



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

ENVIRONMENT AND COMMUNICATIONS LEGISLATION  
COMMITTEE

**Reference: Product Stewardship Bill 2011**

WEDNESDAY, 13 APRIL 2011

CANBERRA

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**SENATE ENVIRONMENT AND COMMUNICATIONS**

**LEGISLATION COMMITTEE**

**Wednesday, 13 April 2011**

**Members:** Senator Cameron (Chair), Senator Fisher (Deputy Chair) and Senators Ludlam, McEwen, Troeth and Wortley

**Substitute members:** (As per most recent Senate Notice Paper)

**Participating members:** Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cash, Colbeck, Coonan, Cormann, Crossin, Eggleston, Faulkner, Ferguson, Fierravanti-Wells, Fielding, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ian Macdonald, McGauran, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Trood, Williams and Xenophon

**Senators in attendance:** Senators Birmingham, Cameron, Fisher and Ludlam

**Terms of reference for the inquiry:**

To inquire into and report on:

Product Stewardship Bill 2011

**WITNESSES**

<b>ANGEL, Mr Jeffrey Samuel, Executive Director, Total Environment Centre, and Boomerang Alliance .....</b>	<b>14</b>
<b>BENNETT, Mr Michael, Director, Environmental Quality Legislation, Department of Sustainability, Environment, Water, Population and Communities.....</b>	<b>35</b>
<b>BROWN, Ms Rebecca, Manager, Waste and Recycling, WA Local Government Association (WALGA) .....</b>	<b>26</b>
<b>COSSEY, Mr Matthew, Chief Executive Officer, CropLife Australia Limited.....</b>	<b>7</b>
<b>GOMEZ, Ms Karen, Chief Executive Officer, AgStewardship Australia Limited .....</b>	<b>7</b>
<b>MAHAR, Mr Tony, Director, Sustainable Development, Australian Food and Grocery Council.....</b>	<b>2</b>
<b>MARTIN, Mr Russell (Russ), President, Global Product Stewardship Council .....</b>	<b>19</b>
<b>PICKLES, Ms Jenny, General Manager, Australian Food and Grocery Council Packaging Stewardship Forum, Australian Food and Grocery Council.....</b>	<b>2</b>
<b>STAPLEY, Mr Ben, Policy Manager, Crop Protection and Stewardship, CropLife Australia Limited.....</b>	<b>7</b>
<b>WELFORD, Mr Rod, Chief Executive, Australian Council of Recycling Inc. ....</b>	<b>28</b>
<b>WRIGHT, Dr Diana, First Assistant Secretary, Environmental Quality Division, Department of Sustainability, Environment, Water, Population and Communities.....</b>	<b>35</b>



**Committee met at 9.07 am**

**CHAIR (Senator Cameron)**—I declare open this public hearing of the Senate Environment and Communications Legislation Committee in relation to its inquiry into the Product Stewardship Bill 2011. The committee's proceedings today will follow the program as circulated. These are public proceedings. The committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee. Any such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is to be taken, and the committee will determine whether it will insist on an answer, having regard to the ground on which it is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

[9.09 am]

**MAHAR, Mr Tony, Director, Sustainable Development, Australian Food and Grocery Council**

**PICKLES, Ms Jenny, General Manager, Australian Food and Grocery Council Packaging Stewardship Forum, Australian Food and Grocery Council**

**CHAIR**—Welcome. Thank you for coming to talk with us today. Mr Mahar is also appearing on behalf of the National Packaging Covenant Industry Association. The committee has received your submission as submission 1. Do you wish to make any amendments or alterations to your submission?

**Mr Mahar**—No.

**CHAIR**—Do you wish to make a brief opening statement before we go to questions?

**Mr Mahar**—I would like to read an opening statement and provide some background. The food and grocery manufacturing sector in Australia is currently operating in what could be described as a perfect storm: input costs, such as energy, packaging and commodity prices, are ever increasing; supermarkets, as you would probably be aware, are engaging in more aggressive competitive behaviour than we have seen for some time; and the regulatory pressures being placed on business by government is ever increasing. This, coupled with the impact of a strong Australian dollar, makes food and grocery imports much more attractive, further exacerbating the competitive pressure being placed on companies that manufacture in Australia. Companies that manufacture food and grocery products are constantly looking for ways to continue manufacturing here in Australia and it is getting harder and harder to justify. The \$100 billion food and grocery sector in Australia is critically important to the economy and is particularly important to rural and regional communities, and we think it is important that we recognise this.

The Food and Grocery Council and its members are committed to actively managing waste streams as part of their overall commitment to secure a sustainable industry in Australia. One of the key issues of importance in terms of product stewardship for the food and grocery sector is packaging waste management. The AFGC view is while packaging is often maligned and has a sometimes negative image it plays a critical role in the supply chain in its ability to deliver safe, healthy, hygienic, high quality and affordable products to the consumer. It plays a significant part in reducing food waste and provides for a range of social issues such as quantity and portion control, and we are of the view that we definitely could not do without packaging.

Specifically in relation to the bill, we support the objective of the bill to reduce the impact that products and their packaging have on the environment and endorse the supply chain wide approach. While we support the intent of the bill, what we do not support is the introduction of primary legislation that paves the way for a myriad of regulations to be implemented for product stewardship schemes without an adequate and robust assessment process based on consideration of economic, environmental and social issues—that is, we favour a truly sustainable approach to policy development.

The AFGC view is that voluntary or co-regulatory arrangements should be pursued as a priority. An excellent example of a co-regulatory scheme is the Australian Packaging Covenant where industry and all levels of government have joined together to respond the issue of packaging waste across the entire supply chain. The Packaging Covenant is low-cost, flexible and provides industry with the ability to make improvements to packaging where it best suits them. Regulations made under any product stewardship scheme should not impose unnecessary costs on industry or act as a disincentive for investment in new technology or processes that improve the overall sustainability of the product.

A couple of quick key concerns in relation to the bill as outlined in our submission. We are of the view that the lack of an appropriate risk assessment process which would assist in the identification of priority products and/or materials subject to product stewardship schemes. While the product criteria included in the bill provides a checklist of issues to be satisfied before legislation would apply, what is lacking is detail on how a product or material will be assessed for its impact. It is our view that the criteria in the bill are too broad and the requirement to adopt only two criteria is an inadequate basis on which to determine appropriate regulatory action. The criteria currently proposed in the bill will pose an unnecessary level of ambiguity around products and potential schemes which could and would lead to a high level of uncertainty for business. The additional requirements of having to satisfy more than two criteria would provide more specific advice which could be incorporated into the regulatory impact analysis, thereby providing a more robust, equitable and credible process for the development of any product stewardship schemes. For the majority of product stewardship arrangements, AFGC supports voluntary schemes, under which organisations could voluntarily take action to



responsibly manage products and/or co-regulatory schemes, involving a combination of industry action and supporting government regulation. That is our opening statement. I am happy to take questions or comments on our submission or opening remarks.

**Senator FISHER**—Can we ask for a copy of the opening statement.

**CHAIR**—Do you have it in a form that you can table?

**Mr Mahar**—Absolutely.

**Senator FISHER**—Thank you.

**CHAIR**—If we go to recommendation 1 in your submission, you say:

... provisions should be added to enable the scale and significance of the problem associated with a product or material to be rigorously assessed.

It seems to me this puts the onus on government to do the assessment. Why would it not be, if someone brings a product to the market, that they should say, 'Look, this is the potential environmental impact of the packaging, of the product itself and of the makeup of the product.' Why should we do that after it has come to market?

**Mr Mahar**—That is a fair question. My view on that one is that every product is going to have an impact. What we are proposing or suggesting is that we have a list of priority products so that we can start with the most intensive or the products that have the most impact and work our way through those rather than having an open policy suggesting product stewardship schemes could be implemented for anything. At the moment it is our view that it could be applied to anything. What we are proposing is: let us develop a process, agenda or scheme that identifies those products that should be prioritised for product stewardship schemes.

**CHAIR**—In recommendation 2 you say that a new clause should be added—

**Ms Pickles**—I would certainly agree with Tony's comments that there needs to be an adequate framework under which you identify what risks are associated with the actual products. Otherwise, we could be dealing with the lowest-hanging fruit, merely on a whim. We are also emphasising that it is more for the co-regulatory and mandatory approaches. Voluntary approaches are a different arrangement. It is a process to seek accreditation. Through that accreditation process, these issues will be worked out. It is more on the co-regulatory and regulatory approaches that we have concerns that there is nothing to establish a framework. Where are we going to start?

**Senator FISHER**—A hierarchy of hits, I suppose.

**Ms Pickles**—Yes.

**CHAIR**—Why would you not start with the low-hanging fruit and make a start?

**Mr Mahar**—What are those low-hanging fruit?

**CHAIR**—I suppose the low-hanging fruit, as outlined in this bill, are the televisions and computers.

**Ms Pickles**—The television has been quite processed to get to the stage that it is at now.

**Mr Mahar**—I suppose what we are suggesting—while there might be some products like televisions, as you said—is a more defined process of identifying those priority products outside the ones that we have already got. The risk for us is that product stewardship schemes can be implemented without any due process notwithstanding what is in the bill already. We think it could be strengthened.

**CHAIR**—Strengthening the bill is one thing but hasn't there been a demonstrated failure in the stewardship of products up to this stage and that is why this bill has come on the scene?

**Mr Mahar**—Arguably, for a range of products, there has been a failure of stewardship. But for those products that are not identified, arguably, there has not been.

**CHAIR**—You basically said that every product has got some waste. That is self-evident but then you say in recommendation 2, about new clauses, that you have to prove 'a demonstrated regulatory and/or market failure of the product'. What do you mean by a 'market failure of the product'?

**Mr Mahar**—If there has been a demonstrated risk or impact of the products or the scheme itself, if those products result in damage or environmental harm, we can look at product stewardship schemes. But there has to be some assessment process to actually document that—a process of considering and examining those impacts and the products and the actual schemes that are, or are not, in place.

**CHAIR**—Are you saying that a product that damages the environment constitutes a market failure?

**Mr Mahar**—To the point that there is an impact, and there is not anything being done to consider that impact, then arguably there could be a market failure there—assuming that there is a demonstrated need for those products from government, the community or industry.

**CHAIR**—We might go to Senator Ludlam. Senator Ludlam is on Skype. This is the first time we have done this, so you a part of history here. Senator Ludlam is creating history.

**Senator FISHER**—Or we are guinea pigs; it could be either.

**CHAIR**—All I would say to Senator Ludlam is that he should have moved the two bottles of tequila!

**Senator LUDLAM**—Which I can assure you are just—

**Senator FISHER**—Is it daylight there in the west? It looks like it is.

**Senator LUDLAM**—Yes, it is only barely daylight. I am going to continue along the lines that the chair was pursuing. Your submission makes it pretty clear that you are not really of the view that regulatory or co-regulatory approaches are the most appropriate in most cases. You seem to be most keen on the voluntary schemes. Have I mischaracterised you there? If not, can you explain why you prefer that approach?

**Mr Mahar**—We certainly favour voluntary schemes as opposed to mandatory schemes, but we very much endorse and support the co-regulatory scheme that is the Australian Packaging Covenant. This scheme includes a safety net, or a free rider provision, for companies that do not sign up to what is effectively a voluntary scheme—that is, the packaging covenant—to have legislation applied to them. Where there is a need for co-regulatory requirements then we would certainly be in favour of those. And, as I say, we are a strong supporter of the packaging covenant, which is working well.

**Senator LUDLAM**—We will have to agree to disagree on how well that it is working—but that is probably another matter. Can you give us an example of a product scheme which you think would deserve a much more strictly regulated approach?

**Ms Pickles**—When we talk about the actual risk or hazard of the product itself, if we look at the current examples of asbestos waste and nuclear waste, there is a need for mandatory provisions in relation to what happens to that waste at the end of its useful life. I think the community would applaud that.

**Senator LUDLAM**—I certainly agree with that—and don't get me started on nuclear waste! But that is not the kind of material that you and your membership are commonly handling. Let us bring us this back to supermarkets and those kinds of product streams. The membership that you are here to represent is extensive. Can you give us an example of any of those that you think deserve to be up at the end of the spectrum?

**Mr Mahar**—In terms of a mandatory scheme?

**Senator LUDLAM**—Yes.

**Mr Mahar**—Probably not. As I say, packaging is probably the key issue for the food and grocery manufacturing sector. We do not represent the retailers but we work closely with them on the covenant, and packaging obviously impacts on them. In terms of other priority waste—and I am not suggesting that mandatory measures apply to this—food waste is another issue for us. Again, that is probably at the community level rather than at the supermarket or manufacturing level. Other issues for us include waste water and other manufacturing wastes. Again, we would favour voluntary co-regulatory arrangements. I am not sure whether I would be able to identify any products in our sector that would require mandatory responses—if that is what you are asking.

**Senator LUDLAM**—Yes, I guess it is. Since you are so keen on voluntary and co-regulatory schemes, do you think we need a whole section of this draft bill devoted to mandatory schemes?

**Mr Mahar**—For our sector I am not able to say there are any products that we think need mandatory requirements.

**Senator LUDLAM**—Since you did get me started on nuclear waste, what about things like batteries and radioactive smoke detectors? What about materials that are commonly sold over the counter that do have some intractable properties and have a very low rate of recycling?

**Mr Mahar**—Again, our response would be that we should ask industry to implement voluntary arrangements and then look at co-regulatory schemes. Mandatory schemes should be a last resort if there is

market failure or if there is no improvement in the recycling rate. But there is clear evidence of good performance from voluntary schemes and co-regulatory schemes.

**Senator LUDLAM**—Because we are dealing with an overlap of responsibilities between the state and territories the government is keen that a regulatory impact statement be undertaken before any major new category of material is incorporated into the scheme. Do you have a view on the amount of time that those processes take, or do you think we have got the balance about right at the moment?

**Mr Mahar**—Specifically for regulatory impact statements?

**Senator LUDLAM**—Yes. There are two that I am aware of. One is around e-waste, which is now coming to fruition after about seven years. The other one is container deposit legislation. I think people have lost track of how long that is taking. That has got us snowed under for the next couple of years. Do you think that the way the process is drafted at the moment is appropriate?

**Mr Mahar**—I think some of these issues are more complex than what some people would like us to believe. We favour a full and comprehensive review and analysis of the impacts. I appreciate that the container deposit issue has been dragging on for a while—and it is something that is close to our hearts—

**Senator LUDLAM**—So you support such a scheme?

**Mr Mahar**—No, you have misinterpreted me.

**Senator FISHER**—It is not akin life-support, in other words.

**Senator LUDLAM**—So fighting off and trying to defeat such a scheme is close to your heart?

**Mr Mahar**—Perhaps that is another way of saying it.

**Ms Pickles**—I think that providing alternatives and giving good consideration to the development of any policy is incumbent on all parties—government, industry and the community. Consideration of a range of options should deliver a better outcome than a unilateral approach going down one line.

**Senator LUDLAM**—Sorry, I did not mean to interrupt your colleague there. I will let him finish and then I will provide commentary.

**Mr Mahar**—As I say, the issues are quite complex. We support a complete and comprehensive examination and consideration of all the views, including economic, environmental and social. We support the government's process at the moment. There have been a number of reviews and investigations but we would hope that they all consider all of the issues and that there is an adequate, comprehensive response following all of the relevant reviews.

**Senator LUDLAM**—You say that your industry is facing a perfect storm—and we are obviously very well aware of what is going on at the moment in terms of price wars, supplies being squeezed and so on. Is it true that schemes such as this can potentially increase costs for industry? Is there a reluctance coming through in your submission to move any faster than you are being forced to?

**Mr Mahar**—There is a risk of increased costs. However, I would argue that something like the packaging covenant is lower cost than some of the mandatory schemes that could be proposed. But they are working well, so cost is not necessarily the main driver. What we are interested in is equity and a whole of supply chain approach to the broader issue. The packaging covenant looks at all of packaging and involves everyone who needs to be involved. While people take pot shots at it—and I appreciate that it is not perfect—it is a good example of a low-cost, flexible arrangement that has a comprehensive approach.

**Senator FISHER**—You say in your opening statement that the product stewardship criteria are too broad. I presume you are talking about section 5 of the bill, which requires that only two of the product stewardship criteria be satisfied before the product can be made the subject of whatever the mandatory scheme may be. Let us take your marketplace for example. Criterion A requires that the products are in a national market, and criterion F says that 'taking action to reduce those impacts will offer business opportunities that would make a contribution to the economy'. Those criteria are pretty open-ended. What would be the impact of applying just those two criteria to what your members supply on their shelves?

**Mr Mahar**—I totally agree. All of our products are sold in a national market. I would struggle to think of any products in Australia that are sold in just one state or one jurisdiction—there are probably a couple of them. It is our view that—

**Senator FISHER**—And, at the very least, someone would argue that taking action to reduce the impact of those products would offer business an opportunity that would make a contribution to the economy. And those businesses might not be your members either.

**Mr Mahar**—That is true. Criterion F is a good example, but there are a couple of others in that list. One of them requires that the consumer is willing to pay for action and the potential to increase conservation or recycling of materials. It is our view that that is quite vague. The breadth and leeway in some of those criteria is so broad that it opens the door for product stewardship schemes for a whole range of issues that do not necessarily take into account the impact of that scheme. It comes back to our opening point about the need for a risk assessment of the criteria.

**Senator FISHER**—You are saying that not only do you need just two of the criteria but each one is vague. The concept of the bill is that something can only be made the subject of a mandatory scheme if two or more of the product stewardship requirements are met and it is consistent with the objects of the act. An objective of the act is to reduce the impact of the products and the substances that they contain on the environment and health and safety. The objectives do not even say that that impact has to be a negative one. It is quite conceivable that there are things that actually have a positive impact on the environment, health and safety et cetera, yet it would seem that the object of this act is to reduce even that. In that context, is your concern about mandatory versus voluntary more related to your not knowing what you are up against?

**Mr Mahar**—Absolutely. While we agree with the objectives and the intent of the bill—and we support that—

**Senator FISHER**—Or what we think the intent of the bill is, given that the objectives are not all that clear.

**Mr Mahar**—Based on the broad interpretation. While we support that, our concern is that it leaves too much scope opportunity for secondary regulations to be made in relation to a range of products that are not necessarily compatible with product stewardship schemes or do not lend themselves to arrangements, mandatory or otherwise, that can be implemented under that bill. In our view the criteria currently in the bill are too broad, too wide and too numerous to allow any certainty for business.

**Senator FISHER**—Were you consulted by the government or any of its arms at any stage in the lead-up to this bill and, if so, when? And when did you first become aware of it?

**Mr Mahar**—We provided a submission to the consultation paper for product stewardship legislation. We drew on that for our submission for the bill. So we were consulted, and in our—

**Senator FISHER**—Was that a federal government thing?

**Mr Mahar**—Yes, it was in relation to the department of sustainability.

**Senator FISHER**—When was that?

**Mr Mahar**—In December last year.

**Senator FISHER**—So you have known this was coming since December last year, but that is all?

**Mr Mahar**—That is when we provided our initial submission.

**Ms Pickles**—We were aware that the government had been looking into this issue for some time. There had been discussions to various other fora, at which it came to our attention that the government was looking at national product stewardship legislation. It was a well known issue probably about six months before that as part of the National Waste Policy.

**Senator FISHER**—Are you satisfied with the consultation—

**CHAIR**—Sorry to interrupt, but we have run out of time. Thank you for your evidence.

[9.36 am]

**GOMEZ, Ms Karen, Chief Executive Officer, AgStewardship Australia Limited**

**COSSEY, Mr Matthew, Chief Executive Officer, CropLife Australia Limited**

**STAPLEY, Mr Ben, Policy Manager, Crop Protection and Stewardship, CropLife Australia Limited**

**CHAIR**—Welcome. The committee has received your submissions, which are numbered six and seven respectively. Do you wish to make any amendments or alterations to your submissions?

**Mr Cossey**—No.

**CHAIR**—Would you like to make brief opening statements.

**Mr Cossey**—Thank you for the opportunity to address the committee with respect to its inquiry into the Product Stewardship Bill 2011. By way of background, CropLife Australia is the peak industry organisation representing the agricultural, chemical and biotechnology sector in Australia. CropLife represents the innovators, developers, manufacturers, formulators and registrants of crop protection and agro-biotechnology products. The plant science industry provides products to protect crops against pests, weeds, diseases, as well as developing crop biotechnologies that are the key to the nation's agricultural productivity, sustainability and food security. Plant science industry is worth more than \$1.5 billion a year to the Australian economy and directly employs thousands of people across the country.

Specific to the issue before the committee, CropLife member companies spend more than \$13 million a year on stewardship activities to ensure the safe use of their products on the environment and human health. CropLife ensures the responsible use of these products through its industry code of conduct and has set a benchmark for industry stewardship through programs such as drumMUSTER, ChemClear and Agsafe Accreditation and Training. Our member companies are committed to the lifecycle stewardship of their products and associated container waste. Membership of CropLife Australia requires registrants of agricultural chemical products to meet certain standards with respect to the development, management and stewardship of their products. All members of CropLife Australia must comply with three codes of conduct that define their obligations with respect to the responsible stewardship of their products. These are: one, the international code of conduct on the distribution and use of pesticides, which requires members to take responsibility for chemical products at each stage of the product lifecycle, from innovation and research through to disposal of containers. The second item requires CropLife Australia members to participate in the Agsafe Accreditation and Training, drumMUSTER and ChemClear programs. Third is the Agsafe code of conduct, which outlines member responsibilities with respect to participation in these stewardship schemes. For the committee's reference, I will table the three documents just referred to.

CropLife Australia works in collaboration with other key stakeholders to administer our stewardship schemes. CropLife, in collaboration with the Animal Health Alliance Australia, the Australian Local Government Association, the National Farmers Federation and the Veterinary Manufacturers and Distributors Association, has established Agstewardship Australia to provide independent funding and strategic management of the and ChemClear schemes. CropLife's subsidiary organisation, Agsafe, administers the day-to-day operations of the very successful drumMUSTER and ChemClear programs, as well as managing the Agsafe Accreditation and Training scheme.

Our programs are among the most successful stewardship schemes in Australia as well as being among the most successful schemes for the management of product containers globally. Our success over the previous 10 years has proven our capacity as an industry to manage agricultural chemical product wastes. To date, drumMUSTER has collected and recycled over 16 million agricultural chemical product drums. ChemClear has collected and safely disposed of over 250 tonnes, that is, 250,000 litres and kilograms, of unused, unwanted, expired or deregistered agricultural chemical products. If it were not for these programs, this waste would have either been sent to landfill or collected in farm sheds in rural locations around the country, potentially degrading and presenting health and environmental risks to local communities.

We welcome the Product Stewardship Bill and consider that its three approaches, voluntary, co-regulatory and mandatory, are appropriate to deal with some of the variation in product stewardship schemes that may operate in Australia. However, for the legislation to be truly successful, CropLife would suggest a set of improvements that would maximise its benefits while minimising its costs. One of CropLife's key concerns is the potential overlap in functions between the proposed accreditation of product stewardship arrangements by

the minister under the bill and the current authorisations provided by the Australian Competition and Consumer Commission. While not all product stewardship schemes are required to obtain an ACCC authorisation, those that do must demonstrate the outcome of the scheme will be of net benefit to the Australian community and outweigh any anticompetitive impact that may be delivered by imposition of a levy. For CropLife stewardship schemes this includes a consideration of the environmental benefits associated with having a sustainable, efficient and effective mechanism by which to manage the risks associated with agricultural chemical product and container waste. Such duplication would merely add to the regulatory cost associated with the bill and duplicate regulatory functions for no additional benefit to the environment or community protection and in fact undermine the current effectiveness of our schemes. As outlined in our submission, CropLife believes that this issue could be addressed by recognising that there are other mechanisms to regulate product stewardship schemes that achieve substantially the same outcome as proposed under the bill. Avoiding duplication with those other processes would be beneficial.

One of the key potential benefits that the bill could deliver with our suggested amendments for these existing waste recycling programs would be to ensure a level playing field by requiring those manufacturers and registrants of agricultural chemicals that currently do not participate in a stewardship scheme to demonstrate that they are also managing product and container wastes, either through participation in the drumMUSTER or ChemClear programs or an equivalent mechanism. Currently this is not available and a co-regulatory or mandatory approach must be pursued to obtain that benefit with the corresponding increase in costs. Availability of such a mechanism would ensure a level playing field between those who as a matter of course, like CropLife members, act as good corporate citizens and those who seek commercial advantage by avoiding the costs associated with proper product waste management or full product lifecycle costs.

Overall, CropLife welcomes the bill but notes the potential for increasing benefit and minimising costs through some targeted amendments as per our submission. Should they be implemented, they would assist in ensuring the bill effectively and efficiently achieves its stated objectives. CropLife's longstanding commitment and achievement in this area and the associated success of our programs provides an effective case study of how this can and should be achieved more broadly.

**CHAIR**—Under your drumMUSTER scheme you said I think 16 million drums have been recovered. Were they recycled or destroyed—what happened to them?

**Mr Cossey**—They are recycled predominantly and then reused. There is a double benefit of collecting the waste and then minimising the need for further drums.

**CHAIR**—How many drums are out in the community?

**Mr Cossey**—That is an interesting question. There are some habits around the country that can see some collected. We have targets; we are seeking to achieve close to 50 per cent at the moment. Ms Gomez, the CEO of AgStewardship, would have some specific data on the success of the program.

**Ms Gomez**—I also have a statement to make.

**CHAIR**—How long is your statement?

**Ms Gomez**—Around five minutes.

**CHAIR**—There would be no time for questions. Mr Stapley, do you have a statement?

**Mr Stapley**—No.

**CHAIR**—I am sorry I did not come to you. Could you go to your statement now then.

**Ms Gomez**—Thank you. I will keep it brief because, by and large, Mr Cossey has set out our issues with the bill. AgStewardship would like to commend the objects of the bill and the intention of the national waste policy. As Mr Cossey has said, we are one of the leading voluntary stewardship programs. We value that the bill is attempting to foster and maintain this approach in addressing product stewardship issues.

AgStewardship has been operating since April 2009. We were formed to bring a strategic focus to product stewardship. Our organisation's members include CropLife Australia, the Australian Local Government Association, the Animal Health Alliance, the VMDA and the National Farmers Federation. We represent the supply chain and their commitment to voluntarily addressing stewardship issues. The establishment of AgStewardship demonstrates the industry and supply chain commitment to product stewardship. We welcome a legislative vehicle to foster that.

We also support the three levels, of voluntary through to co-regulatory and mandatory. We see that logically you would progress through. Where voluntary would work best that is there and allowed for. For products of a high-risk nature that require a mandatory approach, the gradation through to that level is appropriate.

I will now go to the success of drumMUSTER and ChemClear. It is a program where we have addressed both ends of the pipe, not only the collection of waste but also avoiding waste. Through the innovation and technology developments of the chemical manufacturers, along with the support of the farmers in returning empty and used drums, over 75 per cent of waste that would have otherwise gone to landfill has been diverted through this program. That is a significant amount, but it would not have happened if we had focused only at one end. A lot of waste management debate and thinking is increasingly focussing on the start of the pipe. That is a main thing for the committee to consider.

Through a voluntary approach, without having regulatory requirements dictating direction, innovation within the industry has been able to flourish and achieve great outcomes. We have collected 16 million drums. We survey every couple of years how we are performing and in 2009 we collected nationally something like 42 per cent by weight of drums that went into the system. I have a report here that I can table for the committee, which summarises those results nationally and by state.

But there are other success factors. There are something like 84 chemical manufacturers involved in the program nationally, and that covers around 90 per cent of sales. So we have very good coverage and support from the manufacturing sector in AgVet chemicals. We have over 700 sites in rural Australia collecting drums. We also have the support of 460-odd councils around rural Australia, with around 3,000 staff supporting and helping with the collections, with farmers bringing them in. Also, 80 community groups have got involved. So our touch is in all parts of rural Australia.

It is not just on farm or in the manufacturing head officers; it is also on farm and in the local communities. ChemClear was mentioned: yes, 250 tonnes of unwanted chemicals have been collected and 98 per cent of those have been reused for fossil fuel replacement. So there has been an equivalent CO2 saving of around 440 tonnes there. So, again, there is that double benefit that we can provide. They are important programs. The agricultural sector is an important sector. Programs like this underpin our reputation overseas for being responsible, clean farmers. So it is important that their success continues.

Getting back to the bill, our main concern is the duplication of regulation. Considerable resources go into obtaining our ACCC authorisation, and that can be triggered on major or minor events. Some years back we wanted to extend the kind of container that we collect and we needed to go back to the ACCC and get a minor variation before we could do that. Under the bill, the possibility is that we will have to do that twice now in order to expand our program and do more out there. So that is not only introducing costs but also introducing operational inefficiency for us and it makes it more difficult for us to operate effectively and efficiently. I think there is a real issue here from an operational perspective to address that duplication. It is as simple as acknowledging that, for some programs, they have to have authorisation under the Competition and Consumer Act. It is a very simple amendment, we feel.

**CHAIR**—Thanks very much, Ms Gomez. You said that you wanted to table a document. Do you wish to table that now?

**Ms Gomez**—Yes.

**CHAIR**—Maybe I can continue. So you are saying that 60 million drums is 50 per cent?

**Mr Cossey**—On the current rate, as Ms Gomez indicated, we are hitting 75 per cent of containers going out being collected. The double win here is the fact that these containers then go into being reused. So you are reducing the further output. There is no doubt that there are challenges but, on the current rate, it is performing extraordinarily well.

I should indicate that that number is not that we cannot get to the rest; sometimes they are not offered up. What goes out in one year is not naturally going to come back in one year. Occasionally containers are used for other purposes on farms. There is also an inclination by some to be magpies and to collect them in the sheds for a rainy day. But, generally, on the current numbers, it is performing extraordinarily well. We have seen that in the resulting reduction going into landfill and also during operations like Clean Up Australia Day where they are just not coming across these containers.

**CHAIR**—I am still confused. You indicated 50 per cent and Ms Gomez is saying 75 per cent. I am not sure if the document that was tabled clarifies that issue. If not, can you take on notice the difference and explain that difference to the committee. I do not want you to do it now, because—

**Mr Cossey**—Certainly. We can give you a summation of all of the components of the collection.

**CHAIR**—But, if it is 50 per cent, there are still 16 million tonnes of containers, chemicals and whatever still out in the community. Wouldn't that be right?

**Mr Cossey**—Not exactly, because you can have some double counting of containers coming back and being reused again. There is no doubt that there is more out there. It is not that they are sitting around in landfills, though; they are normally being collected and held by farmers themselves and then will get caught up in the system at the appropriate time. But there is a challenge to continue to increase that. Just to be clear with regard to the actual drums—and it is the best one to refer to: 16 million actual drums have been collected. Actually, to be correct, it is more than 16½ million.

**CHAIR**—So you are doing your analysis on a yearly basis of what goes out and what percentage you get back in. What about the last decade or drums?

**Mr Cossey**—That is what has been collected over the last decade. The industry led the way and started 10 years ago.

**CHAIR**—You talk about the regulatory impact on your industry. But before an obligation can be imposed through regulation the minister has to be satisfied that the objects of the act are being met that two or more of the products stewardship criteria specified in the act are implemented and, as a matter of government policy, a regulatory impact assessment requirement of proposed regulations would also have to be satisfied. So there are three steps that have to be taken before there is an imposition on a mandatory position on your industry. Do you accept that?

**Mr Cossey**—I think we need to be here clear. You are talking about a whole-of-industry process there. Our specific point is that at the moment we have an extraordinarily successful scheme operating on a voluntary basis. It is compulsory, obviously for CropLife members because we insist upon them meeting those obligations to become a member of the peak industry organisation. Our argument is that in achieving a whole-of-industry one you would impose a regime of double reporting on those who are already successfully operating to achieve the set—

**CHAIR**—You made that point, and you are making the point again. The point I am making to you is that there are processes in the bill that say that, before a whole-of-industry mandatory approach can be undertaken, there has to be these checks and balances. What do you say about those checks and balances?

**Mr Cossey**—Those checks and balances, though, still then require the double reporting of data even before it becomes mandatory. I suppose that is our core point. Overall, we believe the bill is right. Our argument would be if you specifically targeted the checks and balances to acknowledging that, where there is an effective industry scheme operating with, perhaps specifically, the approval of the ACCC, those participating in that program do not have to still continue, even at the—

**CHAIR**—Isn't that why the regulatory impact is there?

**Mr Cossey**—That is right, but the bill will still impose those reporting obligations on those in the industry who are already participating in a successful scheme. It is why we strongly encourage the components of the bill to go through those processes that are not. It is simply about recognising that those who have got an approval under the ACCC are already meeting those obligations. Or it might be that you move them out of the ACCC area. I would just point out that the reason that we have to go through the ACCC process is that we impose a levy across all members to achieve the outcome, and therefore it is on the competitive basis that we go through the process.

I know the point you are making is that there are checks and balances but, as you go through those processes, the bill does not have a provision to differentiate between those companies in an industry that are actively participating in a successful stewardship scheme and those that are free-riding, if you like.

In light of a former question from Senator Fisher, perhaps we might submit to the committee our original submission to the government's discussion paper on a national waste scheme. Our submission to the committee was specific to where the bill stands now—more as an addendum to our original submission. That may assist.

**CHAIR**—Sure.

**Senator LUDLAM**—I am just interested to know what proportion of the industry is not a CropLife member.



**Mr Cossey**—Now it is down to about 10 per cent of the entire industry are probably not members of CropLife. We have actively sought to have all in the industry participate. On the biotechnology side we have 100 per cent coverage. On the crop protection side, there is about 90 per cent coverage. In some cases that is because those companies cannot yet meet the standards and obligations that we expect. We actively look to assist them meet those standards so that they can join the organisation.

**Senator LUDLAM**—You addressed very briefly in your submission the issue of free riders, and I am just wondering whether you can spell out for us how you think the bill can help bring into the scheme people who may not be interested in volunteering.

**Mr Stapley**—One of things that we would really like to see from this bill is the potential to maximise the benefits while minimising the costs. One of the ways that we can see that that could happen is through the provision of a linkage for voluntary schemes to access the mechanism to draw free riders along as well by requiring nonparticipants in schemes like drumMUSTER and ChemClear to match the obligations that our members already meet. That would enable a level playing field across the entire industry.

**Mr Cossey**—Further to that, it is about recognising that where there is a voluntary scheme that is being participated in by a substantial sector of an industry, the bill might act for those who are not participating by moving it from a voluntary component to a mandatory component while still allowing the successful voluntary scheme to operate and specifically target those in the industry who are not contributing.

**Senator LUDLAM**—We have spoken mostly about the drums and the packaging, and you have given us a bit of information about that. You also mentioned briefly in your opening statement the chemicals themselves—that some of the stuff that is distributed and then is not used is lying around and you are interested in getting it back. Presumably that is the ChemClear—

**Mr Cossey**—That is correct.

**Senator LUDLAM**—What proportion of the unused stuff do you get back and what happens to it when you get it?

**Mr Cossey**—That is a very difficult question because we cannot just from sales know how much is not actually used on properties. So there is a lot of guesswork there. We believe—from what we have found, generally anecdotally—that we get nearly all of that back because, at some point, farmers do not want it on their property any more. If it is no longer of any use to them, there is a natural incentive for them to return to it. So I think, on best anecdotal evidence, we have a very high success rate in getting most product back.

**Senator LUDLAM**—What happens to it—

**Ms Gomez**—It is an interesting example. Our stewardship has been researching this because it is important for us to make sure that ChemClear is operating as best as it can. One of the issues is whether the chemical is actually perceived as unwanted any more. Our farming industry is very industrious and efficient in their use of resources. So when something may be approaching a use-by date, it is whether it is seen that it can be used before that use-by date comes up. The question of how much is out there is as much about a perception of what is a usable and still effective chemical.

We find in our collections that we are continuing to get more but we need to get more regular collections. I think what the committee has to understand is that we are operating in a rural and remote area. We have the tyranny of distance to deal with. We are generally spending high amounts of money on transport on relatively low-value waste goods. So we have got real challenges there in terms of supporting a viable collection service. Dealing with something like chemicals is very expensive. When we do the collections we need to have chemists on site because chemicals are coming in which we cannot identify. So in terms of managing the occupational health and safety side of things we need to have very rigorous risk management processes in place.

**CHAIR**—I am afraid that I have to indicate that you are going to have to try to keep your answers brief. Those opening statements were very lengthy and we have run out of time. The coalition have got some questions and I want to extend a bit of time to them. Senator Ludlam, have you just about finished?

**Senator LUDLAM**—I will make this my last question. Because it is a voluntary scheme it is difficult to identify what is becoming of the materials. Is the levy paying for the destruction of the chemicals that you do get back—or the identification and destruction?

**Ms Gomez**—Yes, 98 per cent of the chemicals that we collect are used for fossil fuel replacement. The levy is used for the collection, for people to register and for the disposal. So it covers the full cost. If a farmer buys

a drumMUSTER participating chemical, they can return their unwanted chemicals to ChemClear free of charge because they have paid upfront through the levy.

**Senator LUDLAM**—I will put my last question on notice, because I think you took some from the Chair as well. I am interested, as the Chair was, about what proportion of industry coverage and material coverage you think you have.

**Senator FISHER**—Be that as it may regarding the answer to that line of questioning, congratulations to the industry for both ChemClear and drumMUSTER. In many ways they were both before their time. Your presence here is evidence of that. Getting back unused chemicals and leftover containers must be a bit like herding feral cats. So well done, even though more work needs to be done. Are your two organisations, AgStewardship and CropLife, only about the very important chemicals and pesticides? Is that the stuff which you oversee?

**Mr Cossey**—Yes, senator, because the industry is led by just the agricultural chemicals.

**Senator FISHER**—But there are no other products in your bailiwick; it is just chemicals and pesticides?

**Ms Gomez**—At this stage, from Agstewardship's perspective, we are focused on making sure that drumMUSTER can clear a setup for success over the next decade. But it is within our strategic remit that we will look at other stewardship opportunities.

**Senator FISHER**—For other agricultural products?

**Ms Gomez**—In the agricultural supply-chain sector.

**Senator FISHER**—Earlier witnesses mentioned 'low-hanging fruit'. The industry has, in other words, self-selected chemicals and their containers as the low-hanging fruit.

**Mr Cossey**—From CropLife's perspective, no. The programs cover all of our members' products.

**Senator FISHER**—Understood. I should have directed that to Ms Gomez.

**Ms Gomez**—I see your point. This was decided based upon the risk and environmental issues that were being addressed. My understanding of 'low-hanging fruit' is that it is the quick gain and the easy pick. I would suggest that these two products are not necessarily in that category. The industry went to address a demonstrable environmental risk.

**Senator FISHER**—Thank you. It is not clear what the fruit is in that context, is it? Do you understand, Ms Gomez, what the effect of this bill will be on the agricultural sector in the broad, leaving aside your CropLife perspective? What products will this bill affect from day one?

**Ms Gomez**—It can affect a broad variety. The question is—

**Senator FISHER**—Are the 'fruit' defined?

**Ms Gomez**—Not particularly.

**Senator FISHER**—No.

**Ms Gomez**—But I do not think that this has been drafted just for agriculture. This bill is cutting across more than—

**Senator FISHER**—But you speak on behalf of agriculture, do you not?

**Ms Gomez**—I do. But I also speak on behalf of a stewardship organisation and the point of this bill—

**Senator FISHER**—In—

**CHAIR**—Senator Fisher, if you would allow Ms Gomez to finish her answer that would be handy.

**Senator FISHER**—Can you explain how?

**Ms Gomez**—How we represent stewardship?

**Senator FISHER**—Broader than agriculture. I thought we had you here today on behalf of AgStewardship. I am questioning the basis on which you can speak more broadly.

**Ms Gomez**—Because one of our capabilities is about being good stewards, I think we have some insight into how a broad stewardship bill may work, through our own experience.

**Senator FISHER**—Can you confine your answer to AgStewardship. Do you understand what agricultural products and substances this bill would apply to from day one? If so, what are they?

**Ms Gomez**—It is quite evident what they will be. They will be products that agriculture relies on that have an impact on waste, the environment and occupational health and community health issues. So it is broad; you are quite right.

**Senator FISHER**—It could be everything, could it not?

**Ms Gomez**—And if you multiply that across other sectors you will get multiples and multiples. If you are dealing with waste then by its nature it has to deal with a whole lot of different sectors and industries.

**Senator FISHER**—Ms Gomez, you referred to the pipeline and to the beginning of it and the end of it. How do you know that this bill does not apply to the stuff in between? Returning to chemicals and pesticides, could this bill not be applied, for example, to substances within chemicals or within pesticides during their life and during their use, particularly bearing in mind the product stewardship criteria listed (a) to (f)? I would ask you to take that question on notice. I would ask you to go away and look at it in the context that any two of those criteria from (a) to (f) could be the trigger for the application of mandatory standards. I would ask you to look at it in the context of whether this bill could apply, even in the limited context of chemicals and pesticides, to something other than mopping up that which is left over and collecting the drums.

My final question is to confirm that drumMUSTER and ChemClear were totally voluntary. So 10 years ago, did they start voluntarily?

**Mr Cossey**—The industry started voluntarily and it was made mandatory to be a member of CropLife, but it is industry led.

**Senator FISHER**—The success of that could demonstrate a voluntary scheme.

**Mr Cossey**—We would put it forward, not only nationally but globally, as one of the best stewardship recycling programs there are.

**Senator FISHER**—Indeed. Well done; thank you.

**CHAIR**—Thank you for your participation today.

[10.10 am]

**ANGEL, Mr Jeffrey Samuel, Executive Director, Total Environment Centre, and Boomerang Alliance**

**CHAIR**—Thank you, Mr Angel, for coming to talk to us today. The committee has received your submission, submission 13. Do you wish to make any of amendments or alterations to your submission?

**Mr Angel**—No, but I have got a few extra points for you.

**CHAIR**—Would you like to make a brief opening statement before we go to questions?

**Mr Angel**—Yes, thanks. I will be brief because I understand you want to have a conversation. For us, the fundamental test of the legislation is: will it make a difference? Reflecting on some of the submissions and some of the requests about accrediting existing voluntary schemes or preferring voluntary schemes as the default of the legislation—which I will explain a bit more in a second—we think the Product Stewardship Bill 2011 has a particularly unfortunate slant in that area.

The bill also appears to offer the opportunity of voiding good state schemes, which may be mandatory or co-regulatory. This federal bill appears to utilise federal powers to extinguish good schemes. It does those three things—the accreditation of the existing schemes, the preference for voluntary schemes and the voiding of state schemes—without a process of full exploration of the alternatives and by use of the regulatory impact statement process, which, by definition of its methodologies and application, preferences voluntary schemes but puts co-regulatory and mandatory schemes under much more severe assessment. We would argue that regulatory impact statements to date under the Commonwealth-COAG situation are not good at assessing environmental regulation.

We have had a couple of examples of schemes that have been claimed to be good voluntary schemes or co-regulatory schemes—such as the Australian Packaging Covenant. I sit on the Australian Packaging Covenant Council. We have had deep and meaningful discussions about whether the Australian Packaging Covenant has made any difference to the recycling rate for packaging. We are clearly ambivalent about that. In my mind the fact is that if you had no Australian Packaging Covenant you would still have the same rate of packaging recycling because it is funded by kerbsides—that is, local councils and ratepayers—and because of the export demand. The APC does have some other uses such as improving packaging behaviour, materials and content of recycled material, which it is now embarking upon, but it cannot be claimed to be an excellent example of co-regulatory mechanisms.

In particular, the Australian Packaging Covenant has done very little on beverage containers. Under our current situation we only collect about 20 per cent of plastic, 38 per cent of glass containers and only 15 per cent of away-from-home beverage containers. You cannot just smear some critical issues under the so-called recycling and packaging gross figure in an effort to avoid one of our more favourite topics, container deposits.

There are other schemes, such as MobileMuster, a voluntary scheme. It, after many years, has only achieved about a five per cent recovery of mobile phones. It does claim that quite a lot are in storage in people's wardrobes, drawers and office desks. However, the critical fact which this bill must also direct itself to is the provision of collection infrastructure. Even if all of the mobile phones that are being stored came out for recycling, MobileMuster does not have the infrastructure to take hold of those and recycle them.

So you have to ask whether a voluntary program has sufficient resources and organisational capacity to develop an infrastructure that gets this stuff to a higher level of collection and recycling. In fact, one of the things that will give us a much greater collection of mobile phones is the e-waste scheme, which is much-heralded and will hopefully be in concert with this bill. That is a co-regulatory scheme and it has come about because of many years of failed voluntary programs. I will give credit to the computer and TV industry for coming on board after a lot of discussions, but the fact is that while we waited for a co-regulatory or mandatory scheme hundreds of millions of electronic items went to landfill.

There are two final points I wish to make. The bill has insufficient external and independent advice to the minister; it is all very bureaucratically controlled inside government. In order to get a proper assessment of what the best type of scheme is—whether a voluntary scheme has gone as far as it can or whether it has too many low targets and insufficient resources to put infrastructure for collection in place—you need much better external independent advice. We are proposing a special committee to not only advise the minister but also involve the community in looking at what type of scheme is best. No particular offence to the bureaucracy, but they do tend to resist co-regulatory and mandatory schemes because of the administrative load and because of

the pressure brought about by the regulatory impact statement process, which I have referred to as not particularly good at environmental regulation.

Finally, I want to say that I am not aware of any product stewardship scheme in the co-regulatory or mandatory field which has forced an industry to go bankrupt or lose significant amounts of market space. In fact, the eventual outcome is to improve that sector's social licence to operate. I am aware of the absence of a product stewardship scheme which has sent recycling companies bankrupt and out of business. That was in the area of tires. We have tried for many years to get a tire recycling scheme for Australia. We failed. The regulatory impact statement terminated efforts at some sort of regulatory process. As a consequence, a lot of tires are either landfill—because it is cheaper than recycling—or are being exported, often for illegal recovery of materials in China via Vietnam. Several Australian tire recycling companies have gone out of business. So, frankly, without product stewardship schemes in Australia you not only harm existing recycling operations which are struggling but also prevent the growth of a domestic recycling industry.

**CHAIR**—Thanks. You heard the evidence from AgStewardship and CropLife before you. They say: 'Don't give us more problems with duplication in regulation. We're doing it pretty well. We are world-class.' Do you have any view on that evidence?

**Mr Angel**—I think you would call that scheme a moderately successful voluntary scheme. It has taken 10 years to get to a 50 per cent recovery rate. I do not really understand the duplication argument because if it comes under this legislation they would simply replace—not duplicate—the reporting and auditing processes that they currently have. Obviously, as part of bringing the AgVet scheme under the legislation, you would reduce the reporting and auditing process to one process. I think they are trying to retain their independence and their identity. Perhaps they are somewhat concerned about bureaucratic or government oversight, but I think what gives the public confidence is someone external saying: 'Your figures are right. Your auditing is okay.' We had this as a quite serious problem with the Packaging Covenant. You cannot operate if the public thinks you are a sham.

**CHAIR**—You also indicated that you think there is a need for external advice. Is there a model for the external advice that you could point as to?

**Mr Angel**—Certainly the New South Wales product stewardship legislation did have an independent committee made up of experts, NGOs and industry representatives. It was involved in establishing a list of priority products and also offering advice each year and a public annual report on the progress towards product stewardship for various products.

**CHAIR**—That worked successfully?

**Mr Angel**—We thought it was successful. The public reports were very illuminating and put out in a transparent manner what industry was up to and the stage at which the government negotiations had been reached. I have to say, the bureaucrats were not particularly in love with it.

**Senator FISHER**—Are you clear about the products to which the bill applies?

**Mr Angel**—If you are asking me whether, in a theoretical scenario, the bill applies to everything, I suppose you could argue that, if you wanted, to go to some sort of theoretical extreme, but the fact is that, in assessing which products or materials that this bill applies to, there are quite a few filters beyond the fact that you would not overwhelm the administrative systems of government by having 100 things at once. The points of need for the bill to apply—whether it is application of criteria or some form of enlightened regulatory impact assessment, and in fact what it industry says it is willing to do, because they become part of the negotiation—is sufficient. I do not expect an avalanche of products to be subject to product stewardship.

**Senator FISHER**—I am not quibbling with the intent of the bill. The intent behind the bill is a good thing and something to which we must work. You said, 'Theoretically, potentially everything' and 'There are filters.' What are the filters in the bill, to your mind, and how would they apply in practice?

**Mr Angel**—Initially, the filters are the criteria, two of which need to be satisfied. They are not minimalist types of considerations. Having been through some years of seeking product stewardship schemes for some products—not all products—the questions are asked, the interrogation of the need is quite significant, and you have to pass that test—

**Senator FISHER**—What part of the bill says you have to interrogate as to the need?

**Mr Angel**—Quite clearly, the criteria will be applied by the minister, and that is one of the reasons we are suggesting greater transparency in his processes, both in public exhibition of his reasons and assessment of

options, plus the advice from an expert and stakeholder committee. He would have to satisfy those before doing something that he would think is politically acceptable.

**Senator FISHER**—Section 5 of the bill sets out the product stewardship criteria to which you have referred. You said that you only need to satisfy two of the five. You also said that the need needs to be demonstrated. If it were argued that the two criteria were satisfied in respect of a particular product—for example, (a) and (f); so the products are in a national market and taking action to reduce impacts will offer business opportunities that would contribute to the economy—how would that demonstrate need in respect of a particular product?

**Mr Angel**—The first point is that I do not think this particular section of the act makes the minister do anything. He has discretion and that discretion is bounded by good advice, administrative capacities et cetera. How those two things—

**Senator FISHER**—What gives him discretion?

**CHAIR**—Senator Fisher, please let the witnesses answer your questions.

**Mr Angel**—How do those things demonstrate need? Well you do not get to the question of need until you have justified making a move. You must meet those two criteria, such as there is a national market, because clearly this legislation is not intended to make only schemes for particular states. That is the first test, so you will not get multiple schemes in different states. These are practicality tests and, if you cannot pass those practicality tests, why ask about the issue of need as well? We have maybe three or four product stewardship schemes in Australia. Governments have often passed the buck between state and federal because we have had state legislation and the federal COAG process says, ‘We will do it instead.’ It has been incredibly hard to get good product stewardship.

**Senator FISHER**—I am not asking about that. Single is obviously going to be better than multiplicity and duplicity and inconsistency. You have said that obviously you need to justify making a move, but isn’t that a circular argument? You are trying to say the need will be demonstrated by justification that a move needs to be made. Where in the bill is that stated? That is a question I have already asked you and, with respect, I think you have answered it in a circular way. You may care to comment on that, but let us look at the issue in a different way. You have said that, yes, theoretically the bill applies to every product. Tell me some examples of some everyday products to which the bill would not be able to apply.

**CHAIR**—Just before you go that, Mr Angel, can I indicate that you can take questions on notice and we can also ask the department later today about these aspects. You do not have to be an expert on the specific minutiae of the bill.

**Senator FISHER**—No, but you have been talking about product stewardship products. You have talked about four of them. You are an expert and you have been working on this for a long time, so have a go.

**Mr Angel**—I do not know what you are asking me because I think it is such a theoretical question that it will not arise.

**Senator FISHER**—Let us hope so, but what in the bill means that it will not arise? I am trying to get my head around it.

**Mr Angel**—What in this bill makes it apply to everything? On paper everything; in practice potentially nothing, as I have outlined.

**Senator FISHER**—Which would be dumb.

**Mr Angel**—Yes. So it will be somewhere in the middle, or somewhere closer to not very many. Knowing how government processes work, how government regulatory assessments work, how industry negotiates and how we have had to work on the various committees, in reality it does not apply to everything. Frankly, I think it is the sort of fiction that puts the bill in a completely wrong perspective and light. What legislation makes everything happen unless it says that everything is going to come under it? It is a discretionary exercise and discretion in ministerial and government terms is very bounded.

**Senator FISHER**—Ultimately, are you saying it will be up to the minister of the day whether there is a need to mandate product stewardship in respect of any particular product?

**Mr Angel**—Yes, but we are also saying we need greater transparency in that process, which brings its own constraints on the minister.

**Senator FISHER**—Where is the transparency in ministerial discretion?

**Mr Angel**—There is not any in this bill. That is one of the issues we have.

**Senator LUDLAM**—I am not quite sure where my colleague is heading, but it seems to me as if this bill—

**Senator FISHER**—I wish I knew. I wish the bill could tell me. It might help.

**Mr Angel**—Can I just try to answer that question?

**Senator LUDLAM**—Go ahead, Mr Angel.

**Mr Angel**—It is true that one of the things this bill lacks is a priority setting process, which could clearly bound the minister's timetable for doing things. That was the reason the New South Wales legislation had an expert committee assisting him and the bureaucracy in applying quite detailed criteria about the need. So I agree to the extent that the discretion invites unfortunate scenarios, but that discretion should be bounded in more transparent and external advice.

**Senator LUDLAM**—It seems to me that the discretion could just as easily mean that nothing ever gets put into this thing. The bill is an empty container. It does not actually talk about any particular product streams.

**Senator FISHER**—Hence the problem.

**Senator LUDLAM**—Yes, hence the problem. The minister could choose to do nothing with this or, as you seem to be hinting, they could go and, heaven forbid, attack every waste stream in the country and make everything recyclable and so on. My question I suppose relates more to how we have seen various product stewardship proposals functioning in the past. You raised the issue of televisions, e-waste and so on. Are we just setting up a repeat where, for any individual product stream once we have prioritised it, we take a decade or so assessing whether to bother or not? I cannot see what difference passing this bill will actually make in reality.

**Mr Angel**—I think in the main the bill tries to validate the status quo. It does that through its preference for voluntary schemes without a level playing field on which you assess those schemes against other types of approaches. Certainly the claim by some sectors to have their schemes automatically accredited simply repeats the lack of transparency that they already have or lack of independent and external assessment.

The regulatory impact statement process, as I said, is pretty poor at looking at environmental policy. It is okay when you can quantify things down to the dollar with other sorts of instruments, such as tax, but, when you are talking about often difficult to quantify public benefits from protecting the environment, the RIS process has been particularly poor. As a consequence it ends up overstating the costs and understating the benefits. We suggested in our earlier submission that the minister have the right to vary or create a more enlightened regulatory impact statement process so that these things are given proper accord.

**Senator LUDLAM**—If we were going to institute some kind of threshold test for whether a given voluntary scheme is working or not, what kind of criteria would you want to set?

**Mr Angel**—The first thing you would look at is the coverage, the number of firms in the sector. The free rider issue has been of great concern to most sectors because those that are in the scheme bear some cost and those out of the scheme do not bear any cost and may get a competitive edge in the marketplace. That is why co-regulatory schemes are at least the minimally acceptable approach, because you can use federal powers to bring free riders into the system. That is what the Australian Packaging Covenant does.

The second thing you would look at is the level of resources being applied to the collection infrastructure. The third thing would be the targets which are embodied in the program. For example, with MobileMuster you have two, three, four and five per cent targets over 10 years. You really have to question whether it is worth anyone's effort. In the case of the e-waste scheme the various parties, including us, agreed to an 80 per cent recycling target by 2020. That seems pretty reasonable. The fourth thing is the external and independent auditing process of the results. Not surprisingly, people often suspect industry sponsored figures for their level of achievement and the scheme itself loses credibility.

**Senator LUDLAM**—You have addressed in one of your proposals for the object of the act that the act should contribute to reducing the amount of virgin resources used in products by preferencing recycle. We could potentially get that into the objects but I am not sure what teeth it would have. What impact will this bill have on the front end? We contemplate this bill mostly in terms of waste—what falls out the end of the pipe—but how do we impact on the way that products are made in the first place to either be easily recyclable themselves or be made of recycled material? Can you see this bill, if it becomes law, having any impact? If not, how would you improve it?

**Mr Angel**—I do not see any overt capacity of the bill to do that. The reason you want to encourage the increased recycle content of a particular product—if that is technically possible—is that you often encourage the domestic recycling industry. You create a market for the recycle and that leads to very significant economic benefits. The fact is that for every tonne of waste that goes to landfill there is one job, but if you take it right through the whole processing and manufacturing system and include that recycle in a product you create nine jobs. That is the first reason to have the recycled content of the product as one of the key considerations.

Secondly, as we have are now trying to do with the Australian Packaging Covenant, the vast majority of the focus is now on those products and the recycled content of the packaging, plus reducing the amount of packaging and its environmental impact. Over several years, the APC is going to be spending a lot of time with its various signatories to get them to assess new product packaging and to look at existing product packaging. Clearly, as a consequence, you reduce the amount of waste going to landfill because more of the packaging is from recycled content and you also waste far less virgin resources.

**Senator LUDLAM**—This is really a portfolio for patient people, isn't it? Thanks for your time.

**CHAIR**—There are two issues that you have raised, Mr Angel: the capacity of this bill to be all-encompassing or do nothing. I think those are the two polemics that have been raised. If you had an activist minister advised by an external advisory committee would that be a positive approach if this committee looked at that? Not that we can tell the minister to be activist—but the external committee.

**Mr Angel**—I think it would be positive because I think the bureaucracy—and this is based on real experience—tends to have quite a conservative view of what can be done in terms of both their perceived future administrative workload and their usually junior position in the regulatory impact statement processes. Until very recently, they have found it very difficult to confront the gatekeepers of the RIS process.

When you have an external committee the people really do interrogate issues. You do not get extreme or highly activist results coming out of expert joint-stakeholder-type committees, but they are usually a bit more adventurous than the bureaucracy—or the minister's office, perhaps. I think that is for the good.

**CHAIR**—Thank you very much for your evidence. If you have something you can put it on notice.

**Proceedings suspended from 10.39 am to 10.52 am**



**MARTIN, Mr Russell (Russ), President, Global Product Stewardship Council**

**CHAIR**—Welcome. I thank you for coming along to help us with our inquiry. The committee has received your submission as submission 3. Do you wish to make any amendments or alterations to your submission?

**Mr Martin**—No amendments.

**CHAIR**—Do you wish to make a brief opening statement before we go to questions?

**Mr Martin**—Yes, thank you. Mr Chair and members of the committee, thank you for the invitation to appear here on behalf of the Global Product Stewardship Council. The council is an independent, not-for-profit organisation dedicated to understanding and advancing the principles of product stewardship. These principles, as we see them, have been provided in our submission to the committee. Within our first year of establishment, the council has held the International Product Stewardship Summit in Sydney and grown membership to span six countries and which includes businesses, other non-profits including producer responsibility organisations, as well as governments at all three levels. We are governed by a board comprising product stewardship experts from the public, private and non-profit sectors in Europe, Canada, the US and Australia. Details are available on our website.

We have detailed our Australian membership in our submission. Our overseas members include non-profit organisations such as the Product Stewardship Institute in the US and WasteMINZ in New Zealand. Our Canadian members include independent recyclers and industry led producer responsibility organisations such as Encorp Pacific (Canada) and Stewardship Ontario. We also have members that are new to product stewardship and with different interests from what we typically see. The best example of this is Petronas, the energy company that is wholly owned by the Malaysian government and that operates in at least 42 countries.

We do not advocate one approach over another. Rather we help stakeholders to understand the objectives, strengths and weaknesses of various schemes based on independent, peer reviewed analysis and sharing information on emerging initiatives through our network of product stewardship practitioners. We aim to facilitate the development of effective product stewardship schemes internationally.

We support shifting physical and financial responsibility from local waste and recycling programs to the producers of products in ways that are transparent and accountable, while giving producers the flexibility to deliver optimal results and minimise their costs. We prefer outcomes based rather than prescriptive approaches. The council has actively participated in the development of this legislation, including the government's Product Stewardship Framework Legislation Stakeholder Reference Group.

The council supports Australia's development of product stewardship framework legislation and the majority of the bill's provisions. In particular, we support the bill's intention to underpin voluntary and co-regulatory approaches to product stewardship. Our experience, as reinforced by overseas participants at the International Product Stewardship Summit, is that Australia has had greater success with voluntary and co-regulatory programs than many overseas jurisdictions have had, and they deserve our continued support.

The bill's objects and product stewardship criteria are largely consistent with the council's product stewardship principles and actions. However, 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. This is the most glaring omission of the bill as introduced. The bill's provisions for mandatory product stewardship arrangements also appear to be overly broad as currently worded. The bill does not include in its criteria the cost and significance of resource recovery. The criteria for applying the legislation are quite broad and can apply to virtually every product sold in Australia.

Most products are sold nationally and most would contain the potential for increased resource recovery. When considering the legislation, it is worth having a process established to prioritise products that encourages consistency and allows for stakeholder input. The council would be pleased to assist in the development of such a process. The council is supportive of the overall approach established by the Australian government to prepare the product stewardship legislation, and we offer our continued support. I am happy to address any questions you may have.

**CHAIR**—Thank you. I think you were here for Mr Angel's evidence.

**Mr Martin**—Yes, I have been attending all day.

**CHAIR**—You have raised an issue that he has raised, and that is some other way of prioritising and also involving business and the community in the application of the bill. What about the New South Wales government's committee that supports the process in New South Wales? Is that a way forward?

**Mr Martin**—I am happy to address that. We saw quite a good deal of support during our International Product Stewardship Summit, especially from state and local governments, for prioritising products based on items such as toxicity, hazard and cost to manage. I would disagree with Mr Angel's assessment, though, in that the New South Wales EPR priority statements were neither EPR nor prioritisation. When you come up with 16 items that are of concern and none are prioritised, that does not seem like a prioritisation to me. New South Wales also had a variety of criteria that were somewhat inconsistently applied. For instance, addressing the potential to be recovered, especially early on, meant that cigarette butts were targeted as an item to be subject to EPR; however, because cigarette butts could not be recovered, they were kind of let off the hook. However, packaging, in which the industry has invested millions and billions of dollars in increasing recovery, was specifically singled out for EPR precisely because there was the infrastructure to help recover it. I would disagree on the EPR expert panel in that a lot of the discussions were still essentially closed and most of us actually found out the recommendations only after the reports had been published. I would encourage a more active stakeholder engagement, greater transparency and accountability along the way to open it up to a broader range of stakeholders and to have that be more transparent so that a more diverse range of views is heard.

**CHAIR**—You say that there is greater success with voluntary programs. How about tyres?

**Mr Martin**—Tyres is not one of the models that I would hold up. We have specifically looked at MobileMuster, drumMUSTER, which you heard about earlier, the news print industry and oil. Those are all prime examples of voluntary approaches that have worked well, whereas a number of our overseas colleagues have had various experiences where they say that voluntary programs do not work. I think we have been happy to prove them wrong in a number of instances.

That said, I think that some of the circumstances we have in Australia might make it easier for us to do it as opposed to some other countries. Generally, a smaller number of players makes it easier to get agreement among those players. Australia will not be a major driver internationally of a lot of change, because of our small market size. However, I think that there are certainly some good models where we have done it well. Industry has stepped up to the plate and delivered in a number of areas. They are working on making those programs better. And that is something that we can actually share with the rest of the world.

**CHAIR**—So are you fundamentally arguing for self-regulation as distinct from government regulation?

**Mr Martin**—No. We think it makes sense to give voluntary and coregulatory approaches a chance to work before automatically going down a mandatory pathway. Some of the discussions that I have heard in testimony today, and what we have seen in the submissions, have applied a number of criteria across everything, whether voluntary, coregulatory or mandatory, and it would make sense to apply a different range of criteria or have a different breadth, depending on the issue. If you have industry that is actively engaged in trying to make a voluntary or coregulatory approach work—they want to institute it; they want the regulatory underpinnings to help make it a sensible program and address free-riders—I see no reason to raise multiple bureaucratic obstructions to block them in doing that. They deserve our support in doing that.

Similarly, you do not want to go out and mandate a range of programs where it is unjustified. I understand that there is a selection process, there is the RIS process, before something would be mandated. But in some cases industries are increasingly saying: 'We want that accountability. We want a level of regulation that helps us make this scheme work, because ultimately that makes it more cost-effective in the long run.'

This is one of the things that we see as well with financial responsibility which, as I said in my comments, was not specifically addressed in the bill. Industries are increasingly willing to take on greater financial responsibility for product stewardship schemes if they get the control and the flexibility to make the program work as they know that it can and if it gives them a chance to reduce their costs as well. So, while it might seem that they are taking on a greater financial responsibility upfront, ultimately, from a long-term perspective, industry is valuing that control and that ability to reduce their costs, to make the program work as they see fit.

**CHAIR**—Is that a generalisation or your point of view? What evidence have you got to back that up?

**Mr Martin**—When we held our International Product Stewardship Summit in Sydney in November, we encapsulated a number of the discussions in an issues paper which we flagged in our submission; we can also

make it available to the committee. In particular, you are seeing programs for packaging, paint and electronics, especially in Canada. We are also seeing them in America. A range of European programs are covered under European Commission directives. However, where they can, they are trying to get that flexibility, in order to control their costs. Where we see costs blowing out is in mandated programs where industry is not given that flexibility. So we are happy to take the question on notice and provide additional examples.

**CHAIR**—Good. Thanks.

**Senator FISHER**—Thank you, Mr Martin. In your submission you talk about your support of the objects of the act. Don't the objects of the act need to be reworded to make it clear that they are about reducing the negative impact of stuff?

**Mr Martin**—I actually had a laugh when you commented on that earlier. As somebody who has done a lot of work on regulatory analysis and understanding positive and negative impacts, there are specifically positive impacts that should be identified—

**Senator FISHER**—And they might be good and we might want to continue that impact.

**Mr Martin**—We have actually had similar discussions as part of preparing the issues paper and as part of our product stewardship principles and actions, in that there are often a range of positive impacts on programs and they do warrant support.

**Senator FISHER**—Yes. So a product or a substance that has a positive impact should not be the subject of a mandatory reduction scheme, should it?

**Mr Martin**—Not necessarily. In some cases industry will say, 'We need a mandatory program to make this work.' And that is sensible, if industry is stepping up to the plate. If industry is not being as proactive as it should, or voluntary and coregulatory approaches have been tested—there has been a legitimate attempt to make them work—and, for whatever reason, they have not worked, then it makes sense to try and have more of a mandatory approach.

**Senator FISHER**—We can have a bit of a laugh, as you have said you did, but the government have been working on this for a long time and it is not really a joke that they have not got their drafting together. You have talked about the consultation paper, and much of your submission is based on the consultation paper. When did you get that paper, when did you first see the bill and how much time have you had to adjust your sight between the consultation paper and the actual bill?

**Mr Martin**—First of all, I represented the council on the stakeholder reference group, so I was active in some of the earlier discussions about the bill with the department. I also participated in the public workshops in Sydney for the bill and for the TV and computer schemes. I provided a range of input but I did not actually see the bill until after it was introduced.

**Senator FISHER**—When was that?

**Mr Martin**—It was mid-March. My understanding is that we were due to see a draft so that we would have a chance to comment—

**Senator FISHER**—But that never happened?

**Mr Martin**—But tying in with the legislative process meant that that was not available.

**Senator FISHER**—Whatever the reason, you did not see a pre-exposure draft.

**Mr Martin**—We did not see it, so we had a bit of a scramble to pull everything together and provide our subsequent submission and testimony.

**Senator FISHER**—And particularly given that you are highlighting discrepancies between what you thought the consultation paper said would happen and what the bill seems to say will happen.

**Mr Martin**—I am cautiously optimistic that there is room for amending these to help address things such as objects and criteria.

**Senator FISHER**—Nonetheless, you agree that there are differences?

**Mr Martin**—There are some differences and we are happy to help in addressing them.

**Senator FISHER**—At the bottom of page 2 of your submission you say the criteria are quite broad and could apply to virtually every product sold in Australia. I would hope that no government and no minister would be so foolish. Nonetheless, it is an issue if the underpinning legislation potentially allows that to happen. You have also said it is better if industry can embrace a product stewardship program giving industry

control and flexibility. You might have a bill that says this can cover everything, but isn't it sensible to have a bill that empowers industry? With product stewardship you can effectively have industry stewards—shop stewards, if you like; we have got a Labor government. For example, you can have the AgStewardship people and yourselves. Isn't that what you would be saying should be happening with this bill?

**Mr Martin**—The bill is actually innovative in that it does give a greater underpinning towards the voluntary and co-regulatory schemes. As I said in my statement, that really does deserve support. We would like to see the potential to address a broader range of industry concerns in the objectives and the criteria—many of the things that you have been hearing about already. I do think that if we have a prioritisation system for other items down the road then we can have greater stakeholder buy-in, greater opportunity to input. That would benefit not only the stakeholders but also governments and non-profits. A lot of the discussions have been polarised to date. I think the department deserves a lot of credit for trying to come up with something that is sensible. As I highlighted in my submission, we think that they addressed a number of things quite well in the bill. They reflected a number of issues and showed that they were listening to the consultations.

**Senator FISHER**—Criterion F talks about taking action to reduce the impacts that will offer business opportunities that will make a contribution to the economy. In your experience what is the potential for a third party, if no-one else, to argue that reducing the impact of a product or a substance on the environment or health will offer business opportunities? For example, waste reduction or elimination could offer a third-party business the prospect of making money. That is pretty easy to argue, isn't it?

**Mr Martin**—I would suggest that the best business opportunities are best identified by the businesses that see those opportunities. If they have a means of being active in the process and putting to the government the fact that they could make a stewardship program work—that there is a compelling business case—then they deserve support. I would not want to see the bill harm those efforts. We have seen a range of programs with voluntary and co-regulatory approaches coming forward without the need for legislation, and they have done quite well. In some cases industries are saying they need some sort of regulatory underpinning to make their scheme work—as with the TV and computer schemes. I would think that the economic value we are seeing in effective product stewardship schemes means there is a very broad range of commercial opportunities.

**Senator FISHER**—Couldn't criterion F be argued in respect of every product?

**Mr Martin**—It could, but I have some faith in the system to weed out every idea. It makes sense to have prioritisation for things like items that are toxic, hazardous or expensive to manage for local waste programs, or if businesses come forward and say they think it makes sense to have a product stewardship scheme in place, they are prepared to undertake it and they want to be active in how the scheme might unfold.

**Senator FISHER**—Does the bill set out those 'sensible priorities'?

**Mr Martin**—Not as well as I would like to see. It goes part of the way. Having that criterion alone is a good step in the right direction.

**Senator FISHER**—But you suggested in your submission that they are basically 'kitchen sink criteria'. You say in your submission that the bill could apply to virtually every product sold in Australia.

**Mr Martin**—That is why I think there is some room for amending the criteria and the objects to clarify that and to clarify the process. The explanatory memo actually had a pretty good assessment of the implications of these different clauses and how it would be applied.

**Senator FISHER**—Yes, but the implications are not in the bill.

**Senator LUDLAM**—It sounds like the one thing that all the witnesses have agreed to so far is that we need to have in the bill or elsewhere a sense of where the government's priorities are at, and you have given us a couple of examples of what they would be. It sounds like you are very much a fan of voluntary schemes where they are appropriate. You mentioned some examples of schemes that are working very well, including MobileMuster, which, Mr Angel just told us, has a recovery rate of less than five per cent. On what basis do you suggest that that particular example is a good showcase for voluntary action?

**Mr Martin**—In our issues paper about the International Product Stewardship Summit, MobileMuster is one of the programs that spoke to the summit. They would report that their recovery is higher. I would ask them to address the actual figures, but my understanding is that it is certainly higher than five per cent.

**Senator LUDLAM**—Okay. I guess you are not here representing them. You also mentioned newsprint and oil, and another one I am aware of is aluminium cans, for which recovery is very high. In all instances this is because there is some economic value in returning that material and it is reasonably easy to just close that loop

and reincorporate that material in product cycles. But what do we do with materials for which there is no easy economic value in returning it? I suppose the problem we have here is that it is mostly cheaper to dump waste—whether it be a television or a beverage container. So what do we do in the instances where the industry is not interested in volunteering?

**Mr Martin**—First of all, I would suggest that the aluminium recovery is more of a commercial process than a product stewardship process. There is scrap value in the material so there is commercial value to be paid back for it to encourage recovery. But there are still some issues involved in that. As cans become lighter weight, you have to recover more cans to get value. And you also have the normal commodity price fluctuations.

For the items that do have a cost to manage, especially to local governments, it makes sense to have some impact. That is consistent with the principles of extended producer responsibility. They impose a cost on local waste programs to manage and therefore that cost needs to be addressed somehow. A range of packaging items, aluminium and steel—metals—often have a positive value for the programs, as we discussed earlier. There is a positive impact in the material value that is often available for those items. An effective RIS process, an effective cost-benefit assessment, should also reflect the positive values as well, but where there are negative impacts then a reasonable understanding of what the costs currently are, options for addressing those costs and various approaches should be considered.

All too often in these discussions there is a search for how to get to that end. If people have a particular policy approach in mind, they try and influence the process to get to that end game for them. I would much rather see a robust regulatory impact assessment process and key stakeholder engagement to lay out a range of options across the board and really understand those options and the impacts, both positive and negative, and then feed that into this process, especially before mandating an approach. Often businesses are considering these items anyway. Local governments certainly have a right to be mindful of the cost. One of the things that we find internationally is that all too often local governments do not necessarily know the cost impacts of a particular item. That is problematic, and that makes it difficult to value.

**Senator LUDLAM**—We are hearing from local government in a second, but I want to keep your comments to your submission, if I could. You wrote that there is a clear presumption in the bill's consultation paper that more reutilisation recycling and higher targets are better, and then you said there is evidence of some counterarguments. Give us an example of where more recycling is actually a bad thing.

**Mr Martin**—It is important to bear in mind that collection and recycling activities are industrial processes that can have their own impacts. They may consume more resources than are saved. Two examples comes to mind. Finland made an active decision to not recycle materials from rural areas, precisely because there was a net impact—that the impacts or the low density simply did not justify collection from rural areas. Similarly, the European Commission, in revisiting the Packaging and Packaging Waste Directive, came up with a list of optimal recycling rates for packaging items. They were nowhere near 100 per cent. They incorporated that consideration in setting targets for each of the materials under the packaging directive.

Bringing it back to an Australian example would be recycling glass, for instance. It is a very heavy material. There is a lot that can be done with economies of scale, processing and secondary markets in Australia, and it has certainly seen a great deal of growth in the past few years. But there would be some parts of Australia where it just would not make sense to take mixed glass or broken glass and try and colour-separate it, ship it to a regional area or ship it halfway across the country in order to meet a market demand. For instance, if you look at green glass, the green glass plant that can take the material is in Adelaide. Are we going to ship a heavy material all the way across the country to get every last bit of it to Adelaide or, by looking at other options, can we do local secondary market development to reduce the transport impacts and have a much greater economic value overall as well as an environmental benefit?

**Senator LUDLAM**—Another thing that you have said is that you have a problem with willingness-to-pay studies; I certainly do, but I suspect that your concerns are the opposite of mine. Your problem is that they may overstate the general public's actual willingness to pay. I have a real problem with the way some of these models are used in regulatory impact processes at the moment, but what evidence do you have that willingness-to-pay studies overstate the general public's willingness to pay?

**Mr Martin**—I am happy to table some documents on that. It is more looking at it as someone with an economics background and having a willingness to pay factor into a range of assessments. As we have heard before, these can be very complex issues. If you are trying to recover an item effectively, there are in all likelihood a range of options to be considered. If you were to take the general public that has been surveyed

and educate them well enough to understand what those options were, they might no longer be representative of the general public. They might say that they have a greater willingness to pay to collect that item, but they are not necessarily representative anymore.

A number of studies have said that, when people know that a survey is related to the environment, they often overstate their willingness to be involved because it is the right thing to do and they want to be seen as being green. There were a range of litter studies over the past decade. They were blind studies where they would survey somebody about their littering practices and an independent observer would observe their practices. Somebody who had just been seen littering would be surveyed, without the person doing the survey being aware that they had littered, and they would say, 'No, I never litter.' So there is a role for that, but they need to be properly structured; I am just mindful of the limitations in some of them.

**Senator LUDLAM**—What a devious piece of research. The reason I ask, I suppose, is that these are not academic questions. In the example of container deposit legislation, which I do not think you have addressed specifically in your submission, modellers inserted tens of millions of dollars worth of imaginary inconvenience costs to substitute for willingness to pay—they just inserted millions and millions of dollars worth of costs that they had basically invented to prove that it was economically unviable to do container deposits because people could not be bothered to pay the notional cost of taking their materials to the recycling centre. You have offered to provide some research, if you have anything recent, that suggests that willingness-to-pay models may even overstate people's willingness to pay, and I think that would be very useful.

**Mr Martin**—In looking at the willingness to pay stuff for the container deposits, I actually felt that they were not detailed enough. There were not enough options included, such as return-to-retail, return-to-depots—a range of activities that are often done to collect containers as well as people's willingness to have a depot located in their community. I did not think that it went far enough on some of those issues.

**Senator BIRMINGHAM**—Thanks, Mr Martin, for your evidence today. I think most of the issues I wanted to touch on have been canvassed, but I just wanted your thoughts on the fact that ACOR in their submission have raised some issues regarding what exactly we are looking at with product stewardship. Whilst we have gone to some of the issues as to how products might be included, they have also highlighted concerns about whether we are looking at end-of-use of the product or the life cycle of the product and that there seem to be some ambiguities in the bill. Do you think the legislation is clear enough in regard to keeping a focus on the end-of-life product?

**Mr Martin**—I think there was enough flexibility in the objects of the bill in particular to allow for people to demonstrate that they are considering the broader life cycle aspects throughout the life cycle and not just end-of-life management. That was one of the specific issues that I was really targeting in looking at this.

Realising that framework legislation by necessity has to be broad enough to be effective over time, I think that there is room ultimately for moving not just to product-specific programs but also, potentially, to material-specific programs in that there could be economies of scale in collecting a range of products together that make a program more cost-effective, allow you to recover more items and have greater environmental benefit by collecting a range of items rather than separately requiring programs for a range of products. You might be able to do a range of electronics, for instance, together in a way that is more viable, is better for the industry and is more cost-effective as a result. So I would not want to see material-specific approaches excluded.

I think that having the objects that we are trying to address—the overall lifecycle impacts—certainly does help. If it was just end-of-life I would be concerned because, as we have seen, a lot of product stewardship initiatives have really evolved over time. By and large they started as end-of-life initiatives and now they are much broader in terms of sustainability, reducing greenhouse impacts, reducing water use and things like that. If those broader environmental impacts are factored into the process, and as some of the benefits that these programs can provide, then that will not only help to tailor the approaches to specific projects but it should also deliver a better environmental outcome as a result.

**Senator BIRMINGHAM**—When you highlight those broader issues and how they apply in a product lifecycle, you are actually talking about how they apply in the lifecycle of the original product or indeed how an appropriate stewardship framework can assist with minimising water or emissions type issues in a recycling and reuse activity or other type of activity.

**Mr Martin**—It is often a combination. What we see is that many of the lifecycle impacts of a product are not in the collection and recycling and reprocessing but in the initial manufacture and processing to get it there. That is why recycling can yield environmental benefits; it avoids more manufacturing and reprocessing.

If you were to take a product and redesign it so that it is not recyclable but it has a different material selection, it reduces transport impacts along the way. You could actually have an item that is better for the environment, even though it is not recyclable. So if the bill was just looking at end-of-life impacts, that would say that that was a bad product. We do not see that. By having the flexibility to address the overall lifecycle impacts we may actually see redesign efforts recognised that can produce far better environmental outcomes than simply making something recyclable. Does that answer your question?

**CHAIR**—We have to move on. Thank you for your evidence.

**Senator FISHER**—Just for the record I want to declare that I hold some shares in Reclaim Industries, which is involved in part in recycling and, in particular, in the recycling of tyres.

[11.28 am]

**BROWN, Ms Rebecca, Manager, Waste and Recycling, WA Local Government Association (WALGA)**

*Evidence was taken via teleconference—*

**CHAIR**—Welcome. The committee has received your submission, which has been numbered twelve. Do you wish to make any amendments or alterations to your submission?

**Ms Brown**—Not at this stage.

**CHAIR**—Would you like to make a brief opening statement?

**Ms Brown**—From the point of view of local government 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 volumes increase and complexity also increases, so does our understanding of the impacts of these wastes on the environment, society and the economy.

Given that situation, local government strongly supports the Product Stewardship Bill 2011 to enable the development, accreditation and implementation of product stewardship schemes. This mechanism will ensure industry takes a greater responsibility for products at the end of their life. Product stewardship will assist in more sustainable waste management operations and solutions as those making and profiting from goods produced will have a direct responsibility for the products at the end of their life.

I would just like to highlight the recommendations from the Western Australian Local Government Association submission which relate not necessarily to the bill itself but to other things that we consider necessary conditions. We would like to see the Department of Sustainability, Environment, Water, Population and Communities develop guidance for product stewardship schemes. The three things that we highlighted for them to consider in their development were equity of service, delivery and outcome for product stewardship schemes. It has been our experience that a national scheme will not necessarily have nationally consistent outcomes. We would also like to see clear negotiation on assignment of roles and responsibilities for schemes and a well-publicised complaints process as a mechanism to monitor compliance.

The other recommendation from our submission was that a list of priority products for product stewardship schemes be developed. That would need to be developed in consultation with local, state and territory governments and the local community. It takes a lot of effort to put together a product stewardship scheme so we would like to make sure that the products selected are the most important and those that have the biggest potential environmental impact.

In summary, cost 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 towards the producer. For producers this means that there is an imperative to think through the lifecycles of their products to consider waste management and intelligent product design and ensure that disposal or recycling options are available. I would also like to say that local government has been very appreciative of the consultative approach that the department has taken in the development of this bill.

**Senator LUDLAM**—One of the points that you raise quite strongly in your submission is about equity of service provision. I am just wondering if you could spell that out for us. You said:

... the equity provision will need to be included in each Regulation relating to a Product Stewardship Scheme.

Can you elaborate for us on what you are concerned about there or how it relates to local government specifically?

**Ms Brown**—The reason that we highlight the equity issue quite strongly is our experience with existing product stewardship schemes, particularly the used oil product stewardship scheme. In Western Australia we have found that we have had problems with used oil recycling. Local government is now recycling used oil at a cost, and that is not the situation in other states. Things like local markets and geographic isolation need to be built into any scheme design so that there is equal service provision nationwide.

**Senator LUDLAM**—I think every witness who has come to us today has spoken about prioritising and getting some sort of idea of what intention the government has by way of prioritising. What kind of products, from a local government point of view, do you think should be prioritised?



**Ms Brown**—We have run a process in the past with our members which included surveying them to find out what kind of products are of concern. We then compared those against our extended producer responsibility policy statement, which we also submitted to the inquiry. The products that very strongly came through from that were electronic waste—TVs and computers, but not just TVs and computers; there was a whole range of electronic waste. Local government also strongly supported container deposit systems and we highlighted the cost of those particular products for local government. Tyres were also considered to be quite a big issue for local government and even though there is already an existing scheme, used oil is a real concern particularly for non-metropolitan local governments.

**Senator LUDLAM**—We did not get very far with tyres after a huge amount of work.

**Senator BIRMINGHAM**—Thank you, Ms Brown, for your time today. You note in your submission concern about proposed section 5 of the bill and argued the need for some amendment, particularly to proposed section 5(c). Can you take us through the reasons for that please and what changes you think are necessary?

**Ms Brown**—Specifically that relates to the criteria for product stewardship.

**Senator BIRMINGHAM**—That is right; this is the criteria part and the linking of conservation or recovery with greenhouse gases or water used.

**Ms Brown**—Our concern there was that initially the rationale for product stewardship was listed in the consultation paper, and there were a range of different rationales and greenhouse gas was not necessarily mentioned as one of the rationales. There were a whole range of other ones. Environmental impact is obviously key. The reason there was concern, particularly for that criteria, is that it may be difficult to quantify the contribution to reducing greenhouse gases. Our experience through the regulatory impact statement process has been that everything has to be economically quantified and that can be a very long and difficult process. You have both of those criteria together when you can demonstrate conservation of material, but it may be difficult to quantify the greenhouse gas, energy or water consumption to any great level of detail. Generically, you can do it for recycled products, but there are a lot of specific calculations for that.

**Senator BIRMINGHAM**—I understand the concerns you are raising and I am certainly far from convinced that we have got the wording around proposed section 5, which is critical to this bill, correct. Equally, if you separated these two clauses, you would leave open the potential that you approve a stewardship program which achieved the aim of conserving materials but did so in a manner that was inefficient in a water sense or inefficient in an emissions sense. Obviously, there is a need there for at least some safety valve, if I can put it that way, or a minimum standard to ensure that, even though you may not be able to measure clearly the dual aims of conserving materials and reducing the use of those natural resources, you do not end up being worse off in one of those criteria.

**Ms Brown**—Understandable. The lifecycle impacts of recycling are certainly something we are well aware of as well.

**Senator BIRMINGHAM**—I did not quite catch what you said there, but that is okay. I want to go back to some early parts of your submission. You highlighted some areas where you are unhappy about recommendations that were made not being met, in particular the need for a list of priority products being developed. The prioritisation and selection criteria have been a topic of conversation with a number of other witnesses this morning. Do you have some thoughts on how it may be best for government to prioritise or what type of selection criteria could be strengthened to ensure there is greater transparency around the operation of these schemes?

**Ms Brown**—As we mentioned in the submission, we are recommending for the selection of products a kind of open process so there is government engagement with stakeholders about what products are of concern to them. Once you have got that, applying the criteria in the bill would probably be a good starting point to work out which ones are going to be the most immediately relevant.

As I mentioned, the association has an extended producer responsibility policy statement. We suggest similar criteria. If a product has significant environmental impacts, if it has significant cost for government and if there is a particular community concern about a product, those things would lead to the product being a higher priority.

**Senator BIRMINGHAM**—In saying that your recommendation with regard to privatisation is not being fully met, is there some merit in looking at the bill and whether there is a need to have a clearer public process mandated for the government to go about their consultation and setting of priorities?

**Ms Brown**—As we said in our submission, that may be something that is outside the scope of the bill and that is something the government would need to commit to separately, or it could be included in the bill.

**Senator BIRMINGHAM**—So you are open to the resolution in that regard?

**Ms Brown**—Yes. We would not request a specific process, but we have clearly identified the outcome we would like to achieve.

**Senator BIRMINGHAM**—Thank you.

**CHAIR**—Ms Brown, we had evidence this morning from AgStewardship and CropLife about the success of their scheme. Do you have any evidence of a continued problem with agricultural chemicals or chemical containers in waste fill in Western Australia?

**Ms Brown**—We did mention drumMUSTER briefly in our submission. We found generally in WA that that is a quite successful program because industry has taken responsibility for the collection and recycling of those products. DrumMUSTER has been pretty successful here. ChemClear, which is AgVet chemicals, has been pretty successful too. We have some comments about how it was rolled out specifically—the mechanics of the system—but we are not getting any loud feedback that it is a bad program.

**CHAIR**—I am not trying to indicate it is a bad program; I am just wondering whether you still have evidence of chemicals and chemical containers in your landfill.

**Ms Brown**—The chemical containers are probably fairly well managed. We do not have any specific evidence about chemicals going to landfill. There is a cost for ChemClear for certain products. That may mean that material is not taken to sites, but that is really speculation.

**CHAIR**—When you say that these programs have been pretty successful, is that just an anecdotal view from you or do you have more evidence on that?

**Ms Brown**—I suppose it is based on feedback from local government. We have not done any surveys or anything like that. Certainly our dealings with particularly drumMUSTER have been very positive. When we have raised concerns with them about the collection of material, they have responded very quickly.

**CHAIR**—I have no further questions. Thanks for your evidence today.

**Ms Brown**—Thank you for the opportunity to present.

#### **Proceedings suspended from 11.43 am to 2.02 pm**

**WELFORD, Mr Rod, Chief Executive, Australian Council of Recycling Inc.**

*Evidence was taken via videoconference—*

**CHAIR**—Welcome. Thank you for talking to us today. The committee has received your submission as submission 18. Do you wish to make any amendments or alterations to your submission?

**Mr Welford**—No material amendments, Chair.

**CHAIR**—Do you wish to make a brief opening statement before we go to questions?

**Mr Welford**—I will, if you like. Firstly, I thank the committee for the opportunity to appear before you and especially your assistance in providing a teleconference contact for this appearance. We appreciate the opportunity to contribute to the committee's deliberations on this bill. The Product Stewardship Bill is an important step forward, in our perspective, in managing materials and products across the economy more environmentally sensitively and also potentially more economically efficiently.

**CHAIR**—Those sounds indicate that Senator Ludlam is coming in on Skype, so bear with us for a moment.

**Senator LUDLAM**—Sorry, I am a couple of minutes late.

**CHAIR**—Mr Welford has just started his opening statement. You have not missed much.

**Mr Welford**—The bill is only framework legislation at this stage, so there is a lot of devil in the detail in terms of how regulations for particular products will pan out. But I think the submission that the Australian Council of Recycling have given your committee gives you some insight into what we believe are the highlight issues for the committee to give further thought to. The general framework of the legislation in providing for voluntary co-regulatory and mandatory product stewardship schemes we believe is an appropriate framework. However, as the submission indicates, there are some elements of the terminology of the bill that might perhaps be refined, in particular provisions that have yet to give priority to the recovery and recycling of these products as distinct from their simple take-back.

The bill provides for companies that are liable parties to participate in the product stewardship scheme to take back or be part of collective arrangements for the recovery of the products. But the bill itself does not prioritise the requirement that the products themselves or the materials in those products should be recycled within Australia. I think this is something that the committee should give some further thought to.

I will leave the rest open to questions based on the submission I have made and perhaps elaborate further in the context of questions the committee may have. Thank you.

**CHAIR**—Thanks, Mr Welford. I might start. You say in your submission that the bottom line is to improve the efficiency of PS schemes by requiring certain products to be made in substantial part by recyclable materials. That is a statement of the obvious, I think. Then on B you say we get 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 usable economic secondary material in the true sense. That sounds like a familiar argument and might be an argument I have pursued over the years about value-adding. Why do you think your argument for value-adding in this area would succeed when it has not succeeded in many other areas of economic engagement in this country?

**Mr Welford**—I am familiar with some of your arguments of the past in this area, Senator Cameron, and I certainly share the sentiment. The distinction I try to draw in the submission in the context that we are talking about here is a distinction between a commodity that obviously it is difficult to oppose the export of on one hand and a waste which we believe should not be exported on the other. To give you an example, the export of the processed materials, for example processed plastic, process cardboard or paper, as a processed ingredient in manufacturing in other countries is something which I would accept it would be very difficult to persuade governments to change policy on. But we are not talking about the crumbed rubber or shredded plastic or indeed shredded metals that have been processed here; we are talking about whole products which in many cases include contaminants which when exported as a whole are simply disposed of in seriously environmentally damaging ways in other countries. I think that distinction is something that the Australian government and the parliament should take cognisance of in looking at the issues around recycling and resource recovery in Australia. To export end of life products as a whole without at least requiring some sorting and processing of their components or their materials here runs the risk that we are simply using other countries as a dumping ground for our waste when a much more sustainable and economically efficient way of dealing with those products and materials is to process them so that, firstly, they have a maximum opportunity of being reused in Australia, but then if there is a surplus that surplus can be legitimately exported.

**CHAIR**—Does that go for uranium waste?

**Mr Welford**—Well, I am cautious not to buy into too many diverse arguments, but our view would be that wastes generated within Australia should be largely managed within Australia and processed here. That would be part of our responsibility.

Apart from paragraph (a) in my last page, which you drew attention to, in the context of products I believe the issue is that, if we are to have a sustainable economy, the materials from those products should be recovered from the economy at the end of the product's life—that is, the life of its economic use—and then those materials should be recovered and reintegrated back into productive use in other forms. Of course, we do this with many materials already—we do it with steel. Our companies, OneSteel and our other steel companies, are able to recover that steel and remanufacture it into new products; similarly with aluminium.

The easiest materials to recycle in Australia are the ones with high embodied energy, because, like the metals, they have value. But as we move into other products, such as this legislation is designed to achieve, the rational approach is that we recover those products in Australia and we process them here rather than send them offshore as a whole product.

**Senator BIRMINGHAM**—Thank you for joining us today, Mr Welford. I want to go through a few of the points you make in your submission. You highlight a list of target goods or products that you think should be the focus of product stewardship initiatives. Do you think the legislation proposal from the government provides enough clarity around where the focus of activity should go?

**Mr Welford**—I think there is more that could be done, though perhaps the legislation is not necessarily the place for it. There is a reason that I have drawn attention to that list of products—and there are others, incidentally. I have been informed since circulating the submission among our members that there are mattress companies, believe it or not, who are recovering, reprocessing and remanufacturing mattresses from those materials. There are companies, of course, that already recover mobile phones through the Australian Mobile

Telecommunications Association. So there are a range of products which are ideal candidates for product stewardship-type schemes. There is another company called Close the Loop, which is a member of the Australian Council of Recyclers, that recovers printer cartridges. Rather than those whole products being exported to Asia for processing, they are able to be processed here.

One of the issues in relation to this is that for a number of these products we have underutilised reprocessing capacity in Australia and, as I point out in the case of tyres, that capacity for recovery and recycling within Australia is now so underutilised because of this leakage of whole tyres out of Australia that we are losing the capacity of companies and they are folding.

If we step back a little and look at the bigger picture and ask the question of what constitutes a sustainable goods economy within Australia we have to say that wherever possible we should maximise the recovery of end-of-life products in Australia and process those materials where there is a demand for them within Australia. Companies like OneSteel and Alcoa in the steel and aluminium manufacturing industries cannot get enough of those recovered products to meet their needs as it is, so anything we can do to improve the recovery of products that allow remanufacturing in Australia is a good thing and enhances the sustainability of the economy overall—in contrast to simply dumping those products overseas, where in most cases they are not managed sustainably or indeed safely.

**Senator BIRMINGHAM**—How would you propose to ensure government went about a selection process for product stewardship arrangements that ensured a focus on the types of situations you have just described?

**Mr Welford**—I think there would need to be a process whereby we look at the low hanging fruit and where the opportunities are. Currently there are a number of businesses in a number of sectors who already have what you might call voluntary arrangements. They are not voluntary arrangements in the sense that they have any formal accreditation or approval by government under this legislation, which does not yet exist, but there are a number of companies already making an effort to recover things like mobile phones, batteries and the like.

The question is: if we want to make our economy sustainable, we need to ensure that those companies are able to have an adequate supply of end of life products. I think the logic of an assessment about which products to prioritise and which of the scheme types would be appropriate—between voluntary or co-regulatory—depends on what are most easily able to be picked up currently. Consultation with industry would readily identify which areas are most easily able to be converted into an accredited scheme. But as I mentioned in relation to voluntary schemes, we need to enable those operators who already function with some kind of take-back scheme to be accredited with a minimum of transaction costs.

**Senator BIRMINGHAM**—I will turn quickly to a couple of specific issues you raise in your submission. You have highlighted concerns over the objectives, the use of the phrase ‘throughout their lives’ and perhaps not an appropriate focus on end of life definitions and management of products. You also go on to highlight some concern about the way the word ‘waste’ is used. Can you explain to us why those are particular concerns that we should either be mindful of or address in fixing the legislation?

**Mr Welford**—I appreciate the question. It is an issue that arises in the context of how product stewardship schemes are seen in the community and how the purposes of these schemes are communicated to the brand owners—that is, the product manufacturers. I have gone back and looked at the definitions. The definition of the ‘life of a product’ does in fact cover its end of life management as waste, as it is described in the bill. However, I think it is important, if the act can do so, that it is drafted so as to highlight that the primary purpose of product stewardship legislation really is on end of life and not just throughout the life of a product.

A standard dictionary reading of the bill referring to ‘throughout their lives’ would lead one to think that the only responsibility that this bill imposes is while this product is being used by its end user or consumer. The real value of product stewardship arrangements is that the manufacturer takes responsibility for that product beyond the time when each of us as consumers might be using such a product. That is precisely what is intended with the first tranche of products—namely, computers and TVs—that will come under this legislation. I think it would be preferable if the legislation was drafted in a way to emphasise the importance of that end of life management.

The other issue relating to waste is simply to overcome a perception in the community that all we are handling here is a waste product. Our view about what constitutes a waste product is that it should be, by definition, a product or material that has no economic value or further potential use. None of the products that you would put into a product stewardship scheme ought to be characterised in that way. We put them into a

product stewardship scheme precisely because we believe that either the product components or the materials that constitute that product do have further uses if we recover the product and process those components or materials. Accordingly, I would encourage, where possible, that we avoid reference to these products at the end of their life as being 'waste' because they should not be regarded as waste until we have exhausted the potential for their materials recovery and recycling.

The other challenge that comes from labelling things as waste—and this is a problem that is experienced with environmental legislation at state level around Australia—is that when remanufacturers take these materials and use recycled materials in manufacturing new products it tends to cast, if you like, a negative perception about the quality of the products that are manufactured out of these materials if we refer to those materials as having been simply waste, because waste in most people's mind refers to all the combination of putrid rubbish that goes into a landfill. So, wherever possible, as a matter of terminology and as a matter of language, our council encourages us to refer to these things as by-products, end-of-life products, secondary materials or simply materials that can be recovered and reused. When we recover steel and that steel is remanufactured into sheet metal and then remanufactured either in Australia or elsewhere into cars no-one sells the car and says to people, 'Please drive your waste carefully.' We regard these products, many of which are made up of up to 70 or 80 per cent recovered materials as perfectly high quality products. If we at the outset in our legislation refer to these recovered product as waste then that tends to weigh on the public perception of those materials for the rest of their economic life.

**Senator BIRMINGHAM**—Mr Welford, we will have to keep moving along. I will ask one more question and then other colleagues will jump in. You also highlight some concerns about the criteria stipulated in the bill. You have particularly highlighted a concern about the operation of section 5 and used an example that my colleague Senator Fisher highlighted earlier today, and that is whether in fact anything could potentially meet subparagraphs (a) and (f) alone and whether that would be a meaningful program to endorse. Do you think if we took your recommendation of requiring paragraph (c) as a mandatory aspect that would still provide satisfactory flexibility to the scheme while certainty that any project that was undertaken by government would be of value?

**Mr Welford**—I think you could include paragraph (c) as a necessary as well as a sufficient condition for the minister making a decision to apply product stewardship to a particular product. I am aware that in some of the other submissions there has been some debate about the general wording of paragraph (c) and whether it sets the bar too low. As you see from my submission, I recommend that you leave paragraph (c) flexible in the way that its current terms contemplate.

I think what the legislative draftsman was trying to achieve in this section was as much flexibility as possible for the minister to assess which products would be appropriate for inclusion in some form of product stewardship scheme. On balance, we would support retaining as much flexibility as possible. The only reason I draw attention to paragraph (c) is that clearly that paragraph reflects the primary function of a product stewardship scheme—namely, the recovery and recycling of products at the end of their life. So, if any of those paragraphs were to be regarded as mandatory rather than discretionary, that might be an appropriate one.

**CHAIR**—I will go to Senator Fisher for one question and then I will come to you, Senator Ludlum.

**Senator FISHER**—Mr Welford, coming off the back of your answers, most latterly to Senator Birmingham, if you look at the criteria in clause 5 (a) to (f) of the bill, can you think of any product that mums and dads buy—from, for example, the supermarket shelf—that would clearly not be covered by any of those criteria?

**Mr Welford**—No, not off the top of my head. I think the criteria that have been outlined pretty much capture all the potential products that one might come across that would be appropriate for a product stewardship type arrangement. As I say, I think the section as a whole is very broad and is intended to be broad so as to allow maximum flexibility to the minister who makes the decision.

**Senator FISHER**—Then are you saying that any product at all is appropriate for a product stewardship program?

**Mr Welford**—No, not at all.

**Senator FISHER**—Then, Mr Welford, I ask my question again: can you think of any product—for example, one on a supermarket shelf—that it would not be able to be argued falls within the coverage of any of (a) to (f)? You have said no, and then I think you have gone on to say, 'But these are products that are

appropriate for product stewardship.' Is every product in the world appropriate for a product stewardship program? And, if not, how does (a) to (f) let out those that are not?

**Mr Welford**—I think that, in its current form, (a) to (f) do not let out those that are not.

**Senator FISHER**—Okay. Thank you.

**Mr Welford**—And that is why I have suggested that to narrow the scope to some extent would require at least one of the paragraphs being a precondition for inclusion. To me, the obvious paragraph is paragraph (c). That is, you would pick products where there is real value in recovering those products and recycling them. The government has already identified that computers and TVs are such products, and I think that is a rational decision. They would similarly make other choices for inclusion, on a very selective basis I would imagine.

**Senator FISHER**—Let us hope so. But the bill does not say that. Thank you, Mr Welford.

**Senator LUDLAM**—Thank you for your evidence, Mr Welford. I will just follow on from where my colleagues have been. I do not share the horror of my colleagues at the idea that anything could eventually find itself needing to be recycled. But I think every single witness who has come—

**Senator FISHER**—Let us not go, 'She'll be right, mate,' Senator Ludlam.

**Senator LUDLAM**—Heaven forbid we should improve recycling rates right across the country!

**Senator FISHER**—That would be good!

**CHAIR**—Senator Ludlam, we do not have a lot of time, so do not be diverted unnecessarily.

**Senator LUDLAM**—Okay. I will take your advice, Chair. Everybody who has come has mentioned that they want some kind of prioritisation. I think I heard you go a bit further, in promoting the idea that, across various product streams, we should prioritise which ones we want to go after, and maybe the government would help us by identifying which of the three tiers should apply. Is that reflecting your views correctly?

**Mr Welford**—Yes, I think that is generally an accurate characterisation of what I have said. For any particular product, one of the three regime types or scheme types would be appropriate. For a number of products, it may well be that the voluntary arrangements—that is, the arrangements that the industry itself sets up—simply need to be endorsed under this legislation to be continued. The one advantage that this legislation provides is the capacity to ensure that those schemes have some accountability and, if you like, some integrity.

The real test of the level of government intervention comes in respect of coregulatory or mandatory schemes, and these might be schemes where the previous senator would have more concerns. My expectation, however, is that government will necessarily take very small steps in this process. No-one would expect government to rush in and declare a whole range of products as being subject to product stewardship—if for no other reason than the infrastructure and the systems for that to occur simply cannot be established easily or overnight. It only really works if you have discrete products where you know who the primary brand owners are.

**Senator LUDLAM**—Okay. That is helpful. I think that everybody agrees that something upfront that identifies priorities and where the government thinks they fit in the frame of things would be helpful. Let us come then to the more regulated end of the spectrum, because we have spent most of today talking about how voluntary schemes do or do not work. What is your view on the process that we go through at the moment, which is proposed to continue here, where we subject a given product stream to a regulatory impact statement process that can last, in the case of e-waste, up to seven or eight years? How well do you think that process has served us to date, and would you propose any improvements?

**Mr Welford**—Whenever you are going to have a coregulatory or mandatory scheme, it will necessarily involve new regulation. Where new regulation is involved, I think most parties accept that the regulatory impact statement process is one that we are all bound by. But it does have its strengths and weaknesses. One of its strengths is that it does bring some rigour to assessments about which products should be in and whether the justification for including them exists. The downside, as you point out, Senator Ludlam, is that these processes sometimes take much longer than they should, involve the relevant parties in much more expense than can be justified and, in some cases, rely on financial assessments that do not fully internalise the economic costs of failing to recover these materials and recycle them.

**Senator LUDLAM**—I think on that last one you have nailed it. These processes do not sometimes do that; they do that by definition, as far as I can tell. You have some quite strong language in your submission around tyres, saying 'We did a regulatory impact statement, we monetised up all the benefits of recycling and the

formula spat out, “Don’t bother; let’s keep dumping this garbage illegally on communities in South-East Asia”, so that is what we are now doing.’ To me, it is a disastrous failure, as I do not want to subject any more product streams there if it can be avoided, that in this instance we weighed up the economic benefits of processing in Australia and decided not to bother. I wonder whether you have any concerns about subjecting other product streams—for example, whether we are going to wind up going down that track with batteries or other kinds of intractable waste.

**Mr Welford**—I think there is a real risk in the way in which the current RIS process operates. We do risk that problem arising again. The difficulty I see with the RIS is that it looks at the product in isolation. By that I mean that when the regulatory impact assessment was done on tyres it looked at what the financial costs of recovering tyres might be—and, of course, there is debate amongst the tyre recycling industry as to whether those assessments of cost were accurate or not. Leaving that aside, it looked at a system for recovering tyres in isolation. Similarly, other regulatory impact assessments that looked at things like container deposits looked at the individual collection systems in isolation. In the real world, if we set up a recycling industry in Australia where there are collectors of recyclable products and materials around Australia serving product stewardship schemes and serving materials that are already collected because they have an economic driver to be collected, the economics of that whole system will change dramatically compared to simply looking at individual products in isolation. For example, if a collector were to set up, whether it be a non-profit organisation like some in South Australia that currently collect containers or a business that set up to collect materials, they would not just collect tyres. They would collect tyres, they would collect metals and they might collect computers on behalf of the product stewardship scheme. Then those economies of scale would be captured in a way that the RIS does not assess.

**Senator LUDLAM**—That is really helpful. Thank you very much.

**CHAIR**—You have raised an interesting point about the definition of ‘waste’. The definition section of the bill states:

*waste*, in relation to a product, means waste associated with the product after it is disposed of.

I have had a look at what is happening in Europe and their definition of ‘waste’ is:

Any substance or object the holder discards, intends to discard or is required to discard is WASTE under the Waste Framework Directive.

Where do you get your definition of ‘waste’? Is your definition of ‘waste’ used by any government anywhere?

**Mr Welford**—I must confess that the way in which I have characterised ‘waste’ is not a traditional way in which the word is used. I can explain the reason for that. It has a long history. The history is associated with 19th and 20th century engineering where everything at the end of its life was regarded as waste—that is, non-usable. Our entire history in the so-called waste management industry has been one of disposal of end of life products to landfill primarily but, as we move in this century to a more enlightened view about what is a sustainable society and a sustainable economy, we need to realise that these things are not waste, they are only waste if we do not use them. The fact is that we can use them and we should recover them and recycling technology does enable us to recover them. As these technologies improve, it will become more economically efficient to recover them than simply throwing them away. It is time to turn that language around and stop referring to end of life products as waste, in the way that has been traditional.

**CHAIR**—Again the European Union go on to say:

Once a substance or object has become waste, it will remain waste until it has been fully recovered and no longer poses a potential threat to the environment or to human health.

From this point onwards, the waste ceases to be waste and there is no longer any reason for it to be subject to the controls and other measures required by the Directive.

**Mr Welford**—Let me explain. They use that definition of ‘waste’ as a regulatory device to maintain control over the product or substance throughout the end of life management. It is simply, as I say, a historical use of that term to maintain legislative control. New South Wales legislation, for example, does a similar thing.

**CHAIR**—But in terms of the definition, this is a definition that has been adopted only since December 2010. They go quite clearly to the point that it is waste until you have recovered and you are basically saying that it does not become waste until you have recovered. You do the complete opposite.

**Mr Welford**—That is right. I am proposing that we do not ascribe the terminology of ‘waste’ to any product or material until recovery options have been exhausted.

**CHAIR**—That is interesting. It is an interesting submission. Thank you very much.

**Mr Welford**—Thank you.



[2.39 pm]

**BENNETT, Mr Michael, Director, Environmental Quality Legislation, Department of Sustainability, Environment, Water, Population and Communities**

**WRIGHT, Dr Diana, First Assistant Secretary, Environmental Quality Division, Department of Sustainability, Environment, Water, Population and Communities**

**CHAIR**—Welcome. Do you have a brief opening statement before we go to questions?

**Dr Wright**—Yes, I do. I would like to thank the committee for this opportunity to appear today and for the opportunity to make a short statement before taking questions from the committee. The Product Stewardship Bill seeks to implement a commitment made in the national waste policy and endorsed by the Council of Australian Governments to introduce a national product stewardship framework underpinned by legislation. The bill establishes a national framework to enable Australia to more effectively manage the environmental health and safety impacts of products and particularly those impacts associated with the disposal of products.

Considerable analysis and consultation have been undertaken to develop this bill. The analysis has included economic analysis for the national waste policy regulatory impact statement, which was published in October 2009. This analysis showed that a national framework approach to product stewardship for problematic waste, compared to separate jurisdictional approaches, generated savings of \$147 million over 20 years. Consultation has included extensive consultation on the national waste policy itself plus the release of a consultation paper on the Product Stewardship Bill. This paper was released on 11 November 2010 and was accompanied by public meetings in Sydney, Melbourne, Brisbane, Perth and Adelaide. Forty-six submissions were received in response.

The department is also currently consulting on regulations which would be made under the product stewardship legislation to support a national industry run recycling scheme for televisions and computers. This proposed scheme was subject to a separate regulatory impact analysis which showed that it would provide a net benefit to society in the range of \$517 million to \$742 million over the period 2008-09 to 2030-31.

A consultation paper on these regulations was released on 8 March, and public meetings were held around Australia. Submissions closed last week and 52 submissions have been received. Following analysis of those submissions, further consultation will be undertaken in developing the regulations. Consultation on the bill and regulations indicates broad support from the community, local government and industry for national product stewardship legislation.

**CHAIR**—Maybe we can commence where we finished with the last witness. Do you have any comment on the definition that Mr Welford was trying to place on waste?

**Dr Wright**—I understand Mr Welford's perspective. To seek to adopt a broader definition which would be difficult to pin down in precise terms would be quite problematic in enacting legislation. As you indicated, the approach proposed by Mr Welford has not been adopted anywhere else in the world, so it would be very difficult to use that sort of definition in a practical way.

**CHAIR**—A number of the issues that have been raised today go to the question of the bill being imprecise and that it could lead to every product on the supermarket shelf being covered by the bill. Obviously that is not a bad thing if we can get rid of waste—

**Senator FISHER**—At any cost?

**CHAIR**—but it could be a practical problem in terms of prioritising, so how do you see this issue of the scope of the bill and how do we prioritise?

**Dr Wright**—Firstly, what has been agreed by COAG is for framework legislation, so that is where the overarching rules are in the head legislation and the detail is in the regulations. This is not a new approach. The EPBC Act is framework legislation. New South Wales, WA and the ACT also have framework legislation for their waste minimisation approaches. In order to provide flexibility but not be open ended, both the objects which are anchored in the national waste policy itself and the criteria need to provide flexibility so that what is subject to regulation is appropriate and the regulations themselves are fit for purpose.

The framework legislation also seeks to cater for three types of approach to product stewardship. Product stewardship itself seeks to cover all those involved in the manufacture, supply, use and disposal of products. So, to go back to the previous comments by Mr Welford, extended producer responsibility deals specifically

with end of life; product stewardship can deal with different aspects of a product throughout its life and at end of life. So we are talking about product stewardship in the broad not just end of life, but it includes end of life.

For mandatory and co-regulatory approaches to product stewardship, as is articulated both in the second reading speech and the explanatory memorandum, a regulation impact assessment would be undertaken. So the regulation impact assessment would be cognisant of the objects of the legislation and those criteria, and it would then assess different products or materials that came up through various mechanisms, and we can talk about that. So the filters for selecting products that are subject to regulation are anchored in processes that have been longstanding. The regulation impact assessment process is COAG endorsed; it dates from 1994 National Competition Policy and was re-endorsed in 2006.

So that is a fairly major step and assessment of that will inform both state and Commonwealth governments' decisions. As others have drawn attention to today, not every product or material will get through the regulatory impact assessment and be a suitable candidate for regulation. As I think Senator Ludlam advised, end-of-life tyres were subject to a regulation impact assessment. They did not get over the line to be regulated because it did not deliver a net benefit to the community. However, the Commonwealth government and the jurisdictions have been working with the tyre industry, the importers, retailers and recyclers in Australia, over the last 12 months, with a view to developing a voluntary scheme which could be subject to accreditation under this legislation, and we are pretty close to that coming to realisation. The target is for May this year for there to be agreement within the industry to undertake some form of product stewardship.

The framework legislation seeks to allow for different approaches for different products and for tailored approaches. So, if it is not that a product is suitable for regulation, there is a process for accreditation so that the consumer can be assured that what the scheme proponents say will happen will indeed happen and that it provides for transparency and accountability in the public domain. Third-party audits would also be a requirement so that the accreditation has integrity and the consumer can trust that as opposed to other product stewardship schemes.

In the mandatory space, one of the things that has been looked at is changing international requirements for Australia to manage and deal with hazardous substances that are included in product and articles, and those substances are there during and at end of life. One of those which is front of mind is, for example, mercury. There has been agreement internationally to develop a legally binding instrument on mercury to seek to reduce the use of mercury, to encourage the alternatives to mercury and to ensure that mercury is made safe at end of life. If Australia signs up to such an international agreement, one of the tools that would be available to the Commonwealth—it is the Commonwealth that is responsible for making sure that Australia meet its international obligations—would be to use product stewardship as part of its approach to mercury. Mercury is found in many products—for instance, in electrical components and fluorescent lights, particularly commercial fluorescent lights—so it could be that there is a need to encourage the reduction of mercury in products, to require labelling of mercury in products. If passed, this legislation would enable government, following appropriate assessment, to deal with that issue as one of the tools in its approach.

So the objects and criteria are part of the story and they are the ones that are appropriate to be in framework legislation. But there are many other checks and balances that will ensure that those things that are appropriate for regulation can be regulated and that those that do not require it—and government is hopeful that there will be a number of schemes that come forward in this space, and we have already had considerable interest—but need an accreditation and ability to demonstrate to the public that this is going to deliver can operate in this space too and avoid the regulatory scheme.

**CHAIR**—Thank you. Dr Wright, I do not want a detailed analysis in response to this now so would you take on notice to provide us with the definition of 'net benefit' and how net benefit is determined—that is, what processes are used for net benefit, what the definitions are and some outcomes.

**Dr Wright**—The approach to assessing community benefit is articulated in the Office of Best Practice Regulation handbook and forms part of the Commonwealth—

**CHAIR**—Dr Wright, I do not carry that around with me. If you can get that for me and give us that definition—

**Dr Wright**—We can provide it for you. We have a copy here.

**CHAIR**—Yes, thanks. And some practical examples of how it has been used.

**Dr Wright**—We can certainly do that, and there is a website run by the Office of Practice Regulation which publishes all regulation impact statements. So the national waste quality ones are there, as are many others, and the application of that assessment can be seen from those regulation impact statements. So we can provide you with a link to that website.

**CHAIR**—So, a link to the website is the best you can do?

**Dr Wright**—No. Certainly we can take it on notice, but there are a large number of regulation impact statements there which could inform how this is dealt with. It depends on what information is available. It includes assessment of both qualitative and quantitative factors, so it is not just an economic analysis. For some areas quantitative information is not available, particularly when you are looking in international negotiations. So there is not one clear metric or formula, because it is both quantitative and qualitative.

**CHAIR**—Okay. I look forward to that more detailed response.

**Senator FISHER**—Chair, further to that, Dr Wright has said that the department has in the room a copy of the Office of Best Practice Regulation handbook. I think it would assist the committee if the department could either provide a copy of that handbook or photocopies of the relevant bits so that we could ask about it in the time available today. Can you do that, Dr Wright?

**Dr Wright**—I think you will find that we will need to understand the regulation impact assessment guidelines in their entirety before the way benefits are assessed.

**Senator FISHER**—So it is not easy to work out?

**Dr Wright**—That is one of the reasons why I was suggesting that looking at the Office of Best Practice Regulation website might give one an appreciation of the different approaches, depending on the nature of the assessment, the information that is available and the statement of problem. We can certainly provide some examples but there is not a one size fits all.

**Senator FISHER**—Well, you are the expert, why can you not answer Senator Cameron's questioned today?

**CHAIR**—Because I did not ask for the answer. I asked her to take it away and have a look at it, thanks very much.

**Dr Wright**—Certainly I am not the expert. The experts are in the Office of Best Practice Regulation.

**CHAIR**—Dr Wright, we had submissions today from AgStewardship Australia and Croplife and one of their major complaints in relation to the bill was about the duplication of regulation. They outlined their obligations under the ACCC regulations for the voluntary processes that they undertake. Are they correct that there would be a duplication of regulation?

**Dr Wright**—There are a couple of issues. The drumMUSTER scheme, which has been in operation since 1998, is a voluntary scheme, so it is not subject to regulation but does require authorisation by the ACCC. That is on approximately a three- or four-year basis. The ACCC has statutory requirements to ensure that there is no cartel type behaviour. We have had many consultations with the ACCC. In terms of the process and the administration of the voluntary component of the scheme, which in itself will be subject to broad consultation as we develop the details, what is envisaged is that as far as possible the accreditation process would align with ACCC processes in terms of information, data and reporting requirements. So there would be minimum add-on to meet accreditation requirements rather than two totally separate parallel processes. The fine detail of that is still to be worked out. We will be issuing a consultation paper, possibly around August-September. We have had many conversations with product stewardship organisations like drumMUSTER. We are very aware of the ACCC requirements. Indeed, we are consulted currently when those authorisations are subject to assessment. We understand their concerns. We do not believe that there will be duplication or, if there is some, it will be minimal.

**CHAIR**—Thanks, Dr Wright. Senator Ludlam, we will go to Senator Fisher, Senator Birmingham and then come to you. We have got an hour so there is plenty of time.

**Senator FISHER**—Thank you, Chair. I will ask some questions and if there is time I will have more, but I will try to limit them. I just want to ask initially about the consultation, Dr Wright. In your opening statement you said that there had been considerable consultation and extensive consultation. Are you referring to the consultation that happened in November and December last year and the 46 submissions?

**Dr Wright**—I am including that. What I am referring to is that there was substantial consultation in the development of the national waste policy itself, of which strategy No. 1 is product stewardship. There was considerable interest in that. I think there were some 120 submissions on the national waste policy and many, many seeking to have a national approach to product stewardship.

**Senator FISHER**—Let us go to product stewardship, which of course is the subject of this bill. What consultation has been held on the provisions of the bill as drafted?

**Dr Wright**—We established nearly 12 months ago a stakeholder reference group which has had a couple of face-to-face meetings and has had regular papers and information provided to it.

**Senator FISHER**—When did the members of that group see the bill?

**Dr Wright**—The bill has not been subject to an exposure draft. Whilst that is desirable, there was equally significant concern from community and businesses to stick to the publicly articulated time frame of 2011 for seeking to establish a national product stewardship framework.

**Senator FISHER**—So the time frame is more important than the guts of the legislation?

**Dr Wright**—That is not what I said. I said that we had established a stakeholder reference group, which has some 32 representatives from a very—

**Senator FISHER**—When did they see the bill?

**CHAIR**—Senator Fisher, I have said this on a number of occasions: if you ask a witness a question, I am determined the witness will answer the question without constant interruption. Dr Wright, if you are answering the first question, please continue.

**Dr Wright**—I believe that I have answered Senator Fisher's question. The bill was not subject to an exposure draft. There was a consultation paper released, there were submissions on that paper, there was a series of national public meetings and there was a stakeholder reference group. We also have a subscription service on the National Waste Policy website where we provide considerable information. We have advertised in the press. We have sought to engage. We have engaged across the Commonwealth. We have had a working group under the Environment Protection and Heritage Council to ensure that jurisdictions are involved. So we believe that we have had broad consultation. The development of product stewardship legislation, and in particular the implementation of a television and computer scheme, was endorsed by the Australian Local Government Association at its national meeting. There is considerable support for this. We believe that we have undertaken comprehensive consultation, but we do acknowledge that there was not an exposure draft.

**Senator FISHER**—How do you know that every member of the consultation council has seen a copy of the bill?

**Dr Wright**—Because when the bill was introduced we made sure that there was a link made available to all those that had registered and all those on our stakeholder reference group.

**Senator FISHER**—That was on 20 March this year?

**Dr Wright**—The bill was introduced on 23 March.

**Senator FISHER**—Are you able to say whether each and every member of the consultation council saw a copy of the bill prior to 23 March and, if so, on what basis do you say so? I would have thought no.

**CHAIR**—Why don't you let the witness answer?

**Senator FISHER**—Because time is limited, Chair.

**CHAIR**—Maybe if you let the witness answer we will get the response. Do not keep interrupting.

**Dr Wright**—We provided a comprehensive consultation paper which covered all the areas that were envisaged to be covered in the bill in November last year, and—

**Senator FISHER**—Is the consultation paper the same as the bill or are there differences?

**Dr Wright**—The consultation paper is a consultation paper. There was no exposure draft of the bill. Releasing an exposure draft of the bill, as I believe many are aware, requires the agreement of the Prime Minister.

**Senator FISHER**—I have not asked about that. I have asked whether the consultation paper was the same as the bill. Let me ask the same question a different way. Are there any differences between the consultation paper and the bill?

**Dr Wright**—Yes. The consultation paper seeks to provide context and explain issues and possible approaches to inform the development of the bill. The bill is informed by the submissions, the intelligence gained from stakeholders. The bill is also drafted by the Office of Parliamentary Counsel. It is a legal document. The consultation paper is not a legal document.

**Senator FISHER**—So am I correct in understanding that the earliest date upon which you are able to reassure this committee that each and every member of the consultation body saw this bill was on 23 March, when it was introduced into parliament?

**Dr Wright**—The stakeholder reference group that I think you are referring to was briefed. Presentation was made to the stakeholder reference group on the approaches—

**Senator FISHER**—Did they see the bill?

**Dr Wright**—taken to the bill. As I have already answered, there was no exposure draft of the bill, so the first point at which those people—and parliamentarians—saw the bill was when it was introduced, and this is normal practice. This is not unusual.

**Senator FISHER**—Would you expect organisations like the Australian Industry Group, the Australian Chamber of Commerce and Industry, the Master Builders Association, the Pharmacy Guild of Australia, who potentially have products and substances covered by this, to have made a submission, for example, to your consultation group? I am not sure what you call it, but I am going off the website of, I think, the environmental department. It lists, I understand, the 46 submissions to which you referred, probably. But I cannot see, for example, submissions from AiG, ACCI, the MBA or the pharmaceutical guild. Would you not expect organisations like that to have expressed an interest in your consultation paper, and did they even though they are not listed?

**Dr Wright**—I can certainly double-check that, but I can advise you now that we did receive a submission from AiG.

**Senator FISHER**—I cannot see them listed. I can see those listed under ‘I’. They are in alphabetical order. I cannot see them there.

**Dr Wright**—Certainly we can provide you with a list.

**Senator FISHER**—Okay, so that is AiG. What about ACCI, what about the Masters Builders Association, what about the Pharmaceutical Guild? There are many other examples.

**Dr Wright**—We can certainly take that on notice.

**Senator FISHER**—Was ACCI a member of the stakeholder group?

**Dr Wright**—If you could give me one minute, we can check on that because we have the list of members in the room.

**Senator FISHER**—It might help if you are able to table that list as the hearing proceeds.

**Dr Wright**—There is no problem with that at all.

**Senator FISHER**—The objects of the act talk about the impact on the environment and on health and safety, ‘reduce the impact that products and substances have on the environment and the health and safety of people’. Is it intended that the bill only address negative impacts and, if so, why doesn’t the bill say that?

**Dr Wright**—It is not only negative impacts. Perhaps I can use an example. You have heard from drumMUSTER today.

**Senator FISHER**—Yes.

**Dr Wright**—With the drumMUSTER voluntary scheme, while the initial focus of the scheme was on collecting chemical drums at end of life, part of the product stewardship agreement between the various players was targeted at reformulating products, developing new approaches to formulations and delivery to reduce the need for containers and reduce wastage and making sure there was better application. That has had a positive impact on the environment. So to just contain this to negative impacts would not allow for product stewardship approaches, particularly in the voluntary space, to address other things that are further up the manufacturing chain, including green design, reduction of hazardous substances and the like. That is part of the thinking behind using this terminology rather than focusing on negative impacts.

**Senator FISHER**—So the objects of the act are one of the filters to which you referred earlier?

**Dr Wright**—They are. The objects of the act are based on the aims of the national waste policy. They have been slightly adjusted to be legislative, but they are essentially a translation of the overall aims of the national waste policy.

**Senator FISHER**—I think a layperson would interpret a filter to lessen that which comes out once it has been through the filter. If the objects, as the first limb of the filter, are talking about both positive and negative impacts on environment and health and safety of products and substances, what products and substances in the world could be argued to have neither a positive nor a negative impact on the environmental health and safety of human beings? What could possibly be left out of that filter?

**Dr Wright**—One of the things to remember is that this legislative framework seeks to embrace mandatory, co-regulatory and voluntary product stewardship. With voluntary product stewardship you could envisage that there are many things that would benefit from organisations and companies getting together to improve their products and deal with end-of-life issues. If one had tighter definitions of the objects and those criteria, then that would preclude many of the voluntary schemes they would need to sit outside the legislative framework. Also, not everything is in the legislation—

**Senator FISHER**—Clearly.

**Dr Wright**—nor should it be in the legislation. In the national waste policy itself, it articulates the mechanism and the forum through which products will be assessed, where there will be consultation and assessment of any other products that are to be considered to sit within this framework—that is, the Environment Protection and Heritage Council. That is quite important because the focus of this is a national framework and to have a national framework there needs to be agreement and commitment from all jurisdictions to its implementation. A lot of the assessment sits outside the legislative framework and that also is quite usual.

**Senator FISHER**—Thank you. So you have suggested that the objects need room to allow for positive impact for voluntary things. Are you saying that you also need to allow room for positive impacts for mandatory things and if not where does the bill say you need negative impacts before you can mandate?

**Dr Wright**—Your question is based on the premise that there is a need to say negative or positive and to distinguish between the two.

**Senator FISHER**—I am trying to see how industry is going to distinguish and how we are actually going to achieve this. It sounds good, but that does not mean it is going to do good. Could you answer the question, please continue, I am sorry I interrupted.

**Dr Wright**—I am not sure that I understand the thinking behind the question—

**Senator FISHER**—Does that matter? Can you answer it?

**Dr Wright**—because of the fact that assessments need to occur before a product can either be accredited under voluntary or subject to mandatory. There would be few products, articles and material that did not need a number of aspects addressed or meet a number of the criteria.

**Senator FISHER**—Exactly.

**Dr Wright**—For example, recycling an aluminium can would provide resource recovery and also delivers greenhouse and energy benefits above the use of virgin materials, but it would only be regulated if it met the regulation impact test. If not then a separate system is being developed—it is not fully developed yet—on voluntary accreditation.

**Senator FISHER**—And you cannot tell us in simple terms what that regulatory impact assessment test would mean, can you?

**Dr Wright**—As I have said—

**Senator FISHER**—Have a go?

**Dr Wright**—There is a process and guidelines have been issued by the Office of Best Practice Regulation. There is also, as my colleague has just pointed out, a short summary in the explanatory memorandum of the bill.

**Senator FISHER**—What page are you on?

**Dr Wright**—Page 3, which is headed, Circumstances in which obligations may be imposed.

**Senator FISHER**—What in that summary, for example, says how you balance a positive or a negative impact on the environment or health that can be addressed, so meeting the objects, with for example the costs that would be imposed on industry to meet any standards be they mandatory or voluntary?

**Dr Wright**—That is exactly what a regulatory impact analysis does.

**Senator FISHER**—On what basis do you reassure us it will do that in each and every case in respect of each and every product and each and every substance that could be subject to stuff flowing from this bill?

**Dr Wright**—Because it is any formal requirement of COAG that all regulation and standard setting bodies undertake a RIS where something is considered to be subject for regulation. Regulatory approaches and voluntary approaches are assessed as part of that regulation impact assessment. There is a detailed economic analysis. There is an assessment of qualitative aspects as well.

**Senator FISHER**—So would you say that that test has been met in respect of tyre recycling then?

**Dr Wright**—As I think I stated earlier, a regulation impact assessment was undertaken on tyres. That assessed a regulatory approach to tyres against a voluntary approach. The regulatory approach did not deliver an overall community benefit. Therefore end-of-life tyres were not considered suitable for a regulatory approach to product stewardship. So the tyre sector is currently working to develop a voluntary scheme and would seek, subject to agreement, for that scheme to be accredited under this framework.

**Senator FISHER**—Has the department heard from the tyre industry that any experience thus far has been that middle men are taking monetary benefits out of any sort of recycling so that it is not in the interests of the industry to bother—that is, the costs of meeting the bureaucratic red tape and then the things that come down underneath outweigh any incentive to the industry to comply?

**Dr Wright**—I am not sure that I fully understand your question because currently there is no product stewardship scheme for tyres in Australia. There is some tyre recycling, which is run by independent recyclers and collection agents who may have bilateral arrangements with particular companies. There is no national scheme. There is no national regulation. There is some regulation on the movement and storage of tyres, which is state legislation, but no Commonwealth legislation.

**Senator FISHER**—Could those tyre recyclers, for example, if the bill were passed, use criteria (f) to argue that you can make money out of reducing the impact on the environment of tyres? Let me quote criteria (f):

(f) taking action to reduce those impacts will offer business opportunities that would make a contribution to the economy.

**Dr Wright**—No. A regulation impact assessment has been made and, unless there is significant change in the market and the dynamics, one would not redo that regulation impact statement.

**Senator FISHER**—In respect of tyres?

**Dr Wright**—Yes.

**Senator FISHER**—Thanks.

**Senator BIRMINGHAM**—Dr Wright, it is always good to see you again. On the area of the objects where Senator Fisher was, before we jump on, we heard evidence today questioning whether the focus on life cycle and discussion of the product life meant that the real focus on end-of-life clean-up and end-of-life usage was potentially missed somehow within the legislation. Do you care to rebut those suggestions?

**Dr Wright**—Certainly end of life is included. The term used in the first object, 1(a), does include end of life. It is not specifically spelt out there but it does include end of life and my colleague will point you to another part of the legislation which covers this.

**Mr Bennett**—That is the definition of life of a product in clause 6. As I understand it, if one followed through on the comment made by the earlier submitter from ACOR, I think what would be proposed is pulling out or expanding ‘throughout their lives’ to include ‘throughout their lives and once the product is waste’ or words to that effect. The current wording is really for brevity of expression and has been adopted for that reason by the Office of Parliamentary Counsel. We have sought advice in light of the submission as to whether any change would be suitable. It would be a minor drafting change rather than affecting the substance of the provision.

**Senator BIRMINGHAM**—Does the advice suggest change is necessary?

**Mr Bennett**—We have not received that advice yet.

**CHAIR**—Senator Birmingham, can I interrupt for a second before you go to your next question, in case I forget. You were going to table the stakeholder reference group list. Is that available?

**Dr Wright**—I am sure I have it. I have too many papers on the desk, so just bear with me.

**CHAIR**—I have seen it on the website. We can print it off the website and then it will be tabled. Is that okay?

**Mr Bennett**—Yes.

**CHAIR**—Dr Wright, you do not need to worry about it. We have got it.

**Dr Wright**—Okay.

**Senator BIRMINGHAM**—I will now go to the criteria issue which Senator Fisher finished on. I know you rebutted to an extent questions Senator Fisher asked about tyres in relation to part (f), but can you tell me what part (f) actually means? It says: ‘taking action to reduce those impacts will offer business opportunities that would make a contribution to the economy’. It does not necessarily suggest that it is a positive contribution. It certainly does not suggest that it is a positive environmental contribution. It seems to be an incredibly sweeping statement.

**Dr Wright**—The criteria are intended to provide a high-level guide to intent, and products should meet at least two criteria. This was intended to indicate that there could be a reason to take action where you have an emerging issue of problem waste where technology becomes available and there is now an ability to deal with it whereas five years ago there may not have been. So it is not the sole driver. In order for something to be considered to be subject to this framework, first of all it needs to meet the objects of the act, and they are quite clear. This is an additional provision. It is done with that in mind—to cater for what may previously have been considered to be an intractable issue when circumstances change and it can now be dealt with, remembering that this is to cover voluntary as well as mandatory and co-regulatory.

**Senator BIRMINGHAM**—There has been a fair bit of commentary and some criticism around clause 5 today and around meeting two or more criteria and how they interact. Is the department considering any possible amendments to that?

**Dr Wright**—Those issues were raised in the consultation process.

**Senator BIRMINGHAM**—Yes. Now, though?

**Dr Wright**—I was getting to that. The issues that have been raised through the submissions are really restating those. It was looked at very closely and we consulted with our colleagues in the jurisdictions. On balance, the outcome is that they would stay as the original proposal in the consultation paper. In the consultation paper, we do raise the issue as to whether criterion (a) should be mandatory—

**Senator FISHER**—As a precondition?

**Dr Wright**—Yes, and we probably had equal views both ways. For example, there were comments that perhaps criterion (a) was a bit broad. But, when you try and think about various products or materials that you may wish to cover, what constitutes a national market could be quite different. You could have importers that are based in only one state but they sell nationally. You could have mail order. So it is very difficult to say that it has to be in absolutely every jurisdiction or in two or more jurisdictions. The more you try and refine it, the more problematic it becomes.

We did take that feedback quite seriously and we looked at different ways of adjusting the criteria. We ran different potential candidates through the criteria to see whether they were too broad or too limiting. You could use a number that we tried. One is products containing mercury, and we need to be cognisant of possible changes in international requirements. It could be something concrete like tyres or something that is used quite broadly like packaging. We ran each of those through the criteria and they are all quite different, so we needed to see that this is fit for purpose, given that this is framework legislation and that there are other controls and methods of consultation and scrutiny and that any product that was to be regulated would need to get the agreement of all jurisdictions as well as the Commonwealth to actually be enacted.

**Senator BIRMINGHAM**—My problem does not lie with (a) in any event. The question really is: why wouldn't you have some variants of (c) as a mandatory criteria? That gets to the crux of the environmental outcomes you are seeking, not whether it is a national market or not. Did you run that possibility through the scenarios?



**Dr Wright**—Certainly. If you made (c) mandatory and if you wished to take action on products and materials that contain mercury or brominated flame retardants, if the driving force was, for example, international requirements under the Basel or the Stockholm conventions, then they would not get through the gate because (c) would not apply because you are dealing with hazardous substances, not conservation of materials or reduction in greenhouse gases. So, yes, we did.

**Senator BIRMINGHAM**—I accept the couple of exceptions you have shown us there. It does strike me that there should be ways to handle those exceptions without having what seems to be a fairly sweeping approach to the criteria of two or more: in a national market and a hazardous substance are two pretty broad things, and (a) and (f) are two pretty broad statements as well. Yes, I realise you are arguing that there are the objects to be met too. But it would seem that you could eliminate some of the concerns by having a far more specific requirement and then dealing with the other factors in an alternative way, even if there has to be, for the one-off area of hazardous substances, some type of exemption created.

**Dr Wright**—But hazardous substances is one of the key reasons for it being appropriate for the Commonwealth to regulate in this space because of its obligations under international conventions, as opposed to just going on a jurisdiction-by-jurisdiction basis. That is actually quite an important aspect of these criteria. I appreciate your concerns, but this goes to the heart of the difference between framework legislation and product specific legislation, as in the current product stewardship for oil legislation which was enacted in 2000.

**Senator BIRMINGHAM**—We already meet our obligations under those international conventions, don't we?

**Dr Wright**—We do. However, as I said, there is currently a legally binding instrument on mercury that is being negotiated. There have recently been an additional nine chemicals added to the Stockholm convention, including brominated flame retardants, and more prospectively. So international obligations do not remain static. This framework legislation seeks to provide for those sorts of changes to be accommodated, and where appropriate, where government decides, the mandatory or coregulatory approach could be a tool in Australia's kit bag to meet its international obligations.

**Senator BIRMINGHAM**—So essentially this will be a better approach for handling something like bromide in the future than what we have done with mercury already.

**Dr Wright**—Mercury is prospective in terms of being an international legal requirement. Currently we have a voluntary scheme to recycle mercury-containing lamps—that is commercial lamps—and that started in July 2010. That is where mercury is, and that is only one component of products in the market that contain mercury. But prospectively, should Australia sign up and should the Australian government, through the treaty-making process and regulation impact statement assessments, decide that part of its approach to meeting its obligations for mercury would be product stewardship then, yes, you would have legislation in place where you could develop a fit for purpose approach through regulation with full consultation that would meet those needs without the need to have a stand-alone piece of legislation with the associated costs, compliance regime and difficulties for business dealing with various pieces of legislation rather than one single piece of legislation.

**Senator BIRMINGHAM**—This is the last thing I have on this and then I want to quickly cover another point. Are there any circumstances or products that you can envisage that would not meet proposed subsections (b) or (c)?

**Dr Wright**—One of the things that could not conceivably be covered by product stewardship legislation would be—

**Senator BIRMINGHAM**—Sorry; I was asking about items that you wish to be covered by product stewardship legislation that would not qualify under proposed sections 5(b) or 5(c). I am not trying to re-ask Senator Fisher's question: is there something that couldn't possibly fit?; I am looking to see if there are things that you would want to have fit that would not fit under proposed sections 5(b) or 5(c).

**Dr Wright**—We were asked earlier what on the supermarket shelf would not fit. I will take an extreme example to throw this into relief. You probably would not have a national product stewardship scheme for flower pots and gardening tools. They may be products that are in the national market but they do not offer these opportunities. There may be a local nursery which recycles its own containers but that is not the sort of thing that would be subject to product stewardship because it is not national.

**Senator BIRMINGHAM**—Yes, but if there is a national market for them and there is an economic contribution recycling can make, they do fit the criteria.

**Senator FISHER**—And you are saying they should, are you?

**Dr Wright**—No. I was trying to—

**Senator BIRMINGHAM**—I am trying to find a serious example that you would want to have fit the criteria that could not manage to clear the hurdles of either proposed sections 5(b) or 5(c) were you to make one of those two mandatory.

**Dr Wright**—We would need to take that on notice because this framework legislation is intended to cover mandatory, co-regulatory and voluntary. The mandatory and co-regulatory clearly have a much tighter and more formal assessment process to get through to be regulated. They need to demonstrate an overall community benefit. There may be a significant benefit through a voluntary approach but it may not deliver it to the same extent. That is not to say that it would not be worth while to encourage an accredited voluntary scheme in that space. Certainly, with voluntary the intention is it would need to be not just an individual commercial decision but something that did deliver beyond business as usual for the community.

**Senator BIRMINGHAM**—I look forward to seeing what examples you can provide in that space.

**Senator FISHER**—On a number of occasions, Dr Wright, you have properly said that the bill covers mandatory, co-regulatory and voluntary in trying to answer well intended questions. Why can't the bill distinguish between mandatory and co-regulatory versus voluntary to mean that you could answer Senator Birmingham's question?

**Dr Wright**—Because this is framework legislation that is designed to provide for a future world which we cannot entirely see, to provide appropriate checks and balances for products and materials that may be assessed and to provide an avenue for encouraging voluntary schemes where regulation is not needed or where there is not a demonstrated community benefit. We have had considerable interest in the voluntary space. A lot of our submissions have seen that as the way forward. One example I have given is that the tyre industry is looking at this. One role of government is to encourage action in the absence of regulation. Regulation is not necessarily the best approach.

Having the suite trying to apply the same objects and criteria and provide for a stricter test—that is, an overall benefit test—for regulatory mandatory, as opposed to voluntary, schemes is what we have been tasked to do. This bill seeks to deliver an even-handed approach. But it is framework legislation like the EPBC Act, and one needs to look at what the checks and balances are to make sure that, on the one hand, you do not let everything through the gate but, on the other hand, you can provide for a broad range of possibilities in future from wanting to act in this space on mercury, which is in many products, to encouraging voluntary product stewardships on tiles or printer cartridges or mobile phones or have a drumMUSTER come on board.

Recently PACIA, the Australian Plastics and Chemicals Industry Association, have sought ACCC authorisation to impose a 2c a litre levy on paint nationally to have a trial in Victoria to deal with paint at end of life. We have been engaging with PACIA and they are quite keen for that approach to come under the voluntary chapeau. Two years ago that scheme was not in view.

There is a need to balance between being flexible and—yes, indeed—being too broad. We have sought through the bill and the framework that sits outside the legislation to provide appropriate checks and balances and for parliamentary scrutiny. All regulations will be disallowable instruments. There is always broad consultation on regulations. It is much easier to issue exposure drafts on regulations to make sure that the industry is consulted. Our department does that regularly in terms of changing regulations on the requirement to manage ozone-depleting substances.

**Senator BIRMINGHAM**—I do appreciate that you are trying to fit a range of things into three different models. Equally, just as you need the flexibility to have lots of different options for voluntary, that needs to be balanced by having at least—if not applicable to the voluntary option, applicable to the other two—appropriate safeguard mechanisms to ensure that industry are confident in the operation of this scheme.

Can I go to how each—voluntary, co-regulatory and mandatory—is initiated. Very briefly, what is the initiation process for each of the three types of schemes? How does the ball get rolling?

**Dr Wright**—There are a couple of paths through which a product or material could be assessed for mandatory and co-regulatory. One is, as I indicated earlier, through changing international obligations, in which case the Australian government would undertake an assessment and would consult. That would include

with business and jurisdictions, and there are formal processes before Australia takes on international obligations.

In addition, in the table in the national waste policy under strategy 1, it states that the Environment Protection and Heritage Council will be the vehicle. In July 2010 the Environment Protection and Heritage Council issued an implementation plan on the national waste policy, and it has already issued a status report in November. Cluster group 1 deals with strategies 1 and 3 and is looking at what products should be assessed for product stewardship. But it is not that there is an existing list that needs to be worked through. Lists have been used in the past. I think New South Wales has some 17 priorities on its product stewardship list and none of those have been implemented. Through jurisdictions and the ministerial council and through the Australian government, there may well be occasions when industry wants to engage, but that would be channelled through the working group, through the Environment Protection and Heritage Council, for assessment.

The details of the voluntary component will be subject to full consultation. It may be that there is a call for expressions of interest on an annual basis and then those are assessed. The details of that are yet to be worked out. The actual accreditation process and submissions aspect sit outside the regulatory framework; the minister will issue determination on what that framework will be and there will be consultation before that is put in place.

**Senator BIRMINGHAM**—Thank you. Section 25 under ‘co-regulatory’ indicates that an administrator of the co-regulatory arrangement may apply. It does surprise me that there does not seem to be a complementary section in the voluntary space that has scope for some administrator or otherwise of a voluntary arrangement to apply. But it is not the voluntary space that I am so worried about; it is the mandatory and the co-regulatory space.

**Dr Wright**—To clarify: under mandatory and co-regulatory it has to have been decided by government that a product or material will be subject to regulation. Then, when those regulations have been made, liable parties will either be able to set up their own arrangement or to form a product stewardship organisation, and those will have to be assessed as being fit for purpose and being able to deliver the outcomes. So that is after you have got through the hoops of the regulation impact statement and you are in. It is not that a company can come and say, I want to set up an arrangement for tyres; if tyres have not passed the regulation impact assessment and there has not been a decision by government then it is not part of the mix.

**Senator BIRMINGHAM**—The EPHC is the official body, isn't it?

**Dr Wright**—No, it is the ministerial council.

**Senator BIRMINGHAM**—Okay. So the national waste policy states that it is the vehicle for identifying areas for consideration—save for those that may be covered by international obligations. Why is it not, as far as I can see at least, mandated in the bill that EPHC be the initiating vehicle?

**Dr Wright**—Because it is not normal to enshrine policy and government policies in legislation because they change over time. EPHC was established in 2002; prior to that it was ANZECC. There has been a review of the ministerial council, and the environment ministers council is about to be renamed so it is not standard to enshrine such things in black letter law.

**Senator BIRMINGHAM**—One last thing: it is not unusual or impossible to require some form of consultation with the states at the initiating phase in legislation. The bill does appear to leave it totally open within the bill for the Commonwealth or the minister to self-initiate. Is that correct?

**Dr Wright**—However, the regulation impact assessment process requires formal consultation and it is a COAG agreed process—

**Senator BIRMINGHAM**—Those can change too, Dr Wright.

**Dr Wright**—They can indeed, in detail; however, the need for a regulation impact assessment has been part of government policy since 1994. The guidelines have evolved over time but that requirement is part of National Competition Policy which was reaffirmed in 2006.

**Senator BIRMINGHAM**—Thank you.

**Senator LUDLAM**—To ease the concerns of my coalition colleagues: is it not the case that, if we went through a RIS process for all of these different product streams, it would take tens of thousands of years? We are in no danger of rushing, as far as I can tell. But I wonder whether you have heard the concerns of, I think, every witness who came before us today who said, ‘We want some idea of the government’s priorities. Can you provide that please?’

**Dr Wright**—Maybe I can answer that in two ways. Firstly, as I said, the ministerial council has a cluster group established under the national waste policy to look at any other priorities and what they may be. As I believe you are aware, there is currently a regulation impact assessment process being undertaken on the impacts of packaging and litter.

**Senator LUDLAM**—I am very aware of that one. I have been banging my head on that one for two years.

**Dr Wright**—One of the options that it has been stated will be covered in that RIS is container deposit legislation, which is a proposed legislative instrument and therefore requires a RIS to be undertaken. Should that be one of the options adopted by governments, then that could be accommodated under this legislation. So litter and packaging is one of the areas that is being assessed as we speak. Of the other products that have to date been on either international product stewardship schemes or in the lists of products in jurisdictions, there is a lot happening in this space that would be accommodated not necessarily with the need for a regulation impact process. There is already a market for used lead-acid batteries and that is working quite effectively in Australia. A voluntary approach to product stewardship of tyres is under development. We have a scheme already in place for dealing with fluorescent lighting tubes at their end of life. There is MobileMuster for phones. Printer cartridges are dealt with by Planet Ark. We have paint cans being dealt with on a trial basis at the moment by—

**Senator LUDLAM**—Sorry, but rather than going through each one by one, which could take quite some time, I am more interested in the overarching framework. Every witness who has come has said this. What is the government's intention from here on? Which product categories are going to be handled voluntarily? Which will be co-regulatory? Which will be legislated for? Which ones are you going to do first? How long is this all going to take? It took several years for the tyres ones to be rejected, and that sent us back to square one; seven years for e-waste; goodness knows how long it is going to take for container deposits. As I said to one of the witnesses before, this is a portfolio for extremely patient people. At what point will we get a clear idea of what the governments' targets are and how they plan to handle the different product streams?

**Dr Wright**—At present there are no specific targets. Litter and packaging is subject to assessment at the moment. The working group under EPHC is looking at whether there are any other products or materials that may warrant consideration for mandatory or co-regulatory. It could be that the Product Stewardship for Oil scheme, which is now 10 years old, may benefit from review and being brought under this framework. Equally, the Australian Packaging Covenant is a co-regulatory approach that exists under different legislation in each jurisdiction. At the first review of the new covenant it is going to be considered to be brought in under this framework. It is possible, as I mentioned, that if there is a legally binding instrument on mercury then product stewardship could be a tool that is employed there. Looking down the New South Wales list, currently we have televisions and computers, which will be dealt with should this legislation be passed. Mobile phones may well come under voluntary. Paint is subject to a voluntary trial. Plastic bags are already being dealt with in each jurisdiction. Tyres—

**Senator LUDLAM**—Sorry to interrupt but we are very short of time. Could I ask you to table what you are reading from, because I am not even sure that we have access to that.

**Dr Wright**—What I was reading from was the New South Wales priority list. As part of the national waste policy we did look far and wide. There are two published studies on product stewardship in North America and Europe and then in Asia. We looked at all the products that were on those lists and we looked at what was of interest to jurisdictions. At present the majority of those either have pending voluntary schemes or have been considered for co-regulatory. The only outstanding two that are on the New South Wales list, and I am happy to provide that list to you, are cigarette butts and treated timber.

**Senator LUDLAM**—Does the Commonwealth have a priority list, or does it intend to develop one?

**Dr Wright**—Ministers have asked the working group to have a look at what else could be considered for product stewardship legislation assessment, but at the moment there is no list of specific programs.

**Senator LUDLAM**—When does that working group intend to report? Will it report internally or to the public?

**Dr Wright**—It has only been recently—I think it was at the November meeting of the EPHC—that it has been asked to address this issue. I would have to get back to you. It would be a decision for ministers as to whether those deliberations are made public. I could also point you to the national waste policy regulation impact statement, which was based on an assessment of between one and five products being subject to the

regulatory side of this legislation over time. It was not a huge list, which is recognising that many products and materials could be dealt with through a voluntary approach.

**Senator LUDLAM**—I suppose all I can ask you to do is perhaps table whatever you have there that would give us any inkling as to how the Commonwealth intends to proceed, because there is something about debating these issues that just makes me want to lose the will to live. It is very difficult to identify when something—

**Senator FISHER**—What a waste!

**Senator BIRMINGHAM**—Hang in there, Scotty!

**Senator FISHER**—Can we have a risk assessment of that?

**CHAIR**—Settle down! Senator Ludlam is only speaking rhetorically.

**Senator LUDLAM**—And only speaking for myself, I'm sure. I will leave it there, but if there is anything at all you can provide us with. I gather you have probably listened in to what some of the witnesses have told us today, and I share their concerns. From industry right through to NGOs, nobody knows where this is heading. We are setting up an empty framework that eventually some things might find their way into and eventually they might not, and it is really very difficult to tell what the point of the whole exercise is. So could we have some clarity provided on that—whether we have targets, priorities, who is actually creating some kind of sense of urgency—because it is very difficult to detect. Thanks.

**CHAIR**—Dr Wright, just to follow on from what Senator Ludlam indicated, there is a model, the EPBC Act, which is a framework act. Can you give us some examples as to how that act has moved from a framework to operating effectively?

**Dr Wright**—A better example would be some of the state waste legislation or New Zealand; they would be more relevant and give you greater insight. We could take that on notice and provide that.

**CHAIR**—Those examples you are going to give, will they give us an insight into how priorities are determined in those other jurisdictions?

**Dr Wright**—Yes. We can use New South Wales as an example. One of the reasons we would be happy to provide you with a list of those things that have been regulated overseas or been on EPHC's list for consideration or any of our state jurisdictions is so that you could have a look at those. Many countries have been doing this for longer than Australia, so more products are covered.

But it is not a large list, and that is why those studies were used as the basis for the National Waste Policy regulation impact statement, which looks specifically at the benefits of national framework legislation. That is the reason for the number five. Clearly something of interest to both the federal government and jurisdictional governments, who all signed off on the National Waste Policy, was to have some degree of comfort that in the regulatory space we were not talking about hundreds. So it was on that basis. We would be happy to provide you with a table so you can see what the usual candidates are, which might give you a degree of comfort that it is not everything on the supermarket shelves. There are some key candidates which virtually self-nominate for consideration, and once you have looked at those they may or may not pass the test for regulation. There are a couple of things prospectively like, as I said, dealing with international conventions, but the ultimate list is not likely to be large.

**CHAIR**—You spoke earlier about two studies, one in North America and I think one in Asia. Is that right?

**Dr Wright**—Yes, the Asia-Pacific region. It looked at China, Taiwan, Japan and Korea. They are both publicly available.

**CHAIR**—Could you provide links to those studies?

**Dr Wright**—Yes.

**CHAIR**—And can you just extrapolate a little bit on what those studies found?

**Dr Wright**—They looked at what was covered by product stewardship legislation around the world, how those schemes were implemented and whether there were any lessons to be learnt that were applicable for implementation in Australia. The conclusion of those studies was yes, there are a lot of signposts for things to consider, but there was not one fit-for-purpose approach that you could just pull off the shelf from Europe or North America and put in place in Australia. Indeed, I think in the United States they have taken a state-by-state approach and they have 32 states with 60 product stewardship laws and nine product categories. That is the sort of end point that the Commonwealth and jurisdictions are seeking to avoid by using national

framework legislation. There are a plethora of individual pieces of legislation that are all totally different but may apply to the same sectors.

**CHAIR**—There is a National Waste Policy implementation plan—less waste, more resources—dated July 2010. Does that provide us any direction in relation to priorities?

**Dr Wright**—No, but in the last two pages it does give you the groups that have been set up to implement the different strategies and who is chairing those groups. It does not give you the details of where those working groups are up to, but it is envisaged that some of that information will be put into the public domain when it has been through ministers.

**CHAIR**—I am just trying to find out who is chairing and who is involved in these working groups.

**Dr Wright**—Under cluster 1, product stewardship, which is strategies 1 and 3, the chair is the Australian government. The second one, markets and standards, which is strategies 2, 4, 5 and 6, is chaired by New South Wales and Victoria. This is at the end of the implementation plan.

**CHAIR**—Yes, I have that. Rather than go through all of that, I am happy you pointed that out to me. But these are governmental groups. One of the issues that was raised today was the need for more community involvement—more openness in decision making processes and more community involvement in determining the priorities. Are there any examples we can look at where there has been wider community involvement than is envisaged in this process?

**Dr Wright**—Over time a number of products were placed on the Environment Protection and Heritage Council's list to look at. They included televisions, computers, tyres, plastic bags and packaging. I think there were a couple more—I cannot remember. That was a catalyst, in a way, for the National Waste Policy and looking at product stewardship as a mechanism for dealing with those issues. In terms of consultation on specific products, with the television and computer scheme the regulatory impact statement had widespread consultation. I can provide you with the details separately, but there was national consultation in regional and major urban centres, as there was with the National Waste Policy. A broad range of people attended those meetings. They were not just from business and they were not just from government. In addition, with the television and computer scheme there was a specific study called a 'willingness to pay' study. An economic analysis called choice modelling was undertaken, and that surveyed in a very technical, specific and scientifically sound way 2,500 people in the community across different profiles of age groups, economic status and so forth.

**CHAIR**—I am sorry—we have run out of time, but really what I was asking for is this. I understand New South Wales has a standing committee that advises government, and that standing committee has business and community involvement. It helps determine priorities. You should take this on notice because we have run out of time, but could you have a look and see if there are any other examples anywhere, including international best practice, on establishing a committee to assist government in managing waste and determining priorities?

**Dr Wright**—Yes.

**CHAIR**—Thanks very much, Dr Wright and Mr Bennett.

**Senator FISHER**—Chair, I will just place one question on notice. Dr Wright, is it intended that the bill be able to apply product stewardship stuff to, for example, farmers applying chemicals to their crops?

**CHAIR**—Thanks, Senator Fisher. That concludes today's proceedings. I think all witnesses for their informative presentations. Thanks also to Hansard and Broadcasting and the secretariat.

**Committee adjourned at 4.02 pm**