

The Senate

Environment and Communications
Legislation Committee

Product Stewardship Bill 2011

May 2011

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Committee membership

Committee members

Senator Doug Cameron (ALP, NSW) (Chair)
Senator Mary Jo Fisher (LP, SA) (Deputy Chair)
Senator Scott Ludlam (AG, WA)
Senator Anne McEwen (ALP, SA)
Senator the Hon. Judith Troeth (LP, VIC)
Senator Dana Wortley (ALP, SA)

Committee secretariat

Mr Stephen Palethorpe, Secretary
Mr Chris Lawley, Senior Research Officer
Mrs Dianne Warhurst, Executive Assistant

Committee address

PO Box 6100
Parliament House
Canberra ACT 2600
Tel: 02 6277 3526
Fax: 02 6277 5818
Email: ec.sen@aph.gov.au
Internet: www.aph.gov.au/senate/committee/ec_ctte/index.htm

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Recommendations

Recommendation 1

3.51 The committee recommends that as part of the framework legislation, a priority list of products to be covered by product stewardship schemes be developed and published annually.

Recommendation 2

3.52 The committee recommends that an advisory group consisting of waste management experts, industry representatives, environmental groups, community representatives and government be established to advise the environment ministerial council on declaring priority products.

Recommendation 3

3.64 The committee recommends that the legislation preserve or protect product stewardship schemes at the state level that are already underway so as to not reduce their targets or effectiveness.

Recommendation 4

3.87 The committee recommends that, subject to the recommendations made elsewhere in this report, the Senate pass the Product Stewardship Bill 2011 during the winter Parliamentary sittings.

Abbreviations

ABS	Australian Bureau of Statistics
ACCI	Australian Chamber of Commerce and Industry
COAG	Council of Australian Governments
DECCW	The former New South Wales Department of Environment, Climate Change and Water, now the Office of Environment and Heritage
DSEWPAC	Department of Sustainability, Environment, Water, Population and Communities
EPHC	Environment Protection and Heritage Council
EPR	Extended producer responsibility
ERG	Expert reference group
implementation plan	<i>National Waste Policy: Less waste, more resources Implementation Plan</i>
kg	Kilogram
National Waste Policy	<i>National Waste Policy, Less waste, more resources</i>
OECD	Organisation for Economic Co-operation and Development
RIS	Regulatory Impact Statement
the bill	Product Stewardship Bill 2011
the department	Department of Sustainability, Environment, Water, Population and Communities
WARR Act	<i>Water Avoidance and Recourse Recovery Act 2001 (NSW)</i>

Chapter 1

Introduction

Referral to the committee

1.1 On 25 March 2011, the Senate, on the recommendation of the Selection of Bills Committee, referred the Product Stewardship Bill 2011 (the bill) to the Environment and Communications Legislation Committee for inquiry and report by 28 April 2011.¹ The bill was referred to assist with appropriate and timely consideration by the Senate of the bill.²

1.2 The reporting date was subsequently extended until 9 May 2011.³

1.3 The committee advertised the inquiry on its website and wrote to relevant organisations inviting submissions by 6 April 2011. The inquiry was also advertised nationally in *The Australian* on 30 March 2011. The committee received 25 submissions (see Appendix 1).⁴ The committee held a public hearing in Canberra on 13 April 2011 (participants listed at Appendix 2).

1.4 The committee thanks submitters and witnesses for their contributions.

Purpose of the bill

1.5 The bill implements 'a cornerstone commitment of the National Waste Policy' by establishing a national framework underpinned by Commonwealth legislation to support voluntary, co-regulatory and mandatory product stewardship schemes.⁵

1.6 Waste generation in Australia is steadily increasing in volume, complexity and toxicity. Australia is projected to produce 150 per cent more waste in 2020–21

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- 1 Senate Selection of Bills Committee, Report No. 4 of 2011, www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2011/rep0411.pdf (accessed 6 May 2011). See *Senate Hansard*, 24 March 2011, p. 103. The bill was introduced to the Senate on 23 March 2011.
 - 2 Senate Selection of Bills Committee, Report No. 4 of 2011, Appendix 3, www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2011/rep0411.pdf (accessed 6 May 2011).
 - 3 An interim report was tabled on 13 April 2011. Senate Environment and Communications Legislation Committee, *Interim Report: Product Stewardship Bill 2011*, www.aph.gov.au/Senate/committee/ec_ctte/product_stewardship/interim_report/index.htm (accessed 28 April 2011).
 - 4 A late submission was received from the Intellectual Property Committee, Business Law Section, Law Council of Australia. This submission is addressed in paragraphs 3.83–3.85.
 - 5 Senator the Hon. Don Farrell, Parliamentary Secretary for Sustainability and Urban Water, Second reading speech, Product Stewardship Bill 2011, *Senate Hansard*, 23 March 2011, p. 1529.

compared with 2002–03 levels.⁶ The National Waste Policy aims to produce less waste for disposal and to manage waste as a resource to deliver economic, environmental and social benefits.⁷ The policy has been endorsed by all Australian governments through both the Environment Protection and Heritage Council (EPHC) and the Council of Australian Governments (COAG).⁸

1.7 Product stewardship is seen as a key method to help meet the objectives of the National Waste Policy by sharing responsibility amongst manufacturers, consumers, government and the community for reducing the environmental, health and safety footprint of manufactured goods and materials across the life cycle of a product.

Report structure

1.8 This report is divided into two substantive chapters. Chapter 2 outlines the policy and regulatory context within which the proposed legislation will operate, and identifies the key provisions of the bill. Chapter 3 then discusses the issues raised during the committee's inquiry in respect of individual provisions of the bill.

6 Environment Protection and Heritage Council (EPHC), *National Waste Report 2010*, March 2010, p. 3.

7 EPHC, *National Waste Policy: Less waste, more resources*, November 2009, p. 6.

8 The National Waste Policy was endorsed by the Environment Protection and Heritage Council in November 2009 and agreed to out of session by the Council of Australian Governments in May 2010.

Chapter 2

Background

Australia's waste is increasing in volume, complexity and toxicity¹

2.1 According to the *National Waste Report 2010* recycling and waste generation have both increased since 1990. In 2002–03, Australia produced 32.4 million tonnes of waste. In the period 2006–07, the amount of waste generated was 43.8 million tonnes, an increase of 35 per cent. It is projected that Australia will generate 81.1 million tonnes of waste in 2020–21, an increase of 150 per cent above 2002–03 levels.

2.2 According to the Australian Bureau of Statistics (ABS) solid waste generation has risen at around six per cent per annum on average from an estimated 23 million tonnes in 1996–97.² In 2008, this committee noted in its report *Management of Australia's waste streams* that the rate of waste generation is occurring faster than annual GDP growth.³

2.3 Per capita, Australia generated around 2080 kg of waste in 2006–07, of which 1080 kg was recycled.

2.4 During this period 22.7 million tonnes, or 52 per cent, of Australia's waste was recycled. Of this quantity:

- 42 per cent was from the construction and demolition waste stream;
- 36 per cent was from the commercial and industrial waste stream; and
- 22 per cent was from the municipal solid waste stream.

2.5 Of the total waste generated in Australia, 48 per cent was discarded to landfill in 2006–07.

2.6 The ABS has noted that associated with the large increase in the number of products available in Australia there has been an increase in waste diversity, toxicity and complexity over the past decades.⁴ Waste generated today is markedly different

1 Unless otherwise referenced, the statistics presented in this section are drawn from the Environment Protection and Heritage Council (EPHC), *National Waste Report 2010*, March 2010, p. 3.

2 Australian Bureau of Statistics (ABS), *Australian Social Trends, 2007: Household waste*, Report No. 41020.0, 2007.

3 Senate Standing Committee on Environment, Communications and the Arts, *Management of Australia's waste streams (including consideration of the Drink Container Recycling Bill 2008)*, September 2008, p. 8.

4 ABS, *Year Book Australia 2008, Waste and recycling practices of households*, Report No. 1301.0, 2008.

from 50 years ago when motor vehicles, refrigerators and televisions were less common. Personal computers, mobile phones and compact fluorescent lamps have also entered the waste stream in recent decades. These goods are increasingly complex and not only contain materials that can be re-used but also contain hazardous substances.⁵

2.7 The estimated quantity of hazardous waste generated in Australia doubled between 2002 and 2006 to around 1.19 million tonnes per annum. An average of 30 000 tonnes of hazardous waste is exported from Australia annually.⁶

2.8 Televisions and computers provide a typical example of the growing challenges faced by the waste sector. According to a Regulatory Impact Statement prepared for the Environment Protection and Heritage Council (EPHC), during the period 2007–08, 138 000 tonnes of new televisions, computers and computer products were sold in Australia.⁷ In the same year, 106 000 tonnes (16.8 million units) reached their end of life. It is estimated that 84 per cent (by weight) were sent to landfill, with only 10 per cent (by weight) being recycled.⁸

2.9 The rapid development of technology, shorter life-span of products and increasing ownership of electrical products will see more electronic goods presented as waste. For example the volume of televisions and computers reaching their end-of-life is expected to grow to 181 000 tonnes (44 million units) by 2027–28, an increase of 70 per cent since 2007–08.⁹

2.10 The Western Australian Local Government Association has succinctly stated the issue facing Australian governments:

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.¹⁰

5 Senator the Hon. Don Farrell, Parliamentary Secretary for Sustainability and Urban Water, Second reading speech, Product Stewardship Bill 2011, *Senate Hansard*, 23 March 2011, p. 1529.

6 For an overview of hazardous waste in Australia see EPHC, *National Waste Report 2010*, March 2010, pp 171–186.

7 PriceWaterhouseCoopers and Hyder Consulting, *Environment Heritage and Protection Council, Decision Regulatory Impact Statement: Televisions and computers*, October 2009, p. iii, www.ephc.gov.au/sites/default/files/PS_TV_Comp_Decision_RIS_Televisions_and_Computers_200911_0.pdf (accessed 6 May 2011).

8 The remaining 6 per cent (by weight) were exported.

9 PriceWaterhouseCoopers and Hyder Consulting, *Environment Heritage and Protection Council, Decision Regulatory Impact Statement: Televisions and computers*, October 2009, p. iii.

10 Ms Rebecca Brown, Manager, Waste and Recycling, Western Australian Local Government Association, *Proof Committee Hansard*, 13 April 2011, p. 26.

Responsibility for waste policy in Australia

2.11 Currently in Australia waste policy and management is developed and implemented by all three tiers of government – Commonwealth, state and local government. According to the *National Waste Policy: Less waste, more resources* (National Waste Policy) the overarching policy and regulatory framework for waste in Australia derives from a range of sources:

...the Australian Constitution, international agreements, Commonwealth legislation, agreements of COAG, decisions of the Environment Protection and Heritage Council and other ministerial councils, and from multiple legislative instruments in each state and territory.¹¹

2.12 Under the Constitution the management of waste is primarily the responsibility of the state and territory governments. State governments have typically delegated to local councils much of the day-to-day responsibility for domestic waste management services. The roles and responsibilities of local government depend on the regulatory framework of a particular state or territory and can vary significantly. Local government often assumes responsibility for providing household waste collection and recycling services and managing and operating landfill sites.

2.13 In submissions to this inquiry, local government representative bodies argued that councils are not properly funded to deal with the increasing volumes and complexity of the waste stream.¹² For example the Western Australian Local Government Association submitted that:

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 [end-of-life] products is not sustainable.¹³

Australia's international obligations and current Commonwealth legislative framework

2.14 The Australian government is responsible for ensuring that Australia's international obligations are met, whether through measures implemented by the Commonwealth or through measures implemented by the states.

2.15 The Australian government's role and overarching responsibilities flow from a suite of international agreements and apply to 'hazardous substances, wastes,

11 EPHC, *National Waste Policy: Less waste, more resources*, November 2009, p. 2, www.ephc.gov.au/sites/default/files/WasteMgt_Rpt_National_Waste_Policy_Framework_Less_waste_more_resources_PRINT_ver_200911.pdf (accessed 9 May 2011).

12 See Australian Local Government Association, *Submission 11*; Local Government Association of Tasmania, *Submission 15*; and South Australian Government, *Submission 19*.

13 Western Australian Local Government Association, *Submission 12*, p. 2.

persistent organic pollutants, ozone depleting substances and synthetic greenhouse gases and climate change'.¹⁴

2.16 The two most relevant international agreements that concern product stewardship are the Basel Convention on Transboundary Movement of Hazardous Wastes and Their Disposal (the Basel Convention) and the Stockholm Convention on Persistent Organic Pollutants (the Stockholm Convention).¹⁵

2.17 Australia must also be ready to deal with changing international requirements. Currently the United Nations Environment Programme is developing a legally binding instrument on mercury to seek to reduce its use, to encourage the use of alternatives and to ensure that mercury is made safe at end-of-life.¹⁶

2.18 In order to comply with these international treaties the Australian Government has passed several pieces of legislation:

- the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* which governs the import and export of hazardous waste to and from Australia;
- the *Industrial Chemicals (Notification and Assessment) Act 1989* which requires the notification and assessment of industrial, agricultural and veterinary chemicals;
- the *Environment Protection (Sea Dumping) Act 1981*, *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Environment Protection and Biodiversity Conservation Act 1999* which prohibits dumping and incineration of waste at sea; and
- the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* which restricts ozone depleting substances.

14 For a complete list of the international agreements Australia is party to, see EPHC, *National Waste Policy: Less waste, more resources*, November 2009, p. 2.

15 Australia became party to the Basel Convention in 1992 and is required to ensure that:

- the generation of hazardous and other wastes (in particular household wastes) is reduced to a minimum (taking into account social, technological and economic aspects);
- that adequate disposal facilities exist for the environmentally sound management of wastes; and
- that managers of waste take steps to prevent pollution, but if pollution occurs, minimise the consequences for human health and the environment.

In 2004 Australia became a party to the Stockholm Convention under which there is the further requirement to restrict and ultimately eliminate the production, use, trade, release and storage of dangerous long-lasting chemicals (EPHC, *National Waste Report 2010*, p. 8).

16 Dr Diana Wright, First Assistant Secretary, Environmental Quality Division, Department of Sustainability, Environment, Water, Populations and Communities (DSEWPAC), *Proof Committee Hansard*, 13 April 2011, p. 36. See also United Nations Environment Programme, Mercury programme, www.chem.unep.ch/mercury/partnerships/new_partnership.htm (accessed 6 May 2011).

2.19 The state and territory governments have also enacted legislative and policy instruments to protect the environment and conserve natural resources.¹⁷

The National Waste Policy

2.20 In 2008 the committee's predecessor undertook a wide ranging review of national waste policy. At that time the committee observed the absence of a national waste policy, stating that 'over the past two decades the only national waste minimisation strategy that has been established was the National Waste Minimisation and Recycling Strategy' of 1992.¹⁸

2.21 During that inquiry the committee heard evidence that in the absence of a national approach, the states have tended to develop waste management policies in an uncoordinated and at times inconsistent fashion.¹⁹

2.22 One of the committee's key recommendations was for the development of a national resource efficiency strategy which:

...should seek consistent policies between the states and adopt a principles-based approach; including sustainability, the waste hierarchy, extended producer responsibility [also known as product stewardship] and user pays cost reflective pricing as guiding principles.²⁰

2.23 A major development occurred in November 2009, when all Australian governments through the Environment Protection and Heritage Council (EPHC) agreed to a new national policy on waste and resource recovery.²¹ The *National Waste Policy: Less waste, more resources* sets the direction for Australia for the next 10 years 'towards producing less waste for disposal and managing waste as a resource to deliver economic, environmental and social benefits'.²²

17 For a list of state and territory legislative and policy instruments see EPHC, *National Waste Policy: Less waste, more resources, Implementation Plan*, July 2010, p. 2.

18 Senate Standing Committee on Environment, Communications and the Arts, *Management of Australia's waste streams (including consideration of the Drink Container Recycling Bill 2008)*, September 2008, p. 57. Prior to September 2010 the Senate Environment and Communications Committee was known as the Senate Environment, Communications and the Arts Committee.

19 Senate Standing Committee on Environment, Communications and the Arts, *Management of Australia's waste streams (including consideration of the Drink Container Recycling Bill 2008)*, September 2008, p. 58.

20 Senate Standing Committee on Environment, Communications and the Arts, *Management of Australia's waste streams (including consideration of the Drink Container Recycling Bill 2008)*, September 2008, p. 60.

21 The Environment Protection and Heritage Council of Australia and New Zealand (EPHC) was established in 2001 by the Council of Australian Governments (COAG). The EPHC is comprised of Ministers from the Commonwealth, state and territory governments as well as the New Zealand government and the Papua New Guinea government. The EPHC is also referred to as the Environment Ministerial Council in this report. The EPHC is to change its name on 1 July 2011.

22 EPHC, *National Waste Policy: Less waste, more resources*, November 2009, p. 6.

2.24 The National Waste Policy also acknowledges the potential to achieve wider community objectives through waste management. Accordingly the policy 'aims to help reduce greenhouse gas emissions, improve energy conservation, raise water efficiency and enhance productivity of the land'.²³

2.25 The policy has been designed to ensure that all wastes, including hazardous wastes, will be managed consistent with Australia's international obligations.

2.26 The National Waste Policy lists six key directions for the period to 2020 to ensure that Australia manages its waste in 'an environmentally safe, scientific and sound manner and reduce the amount per capita of waste disposed'.²⁴ Sixteen priority strategies that would benefit from a national or coordinated approach were developed to meet these key directions.²⁵

2.27 In July 2010, the EPHC endorsed the *National Waste Policy Implementation Plan* (the implementation plan) which presents the aims, key directions and strategies of the National Waste Policy and prioritises when they will be implemented.²⁶ The implementation plan also sets out governance and resourcing arrangements and sets key milestones for the first five years of the policy and arrangements for monitoring progress and performance.

Product stewardship as part of the National Waste Policy

2.28 The first key direction identified in the National Waste Policy is the need for Australian governments to share responsibility for:

...reducing the environmental, health and safety footprint of manufactured goods and materials across the manufacture-supply-consumption chain and at end of life.²⁷

2.29 In response to this key direction, 'Priority Strategy 1' was developed:

The Australian Government with the support of state and territory governments, will establish a national framework underpinned by legislation to support voluntary, co-regulatory and regulatory product stewardship and extended producer responsibility schemes to provide for the impacts of a product being responsibly managed during and at end of life.²⁸

23 EPHC, *National Waste Policy: Less waste, more resources, Implementation Plan*, July 2010, p. 5.

24 EPHC, *National Waste Policy: Less waste, more resources*, November 2009, pp 7–8.

25 EPHC, *National Waste Policy: Less waste, more resources*, November 2009, pp 9–15.

26 EPHC, *National Waste Policy: Less waste, more resources, Implementation Plan*, July 2010, www.ephc.gov.au/sites/default/files/WasteMgt_National_Waste_Policy_Implementation_Plan_Final_201007.pdf (accessed 6 May 2011).

27 EPHC, *National Waste Policy: Less waste, more resources*, November 2009, p. 9.

28 EPHC, *National Waste Policy: Less waste, more resources*, November 2009, p. 9.

2.30 Under Priority Strategy 1 (the Product Stewardship Priority Strategy) the Australian government is responsible for the resourcing, establishment and administration of the Commonwealth legislative framework. The Australian government is also required to consult with state and territory governments through the EPHC on the design of the national product stewardship legislation.²⁹

2.31 State and territory governments are to assist with intelligence gathering as part of existing policy, program and regulatory operations. State and territory governments can also continue to support local product stewardship action.³⁰

2.32 The Product Stewardship Priority Strategy also provides for the operation of the co-regulatory and regulatory product stewardship schemes to be funded by the sector subject to regulation. Accreditation of voluntary schemes is to occur on cost recovered basis through a fee for service.³¹

2.33 According to the timetable specified in the Implementation Plan, the Commonwealth national product stewardship framework legislation is to be enacted in 2011.³²

2.34 Under the implementation plan the Australian Government is also to develop and implement a national television and computer product stewardship scheme in 2011.³³ This scheme will be the first to be implemented under the framework established by this bill. The committee notes that the Commonwealth environment department is currently conducting a consultation process on the regulatory underpinnings of such a scheme.³⁴

Definition of product stewardship

2.35 The explanatory memorandum explains that product stewardship:

...involves shared responsibility for reducing the environmental health and safety footprint of manufactured goods and materials across the life cycle of a product.³⁵

2.36 For the purpose of consulting on provisions of the bill, product stewardship was defined in the Product Stewardship Legislation Consultation Paper as:

29 EPHC, *National Waste Policy: Less waste, more resources, Implementation Plan*, July 2010, p. 13.

30 EPHC, *National Waste Policy: Less waste, more resources*, November 2009, p. 9.

31 EPHC, *National Waste Policy: Less waste, more resources*, November 2009, p. 9.

32 EPHC, *National Waste Policy: Less waste, more resources, Implementation Plan*, July 2010, p. 13.

33 EPHC, *National Waste Policy: Less waste, more resources, Implementation Plan*, July 2010, p. 13.

34 Department of Sustainability, Environment, Water, Populations and Communities (DSEWPAC), National product stewardship legislation, www.environment.gov.au/settlements/waste/product-stewardship/consultation/index.html (accessed 6 May 2011).

35 Explanatory Memorandum, Product Stewardship Bill 2011, p. 2.

All parties in the production-supply-consumption chain ensuring that products are responsibly managed during and at the end of life and...where Extended Producer Responsibility is the term applied where the producer or importer is responsible for the product during and at the end-of-life.³⁶

Outline of the bill

2.37 The Product Stewardship Bill 2011 (the bill) establishes a national framework to more effectively manage the environmental, health and safety impacts of selected products, and in particular those impacts associated with the disposal of products. This is done through either a voluntary, co-regulatory or mandatory approach.³⁷

2.38 The voluntary provisions of the bill essentially establish a mechanism to encourage and recognise product stewardship without the need to regulate, and to provide assurance to the community that a voluntary product stewardship scheme is operating to achieve its stated outcomes.³⁸ The voluntary provisions would provide for the accreditation of voluntary product stewardship arrangements designed to further the objects of the Act.³⁹ They also would authorise the use of product stewardship logos in connection with such arrangements.

2.39 On the other hand, a co-regulatory scheme would involve a combination of government regulation and industry action.⁴⁰ Some manufacturers, importers, distributors and users of products, who have been specified in the regulations, would be required to be part of a co-regulatory scheme. The regulations would set minimum outcomes and operational requirements that are to be met in relation to a class of products, with industry ensuring that the outcomes and requirements are achieved.

2.40 The third type of scheme provided for under the bill is for mandatory product stewardship which would require some persons to take, or not to take, specified action in relation to products.⁴¹ These requirements might include restricting the manufacture or import of products, labelling requirements and requirements relating to the treating or disposing of products. The bill also specifies penalties that may be imposed for not complying with mandatory regulations.⁴²

2.41 Before an obligation can be imposed through regulation, the minister has to be satisfied that:

36 Department of Sustainability, Environment, Water, Population and Communities (DSEWPAC), *Product Stewardship Legislation Consultation Paper*, November 2010, p. 9, www.environment.gov.au/settlements/waste/product-stewardship/consultation/pubs/ps-legislation-consultation.pdf (accessed 19 April 2011), ellipses in original.

37 Explanatory Memorandum, Product Stewardship Bill 2011, p. 2.

38 The voluntary product stewardship arrangements are contained in Part 2 of the bill.

39 Which broadly speaking aim to reduce the environmental, health and safety impacts of products and substances contained in products. Product Stewardship Bill 2011, clause 4.

40 The co-regulatory product stewardship arrangements are contained in Part 3 of the bill.

41 The mandatory product stewardship arrangements are contained in Part 4 of the bill.

42 Subclause 38(1) identifies the maximum penalties that may be imposed by regulations.

-
- the objects of the Act are being met; and
 - two or more of the six product stewardship criteria are satisfied.

2.42 In addition, as a matter of government policy, a regulatory impact assessment of the proposed regulations would also have to be satisfied.⁴³

Committee comment

2.43 The committee supports the aims of the National Waste Policy to produce less waste for disposal and to manage waste as a resource to deliver economic, environmental and social benefits. Product stewardship is an important strategy to help achieve these aims by ensuring that products are responsibly managed throughout their life cycle.

2.44 The committee supports the unified approach adopted by the Environment Protection and Heritage Council to establish national product stewardship legislation. The lead taken by the Commonwealth government in creating a national legislative framework will help to reduce the inefficiencies associated with multiple state and territory based arrangements. The proposed framework will also help Australia meet its international obligations.

2.45 The committee acknowledges the timeframe set out in the National Waste Policy Implementation Plan for national product stewardship legislation to be in place by 2011.

43 Explanatory Memorandum, Product Stewardship Bill 2011, p. 16.

Chapter 3

Key issues

Overview

3.1 There was broad support amongst submitters for a national approach to product stewardship rather than multiple, and potentially inconsistent, state based arrangements.¹ Australia was also recognised by several submitters as being behind other international jurisdictions in relation to policies, laws and directives concerning product stewardship.²

3.2 In a recent media release, Product Stewardship Australia and the Australian Information Industry Association were strongly supportive of the bill claiming that it 'is a significant and positive step towards supporting industry efforts to deliver a national scheme'.³ They stated that the bill is an important government initiative that 'must be passed in a timely manner so that industry can commence delivering its national television and computer recycling scheme'.⁴ The media release is attached at Appendix 4.

3.3 Submitters were also supportive of the intention of the bill to provide first for voluntary and co-regulatory schemes rather than imposing a mandatory scheme.⁵ The explanatory memorandum highlights that the purpose of accreditation is 'to provide an avenue for encouraging and recognising product stewardship without the need to regulate'.⁶ The Lighting Council of Australia summarised that:

...this gives industry an incentive to work towards a voluntary or co-regulatory approach. The industry ownership bestowed by this approach should lead to better outcomes among industries prepared to assume such

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- 1 For example see: National Packaging Covenant Industry Association, *Submission 2*; Vinyl Council of Australia, *Submission 4*; Australian Industry Group, *Submission 5*; Keep Australia Beautiful, *Submission 9*; Lighting Council of Australia, *Submission 10*; and Australian Network of Environmental Defender's Offices, *Submission 17*.
 - 2 For example see: Australian Information Industry Association and Product Stewardship Australia, *Submission 16*.
 - 3 Product Stewardship Australia and Australian Information Industry Association, 'Proposed legislation on e-waste and product stewardship give industry certainty', Media release, 3 May 2011, www.aiia.com.au/news/64160/Proposed-Legislation-on-E-waste-and-Product-Stewardship-Gives-Industry-Certainty.htm (accessed 6 May 2011).
 - 4 Product Stewardship Australia and Australian Information Industry Association, 'Proposed legislation on e-waste and product stewardship give industry certainty', Media release, 3 May 2011.
 - 5 For example see: Australian Food and Grocery Council, *Submission 1*; Global Product Stewardship Council, *Submission 3*; and Lighting Council of Australia, *Submission 10*.
 - 6 Explanatory Memorandum, p. 12.

responsibility. To reduce costs on both industry and government, all efforts should be made to encourage voluntary rather than regulatory approaches.⁷

3.4 However the bill did raise a number of concerns for submitters. These concerns were galvanised around six main issues:

- the potential coverage of products that may come under a product stewardship scheme;
- the absence of a priority list of products to be covered under the framework legislation;
- the lack of an advisory panel to recommend a list of priority products;
- the overlap of state and territory legislation;
- the broadening of the objects of the Act; and
- the adequacy of the consultation process.

Coverage

3.5 As the bill is designed to establish a legislative framework for product stewardship schemes, it is silent on the products that may be covered at some point in the future. Different industry sectors will decide which products they seek accreditation for under the voluntary arrangements, while it will be for the environment minister to decide which products to regulate under the co-regulatory or mandatory arrangements. For this reason there were differing views about the coverage of the bill. Some submitters argued that every conceivable product could be covered while others argued that potentially no products would be covered.

3.6 The explanatory memorandum explains that the bill uses product stewardship criteria 'to be basic filter criteria to help determine whether the Bill should apply to a particular class of products'.⁸ Before regulations are made for either a co-regulatory or mandatory scheme, the minister must first be satisfied that the regulations will further the objects of the Act and that the product stewardship criteria are met.⁹

3.7 The product stewardship criteria are outlined in clause 5 of the bill. The criteria are satisfied if two or more of the following criterion apply to a class of product:

- (a) the products are in a national market;
- (b) the products contain hazardous substances;

7 Lighting Council of Australia, *Submission 10*, p. 2.

8 Explanatory Memorandum, p. 7.

9 Clauses 19 and 39, Product Stewardship Bill 2011. In addition, as a matter of government policy, a regulatory impact assessment of the proposed regulations would also have to be satisfied. See Explanatory Memorandum, Product Stewardship Bill 2011, p. 16.

- (c) where there is the potential for resource recovery benefits;
- (d) reusing or recycling of the products involves a significant cost to the Commonwealth, state, territory or local governments;
- (e) consumer's willingness to pay; and
- (f) taking action will offer business opportunities that would make a contribution to the economy.¹⁰

3.8 Several submitters raised concerns that these criteria were too broad and could conceivably require all household items sold in Australia to be covered by a product stewardship scheme.¹¹ According to several industry associations this potential coverage of products creates uncertainty for businesses.

3.9 The Australian Food and Grocery Council, which represents Australia's food, drink and grocery manufacturing industry, highlighted that the wide ranging criteria would leave their industry without a clear indication of which products may be targeted for a product stewardship scheme:

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.¹²

3.10 Of particular concern to several industry groups were criteria (a) and (f). It was believed that most products on Australian shelves were sold in a national market and that any action to recycle or re-use a product would provide a business opportunity to a waste management or recycling company.¹³

3.11 In contrast to the industry associations, the use of broad criteria was supported by environmental and recycling groups as a way to 'capture all the potential products that one might come across that would be appropriate for a product stewardship type arrangement'.¹⁴

3.12 It was suggested that to address the issue of having broad criteria, a product must satisfy a least three criteria (instead of the current two) in order for it to qualify

10 This list paraphrases clause 5 of the Product Stewardship Bill 2011.

11 See: Australian Food and Grocery Council, *Submission 1*; Global Product Stewardship Council, *Submission 3*; and National Association of Retail Grocers of Australia, *Submission 20*.

12 Mr Tony Mahar, Director, Sustainable Development, Australian Food and Grocery Council. *Proof Committee Hansard*, 13 April 2011, p. 2.

13 For example see: *Proof Committee Hansard*, pp 31, 43–44; National Association of Retail Grocers Australia, *Submission 20*.

14 Mr Rod Welford, Chief Executive, Australian Council of Recycling, *Proof Committee Hansard*, 13 April 2011, p. 31.

for a stewardship scheme.¹⁵ The Australian Food and Grocery Council argued that requiring an additional criterion to be met would provide more specific advice to industry and give a 'more robust, equitable and credible process for the development of any product stewardship schemes'.¹⁶

3.13 At the public hearing the department informed the committee that the criteria were deliberately broad so as to capture any potential products that could be covered under a stewardship scheme.¹⁷

3.14 The department also advised that there are additional requirements besides the criteria that a product must satisfy for it to be subject to the framework. For a product to be covered by a product stewardship scheme it must:

- be recommended for consideration by the Environment Ministerial Council;
- be subjected to a Regulation Impact Statement (RIS);
- go through a consultation process;
- meet the objects of the Act;
- meet the criteria; and
- have the support of the Australian Parliament.¹⁸

3.15 These additional requirements are set out in more detail in Appendix 3.

3.16 Several local government peak bodies and environmental groups noted that the requirement for a product to be subjected to a RIS could have the effect of limiting the number of products being placed under stewardship schemes.¹⁹ Both groups had concerns that the RIS process is poorly suited to quantify environmental benefits in monetary terms. They contended that the RIS process 'ends up overstating the costs and understating the [environmental] benefits'.²⁰

15 For example see Vinyl Council of Australia, *Submission 4*.

16 Mr Tony Mahar, Director, Sustainable Development, Australian Food and Grocery Council. *Proof Committee Hansard*, 13 April 2011, p. 2.

17 Dr Diana Wright, First Assistant Secretary, Environmental Quality Division, Department of Sustainability, Environment, Water, Population and Communities (DSEWPAC), *Proof Committee Hansard*, 13 April 2011, p. 42.

18 For further detail on the process a product must pass through before being regulated under the Act, see Department of Sustainability, Environment, Water, Population and Communities, Answer to questions taken on notice, 13 April 2011 (received 21 April 2011), p. 6.

19 See: Ms Rebecca Brown, Manager, Waste and Recycling, WALGA, *Proof Committee Hansard*, 13 April 2011, p. 27; and Mr Jeff, Executive Director, Total Environment Centre and Boomerang Alliance, *Proof Committee Hansard*, p. 17.

20 Mr Jeff Angel, Executive Director, Total Environment Centre and Boomerang Alliance, *Proof Committee Hansard*, p. 17.

3.17 Conversely, several industry associations felt that the RIS process would help to evaluate suitable products based on their physical size, materials, supply chains and processing issues.²¹

3.18 The department noted that the RIS process would be cognisant of the objects of the Act and accordingly not every product would qualify for a stewardship scheme.²² End-of-life tyres was one example given by the department of a class of product that did not pass a regulatory impact assessment.²³

Committee comment

3.19 The committee has considered the concerns raised by submitters and provides comments and recommendations later in the report at paragraphs 3.47–3.52.

List of priority products

3.20 In response to the broad list of criteria that must be satisfied for a product to be covered by a stewardship scheme, it has been suggested that a priority list of products be drawn up to give industry, environmental groups and the community certainty as to what range of products are to be covered.²⁴

3.21 The Australian Food and Grocery Council suggested that a list of priority products could be developed 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.²⁵

3.22 It was suggested by a number of submitters that a priority list of products could target the 'low hanging fruit' and address the products that are most easily able to be converted into an accredited arrangement.²⁶ Low hanging fruit was indentified to

21 Australian Industry Group, *Submission 5*, p. 3.

22 Dr Diana Wright, First Assistant Secretary, Environmental Quality Division, DSEWPAC, *Proof Committee Hansard*, 13 April 2011, p. 36.

23 Dr Diana Wright, First Assistant Secretary, Environmental Quality Division, DSEWPAC, *Proof Committee Hansard*, 13 April 2011, p. 36. A scheme to cover end of life tyres failed to qualify for regulation as it would not deliver a net benefit to the community. The department is currently working with the industry to develop a voluntary product stewardship scheme.

24 For example see: Australian Local Government Association, *Submission 11*; Western Australian Local Government Association, *Submission 12*; and Local Government Association of Tasmania, *Submission 15*.

25 Mr Tony Mahar, Director, Sustainable Development, Australian Food and Grocery Council. *Proof Committee Hansard*, 13 April 2011, p. 3.

26 Mr Rod Welford, Chief Executive, Australian Council of Recycling, *Proof Committee Hansard*, 13 April 2011, p. 30.

include televisions and computers which are scheduled to be covered under the first regulations issued under the framework legislation.²⁷

3.23 It was also felt that the process of developing a priority list would allow direct input by stakeholders into what products are considered. The Australian Local Government Association believed that a priority list would show 'clear leadership from Government and allows industry time to develop product stewardship programs'.²⁸

New South Wales Extended Producer Responsibility Priority List

3.24 The New South Wales product stewardship legislation was highlighted as an example that contained a list of priority products.²⁹

3.25 In 2001, extended producer responsibility (EPR) legislation was introduced into NSW through the *Waste Avoidance and Resource Recovery Act 2001* (WARR Act). Section 15 of the WARR Act notes that 'EPR schemes' also refer to schemes that may be labelled as 'product stewardship schemes'.³⁰

3.26 The aims of the NSW EPR scheme are to:

...engage producers and others involved in the supply chain of a product to take responsibility for the environmental, health and safety footprint of those products. This includes the design and manufacture of a product, as well as how the product is managed at the end of its life (including resource recovery and proper disposal).³¹

3.27 Section 18 of the WARR Act requires the Director General of the former Department of Environment, Climate Change and Water (DECCW)³² to publish an annual priority statement on EPR schemes that the Director General proposes to recommend for implementation under the WARR Act in the following 12 months.³³

27 Mr Tony Mahar Director, Sustainable Development, Australian Food and Grocery Council. *Proof Committee Hansard*, 13 April 2011, p. 3.

28 Australian Local Government Association, *Submission 11*, pp 1–2.

29 Mr Jeff Angel, Executive Director, Total Environment Centre and Boomerang Alliance, *Proof Committee Hansard*, p. 15.

30 *Waste Avoidance and Resource Recovery Act 2001 No. 58*, section 15.

31 New South Wales Department of Environment, Climate Change and Water (DECCW), *NSW Extended Producer Responsibility Priority Statement 2010*, December 2010, p. 1, www.environment.nsw.gov.au/resources/warr/101012EPRrpt.pdf (accessed 6 May 2011).

32 In 2011 the functions of the NSW Department of Environment, Climate Change and Water were transferred to the NSW Office of Environment and Heritage.

33 The NSW priority statement goes beyond the legislative requirements of flagging certain products for implementation by listing 'wastes of concern' that puts those industries on notice to take greater responsibility for management of their products at end of life.

3.28 Whilst the WARR Act requires a priority statement to be developed, no regulations have yet been made under the Act to establish an EPR scheme.

3.29 The first NSW priority statement was published in March 2004 and identified 16 'wastes of concern'.³⁴ In 2004 an expert reference group (ERG) was also established to advise the then Minister for the Environment and the Director General on current and proposed EPR schemes and other industry action. The ERG provided its report to the Minister and Director General in September 2005.³⁵ The report contained analyses and recommendations on each waste of concern listed in the 2004 priority statement. The Minister subsequently wrote to each industry sector seeking specific actions and reporting over the next 12 months.

3.30 Priority statements were revised and released in 2005–06 and 2007.³⁶ Priority statements progressing state-based regulation were not issued in 2008 and 2009 pending development of the National Waste Policy. The most recent priority statement is from 2010 and covered 17 products.³⁷ The Director General of DECCW has indicated that the department will not recommend any wastes for EPR regulatory action in NSW in 2011, noting 'new Product Stewardship legislation is due for consultation at the national level in the first quarter of 2011'.³⁸

3.31 The NSW list of priority products has received support from various environmental groups. The Total Environment Centre believed that the list has been successful. In particular, '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'.³⁹

3.32 However it was pointed out to the committee that the NSW scheme does have its limitations. Mr Russ Martin, President of the Global Product Stewardship Council, argued that the NSW EPR priority statements were not in fact prioritised, but instead

34 DECCW, *Extended Producer Responsibility Statement 2004*, www.environment.nsw.gov.au/warr/EPRPriority2004.htm (accessed 6 May 2011).

35 EPR Reference Group, *Report on the Implementation of the NSW Extended Producer Responsibility Priority Statement 2004*, September 2005, www.environment.nsw.gov.au/resources/warr/2005250_epr2004_erg rpt.pdf (accessed 6 May 2011)

36 For priority statements for each year see DECCW, *Extended Producer Responsibility*, www.environment.nsw.gov.au/warr/EPR.htm (accessed 6 May 2011).

37 DECCW, *NSW Extended Producer Responsibility Priority Statement 2010*, December 2010, p. 1.

38 DECCW, *NSW Extended Producer Responsibility Priority Statement 2010*, December 2010, p. 3.

39 Mr Jeff Angel, Executive Director, Total Environment Centre and Boomerang Alliance, *Proof Committee Hansard*, 13 April 2011, p. 15.

consisted of 16 items that were all to be equally addressed.⁴⁰ Mr Martin also stated that it then became an issue of which products could be most easily singled out for stewardship with regards to existing infrastructure and the size of the task.⁴¹

3.33 The Department of Sustainability, Environment, Water, Population and Communities (DSEWPAC or the department) felt that the NSW example helps to illustrate that 'statutory mechanisms to identify "priority products" do not necessarily result in more product stewardship activity.'⁴² The department further explained that:

The significant difference appears to be that framework legislation applies a consistent rather than piecemeal approach to regulation of products and hence reduces regulatory red tape.⁴³

Commonwealth arrangements for identifying priority products

3.34 In an answer to a question taken on notice, the department outlined the current arrangements for identifying priority products for stewardship schemes:

As part of COAG's agreement to the National Waste Policy, the primary role of establishing priority product stewardship rests collectively with Australia's Environment Ministerial Council. Strategy 1 of the National Waste Policy provides that consultation on additional products that might be regulated in the future will be through the EPHC. This is the long-standing mechanism for identifying priorities and has a history of active and broad consultation with stakeholders on a range of products. The use of the Council makes practical sense as the Council undertakes this role already, it includes all jurisdictions and local government, has well established consultative mechanisms and experience with regulatory impact analysis of products...⁴⁴

3.35 Additionally, the work of the Environment Ministerial Council is supported by a Product Stewardship Working Group which has responsibility for providing advice on strategic and emerging product stewardship issues and priorities.⁴⁵

40 Mr Russ Martin, President, Global Product Stewardship Council, *Proof Committee Hansard*, 13 April 2011, p. 20.

41 Mr Russ Martin, President, Global Product Stewardship Council, *Proof Committee Hansard*, 13 April 2011, p. 20.

42 DSEWPAC, Answer to questions taken on notice, 13 April 2011 (received 21 April 2011), p. 13.

43 DSEWPAC, Answer to questions taken on notice, 13 April 2011 (received 21 April 2011), p. 13.

44 DSEWPAC, Answer to questions taken on notice, 13 April 2011 (received 21 April 2011), p. 8.

45 Environment Protection and Heritage Council, National Waste Policy Strategy Cluster 1, Product Stewardship Working Group, Terms of Reference, www.ephc.gov.au/sites/default/files/WG_1_Product_Stewardship_ToR_Dec2010.pdf (accessed 9 May 2011).

3.36 In Australia there are six products or materials that are currently subject to assessment for product stewardship or have been previously assessed by the Environment Ministerial Council: packaging; plastic bags; mercury containing lights; computers and televisions; tyres; and packaging and litter (including beverage containers).⁴⁶

3.37 Of these products, the National Waste Implementation Plan has identified that televisions and computers, packaging and litter, mercury containing lamps and tyres are the priority products to be covered under product stewardship schemes in the first two to three years.⁴⁷

Committee comment

3.38 The committee has considered the concerns raised by submitters and provides comments and recommendations later in the report at paragraphs 3.47–3.52.

Advisory panel

3.39 A number of submitters to the inquiry raised the possibility of establishing an expert advisory panel to recommend a priority list of products to be covered by stewardship schemes.⁴⁸

3.40 It was argued by submitters that an independent group consisting of industry, consumer, community, environment and scientific representation would be valuable in providing expert advice on new products that could potentially come under the framework legislation.⁴⁹

3.41 The use of an expert panel was seen as a way of providing forthright advice from outside the bureaucracy and would strengthen the governance arrangements.⁵⁰ The Western Australian Local Government Association thought that the panel would ensure that the most important products and those with the biggest potential to create an environmental impact were selected for product stewardship schemes.⁵¹

3.42 An example of such an advisory committee being established to manage waste and determine priorities is the statutory Waste Advisory Board in New

46 For an overview of each products assessment see the Environment Protection and Heritage Council website, Product Stewardship, www.ephc.gov.au/stewardship (accessed 9 May 2011).

47 Environment Protection and Heritage Council, *National Waste Policy: Less waste, more resources, Implementation Plan*, July 2010, pp 13–19.

48 For example see: Total Environment Centre, *Submission 13*; and Australian Network of Environmental Defender's Offices, *Submission 17*.

49 Australian Network of Environmental Defender's Offices, *Submission 17*, pp 2–3.

50 Australian Network of Environmental Defender's Offices, *Submission 17*, pp 2–3.

51 Ms Rebecca Brown, Manager, Waste and Recycling, WALGA, *Proof Committee Hansard*, 13 April 2011, p. 26.

Zealand.⁵² The board is tasked with providing advice to the responsible minister on a range of issues including:

- declaring priority products (but is not required to develop a priority list);
- making guidelines for product stewardship schemes;
- specifying criteria for the funding of waste minimisation projects; and
- regulations on records, information and reports.

3.43 The *Waste Avoidance and Resource Recovery Act 2001 (NSW)* also provides for the establishment of a non-statutory committee with expert, business and non-government representatives to assist the Director General of the DECCW to develop a list of wastes of concern.

3.44 The Department of Sustainability, Environment, Water, Population and Communities has raised concerns about the effectiveness of establishing external panels on waste management. The department notes that the National Waste Policy, agreed by all jurisdictions, states that consultation on existing products that might be regulated would be through the Environment Ministers Council which already has a governance structure in place.

3.45 The department also had concerns about the ability of an external panel, even a large panel, to provide expert advice on a wide range of products and the supply chain related to those products.⁵³ The department also raised concerns that some groups may feel disenfranchised by not being represented on the panel.⁵⁴

3.46 The department therefore recommended that:

Rather than establishing a single standing advisory committee it would be more effective to continue current practice of establishing stakeholder reference groups and/or working groups relevant to products and their supply chain.⁵⁵

Committee comment

3.47 The committee acknowledges the concerns raised by submitters regarding the uncertainty over which products may be covered by a future product stewardship

52 New Zealand Ministry for the Environment, The Waste Advisory Board, www.mfe.govt.nz/issues/waste/advisory-board/index.html (accessed 6 May 2011). The Advisory Board is established under the *Waste Minimisation Act 2008* (NZ).

53 DSEWPAC, Answer to questions taken on notice, 13 April 2011 (received 21 April 2011), p. 17.

54 DSEWPAC, Answer to questions taken on notice, 13 April 2011 (received 21 April 2011), p. 17.

55 DSEWPAC, Answer to questions taken on notice, 13 April 2011 (received 21 April 2011), p. 17.

scheme. These concerns were raised right across the spectrum of submissions the committee received.

3.48 The committee notes that established government policy requires a Regulation Impact Statement process to be undertaken prior to the minister authorising regulations under the proposed Product Stewardship Act. The committee also notes that a product must further the objects of the Act and meet a minimum of two legislated criteria before regulations can be made.

3.49 The committee recognises that the Environment Ministerial Council currently has responsibility for examining which products would be suitable for a product stewardship scheme. The committee believes that developing and annually publishing a priority list of products to be covered by product stewardship schemes would create certainty for business and community groups. Without identifying the end-of-life products that could be covered by the framework, the question of whether a product stewardship scheme could be established for every conceivable product or alternatively not a single product would remain unresolved.

3.50 The committee believes that an advisory group consisting of waste management experts, industry representatives, environmental groups, community and government would be valuable in advising the Environment Ministerial Council on developing a priority list of products.

Recommendation 1

3.51 The committee recommends that as part of the framework legislation, a priority list of products to be covered by product stewardship schemes be developed and published annually.

Recommendation 2

3.52 The committee recommends that an advisory group consisting of waste management experts, industry representatives, environmental groups, community representatives and government be established to advise the environment ministerial council on declaring priority products.

Relationship with state and territory laws

3.53 A number of submitters raised concerns that whilst the framework legislation would create a national approach to product stewardship and reduce inconsistent state-based arrangements, there was the possibility that successful, pre-existing state product stewardship schemes may be made void.⁵⁶

3.54 The Total Environment Centre (TEC) argued that in seeking a national approach, 'there is a clear risk that a regulation under the Act could dumb down the

56 For example see: Australian Industry Group, *Submission 5*; and Total Environment Centre, *Submission 13*.

achievement of state law by reducing targets and quality of outcomes'.⁵⁷ Accordingly they recommended that:

...there should be protection of state laws that achieve more or a clause inserted that ensures a regulation achieves more than the best applicable state law in relation to targets and quality outcomes.⁵⁸

3.55 Contrary to this view, the South Australian Government believed that the bill would allow for existing state schemes to continue operating. The national approach was seen to be 'consistent with the approach taken by the South Australian Government to support product stewardship through a mix of legislation, collaboration, advocacy and incentives'.⁵⁹

3.56 The framework legislation would complement other South Australian waste management policies and strategies including the Environment Protection (Waste to Resources) Policy 2010, which addresses the issue of rising waste, and the *Environment Protection Act 1993 (SA)*.⁶⁰

3.57 The South Australian Environment Protection Act provides for one of the longest running product stewardship schemes in Australia, the container deposit system. According to the South Australian Government the scheme is well supported by the community and results in significantly higher recovery rates and lower litter rates than in other jurisdictions.⁶¹ The container deposit scheme will still continue to operate following the passage of the bill.⁶²

3.58 The TEC's comments that the bill's federal powers may extinguish state schemes appear at odds to statements made in the explanatory memorandum and outlined in the bill.⁶³

3.59 The explanatory memorandum acknowledges that 'as the Bill was developed with the support of all Australian governments to establish a nationally-consistent approach to product stewardship, it is unlikely that duplicative schemes for the same class of products will be established'.⁶⁴

57 Total Environment Centre, *Submission 13*, p. 1.

58 Total Environment Centre, *Submission 13*, p. 1.

59 South Australian Government, *Submission 19*, p. 2.

60 For information on the Waste to Resources Policy see Environment Protection Authority South Australia, *Environment Protection (Waste to Resources) Policy 2010*, www.legislation.sa.gov.au/LZ/C/POL/ENVIRONMENT%20PROTECTION%20%28WASTE%20TO%20RESOURCES%29%20POLICY%202010.aspx (accessed 4 May 2011).

61 South Australian Government, *Submission 19*, p. 5.

62 The bill would allow national deposit schemes (known under the bill as 'product return payment' schemes). See paragraph 37(3)(f) and subclauses 37(5)–(6).

63 See: Explanatory Memorandum, Product Stewardship Bill 2011, p. 11; and clause 9 of the bill.

64 Explanatory Memorandum, Product Stewardship Bill 2011, p. 11.

3.60 The bill outlines the relationship between the federal framework legislation and state and territory laws. Subclause 9(1) states that the Act 'is not intended to exclude the operation of any law of a State or Territory, to the extent that that law is capable of operating concurrently with this Act'.⁶⁵ Subclauses 9(2) and 9(3) do allow for regulations to be made prescribing a state or territory law as an 'excluded law' if a duplicate law is established in another jurisdiction.

3.61 In evidence to the committee, the department also pointed out that in practice all states and territories will be consulted on proposed products to be covered by a stewardship scheme at the ministerial level through the Environment Protection and Heritage Council.⁶⁶

Committee comment

3.62 The committee notes the concerns of some submitters regarding the possibility that the national product stewardship legislation may be counterproductive to successful product stewardship schemes already existing in the states and territories. The committee also notes that the two state governments that submitted to this inquiry were supportive of the bills and did not raise as an issue the potential winding back of established state-based schemes. It is the committee's view that successfully operating state schemes should not be impacted by this legislation so as to reduce targets or outcomes. The committee notes that should a national product stewardship scheme be introduced with higher targets than an existing state scheme, then the national scheme should prevail.

Recommendation 3

3.63 The committee recommends that the legislation preserve or protect product stewardship schemes at the state level that are already underway so as to not reduce their targets or effectiveness.

Objects of the Act

3.64 A number of organisations expressed the view that the objects of the Act should be broadened to ensure that the manufacturing of goods is included as a key part of product stewardship.⁶⁷

3.65 Keep Australia Beautiful NSW highlighted that one of the ongoing trends in the production of modern goods is their reducing lifespan.⁶⁸ They believed that modern consumers will simply throw a product 'onto a curb side council cleanup and

65 Subclause 9(1).

66 DSEWPAC, Answer to questions taken on notice, 13 April 2011 (received 21 April 2011), p. 6.

67 See: Keep Australia Beautiful NSW, *Submission 8*; and Total Environment Centre, *Submission 13*.

68 Keep Australia Beautiful NSW, *Submission 8*, p. 1.

buy a brand new product because the parts might be too expensive or difficult to find'.⁶⁹ Keep Australia Beautiful NSW highlighted in their submission that when producing any type of product, there is a set amount of energy and resources used. The longer this product is used, 'the better the return on the embodied energy and inputted resources'.⁷⁰

3.66 Keep Australia Beautiful NSW therefore recommended that the objects of the Act be amended to ensure that the lifespan of a product be considered for its impact on waste streams and the environment.⁷¹

3.67 The Total Environment Centre raised a similar point, arguing that the objects of the Act should also contribute to 'reducing the amount of virgin resources used in products by preferencing recycle'.⁷² The TEC argued that in addition to the benefit of limiting the amount of new resources used in creating a product, expanding the objects of the Act would have the effect of encouraging 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.⁷³

Committee comment

3.68 The committee notes the concerns raised by submitters regarding the broadening of the objects of the Act. The committee recognises the environmental and economic benefit of using as much recycled material as possible in manufacturing products.

3.69 The committee however believes that reducing the use of virgin material in the manufacturing of goods and increasing the lifespan of products is sufficiently covered under the current objects of the Act. In particular paragraph 4(2)(e) requires that the objects of the Act be achieved by ensuring that manufacturers take action to ensure that products and waste are reused, recycled, treated and disposed of in an environmentally sound way.⁷⁴

69 Keep Australia Beautiful NSW, *Submission 8*, p. 1.

70 Keep Australia Beautiful NSW, *Submission 8*, p. 1.

71 Keep Australia Beautiful NSW, *Submission 8*, p. 1.

72 Total Environment Centre, *Submission 13*, p. 1.

73 Mr Jeff Angel, Executive Director, Total Environment Centre and Boomerang Alliance, *Proof Committee Hansard*, p. 18.

74 Clause 4, subsection 2(e).

Consultation

3.70 The issue of consultation with key stakeholders over the proposed legislation was raised during the public hearing.⁷⁵ There was some concern that industry and key businesses were not given an opportunity to comment on the legislation before it was entered into Parliament.

3.71 For example the Australian Chamber of Commerce and Industry (ACCI), who were a member of the Product Stewardship Framework Legislation Stakeholder Reference Group submitted:

...ACCI would like to make clear its disappointment with one key aspect of the consultation process to date...the Stakeholder Reference Group was not provided with a copy of the legislation before it was introduced into the Parliament.⁷⁶

3.72 The ACCI recommended that a fresh round of consultation is required to 'ensure that any product stewardship scheme has the full co-operation of the group that will have primary responsibility for its success – the business community'.⁷⁷

3.73 Other submitters however felt that the product stewardship legislation has been long known to industry:

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 [December 2010] as part of the National Waste Policy.⁷⁸

Government consultation

3.74 In response to the issues of stakeholder engagement, the Department of Sustainability, Environment, Water, Population and Communities outlined the consultation processes it undertook.

National Waste Policy

3.75 Initial consultation over the creation of framework legislation for product stewardship began as part of the broader strategic aims of the National Waste Policy. Consultation on the policy commenced in April 2009 with a consultation paper followed by a discussion paper on a draft policy. Over two hundred written

75 Senator Mary Jo Fisher, *Proof Committee Hansard*, 13 April 2011, pp 6, 21, 38–39.

76 Australian Chamber of Commerce and Industry, *Submission 24*, p. 2.

77 Australian Chamber of Commerce and Industry, *Submission 24*, p. 2.

78 Ms Jenny Pickles, General Manager, Packaging Stewardship Forum, Australian Food and Grocery Council, *Proof Committee Hansard*, p. 6.

submissions were received in connection with the papers and 11 public meetings were held in capital cities and regional centres with 364 attendees.⁷⁹

3.76 In conjunction with the consultation on the National Waste Policy, the department commissioned publicly available research on overseas product stewardship schemes to inform public debate.⁸⁰

Consultation regulatory impact statement

3.77 Prior to the finalisation of the National Waste Policy in November 2009, the department also commenced a Consultation Regulatory Impact Statement for televisions and computers as part of a wider consultation package. Consultation occurred between July and August 2009, with 130 written submissions received. Four public meetings were held with 163 attendees.⁸¹

Product stewardship legislation consultation paper

3.78 A consultation paper on the proposed product stewardship legislation was released on the department's website for public comment between 11 November and 10 December 2010. Forty-six submissions were received and five public meetings were held in Adelaide, Brisbane, Melbourne, Perth and Sydney with 140 attendees. The department also provided 14 face-to-face bi-lateral meetings with interested individuals or organisations.⁸²

3.79 The department notified the public of the release of the consultation paper and the public meetings through the National Waste Policy E-News, stakeholder reference groups, public notice in *The Weekend Australian* and emails to state and territory government representatives and the Australian Local Government Association.⁸³

National television and computer product stewardship schemes

3.80 The National Television and Computer Product Stewardship Scheme: Consultation Paper on Proposed Regulations was released on the department's website for public comment from 8 March 2011 to 8 April 2011. Sixty-two

79 DSEWPAC, Additional information received, p. 3.

80 MS2 and Perchards, *Product Stewardship in North America and Europe*, June 2009, www.environment.gov.au/settlements/waste/publications/pubs/product-stewardship-na-eu.pdf (accessed 6 May 2011); and Institute of Sustainable Futures, University of Technology Sydney, *Product Stewardship Schemes in Asia: China, South Korea, Japan and, Taiwan*, July 2009, www.environment.gov.au/settlements/waste/publications/pubs/product-stewardship-asia.pdf (accessed 6 May 2011).

81 DSEWPAC, Additional information received, p. 3.

82 DSEWPAC, Additional information received, p. 3.

83 DSEWPAC, Additional information received, pp 3–4.

submissions were received and 11 public meetings were held around the country with 310 attendees.⁸⁴

State and territory consultation

3.81 The department has also consulted with state and territory governments on the product stewardship legislation through the Environment Protection and Heritage Council. The EPHC has considered the National Waste Policy and product stewardship legislation at five meetings between November 2008 and November 2010. Departmental officers also provided a briefing to state and territory government officials on the draft bill in mid-February 2011 prior to its introduction to the Parliament.⁸⁵

Committee comment

3.82 Whilst acknowledging that the government did not release an exposure draft of this legislation before its introduction, the committee is satisfied that the government has undertaken extensive public consultation on the proposed product stewardship legislation. This consultation has occurred in the context of much broader industry and community consultation as part of the development and implementation of the National Waste Policy. This has involved several consultation papers, the receipt of hundreds of written submissions, and dozens of public meetings. The committee also acknowledges that consultation continues with key stakeholder groups regarding the creation of a national television and computer product stewardship scheme.

Other matters

3.83 The committee received a late submission from the Intellectual Property Committee of the Business Law Section of the Law Council of Australia, concerning the creation of product stewardship logos under the voluntary product stewardship provisions.⁸⁶

3.84 The committee is aware that the Law Council only became aware of the provisions of the bill relatively recently, however due to the recent arrival of the submission the committee has not had an opportunity to consider in detail the issues raised.

84 DSEWPAC, Additional information received, p. 6.

85 DSEWPAC, Additional information received, p. 6.

86 Intellectual Property Committee, Business Law Section, Law Council of Australia, *Submission 25*.

Committee comment

3.85 The committee draws the government's attention to the issues raised in the submission by the Law Council of Australia.

Recommendation 4

3.86 The committee recommends that, subject to the recommendations made elsewhere in this report, the Senate pass the Product Stewardship Bill 2011 during the winter Parliamentary sittings.

Senator Doug Cameron
Chair

Coalition Senators' additional comments

Coalition Senators' recommendations

Recommendation 1

That the government delay passage of the bill to consult with stakeholders both on the recommendations made in the Main Report, and the suggestions and recommendations made in the following additional comments from Coalition Senators.

Recommendation 2

That the Government re-work each of criteria to be met before a product or substance is to be subject to the bill, so as to have a clear and limited meaning, relevant to the objects of the Act.

That the Government then consider increasing from two, the threshold number of criteria to be met.

Coalition Senators' comments

The Coalition fully supports the principle of sharing responsibility for reducing the environmental health and safety footprint of manufactured goods and materials across the lifecycle of a product.¹ However, in trying to achieve this outcome, the bill has a number of shortcomings.

Whilst the term 'product stewardship' may well have been 'industry' vernacular for some time, it is not clear whether it became recognised and utilised government vernacular before the enunciation of Priority Strategy 1 of the National Waste Policy published in November 2009.² Consequently, whilst the term 'product stewardship' is far from public parlance, it might only have been government and industry parlance for just over a year before the Government introduced this bill and the committee started this inquiry. That has left some key stakeholders unaware, and resulted in others becoming belatedly aware, of the intended meaning of and relevance to them of this bill.

This uncertainty has been compounded by the relative haste with which the government has pursued this bill, and has been exacerbated by the fact that the government did not release an exposure draft of the bill, prior to introducing it in Parliament. Regrettably, this situation is causing some distress to the television and computer industries, many of whom have been working responsibly, long and hard towards a national and industry-run product stewardship program for their industry.

1 Explanatory Memorandum, p. 2.

2 Environment Protection and heritage Council, *National Waste Policy: Less waste, more resources*, November 2009.

This bill, whilst necessary to give 'legislative legs' to a scheme for IT, televisions and computers, is about far more than that. That scheme should not be used as a 'stalking horse' for the passage of this bill.

Coalition Senators now address our particular concerns in more detail.

Consultation

Several witnesses raised concerns regarding the amount of, and in reality, lack of, consultation on the bill. While the Coalition notes comments in paragraphs 3.70–3.73 of the Main Report, it is hollow reassurance to those affected by a framework bill to claim that consultation on the general question of 'product stewardship' in Australia amounted to consultation on the detail of the consequent bill.

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.³

This, coupled with these sorts and other concerns raised by Australian Chamber of Commerce and Industry in its submission lodged after the hearing into this bill, suggest the government could do worse than delay passage of the bill so that the government can consult with stakeholders both on the recommendations made in the Main Report, and the suggestions and recommendations made in the following additional comments.

Recommendation 1

That the government delay passage of the bill to consult with stakeholders both on the recommendations made in the Main Report, and the suggestions and recommendations made in the following additional comments from Coalition Senators.

Objects of the bill

The objects of the bill refer to reducing the impact that products have on the environment, and health as safety, without giving a sense of whether the intent is to reduce 'bad' impacts, or any impacts at all. Evidence from the Department of

3 Dr Diana Wright, First Assistant Secretary, Environmental Quality Division, Department of Sustainability, Environment, Water, Population and Communities (DSEWPAC), *Proof Committee Hansard*, 13 April 2011, p. 39.

Sustainability, Environment, Water, Population and Communities failed to clarify, arguably leaving industry confused as to how to best start.

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.⁴

The Food and Grocery Council said:

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.⁵

Coverage of the bill – what is not covered?

In addition to evidence to which the Main Report refers on this issue, Mr Angel, of the Total Environment Centre, agreed that the bill in its terms could apply to every substance and every product, but suggested that ministerial discretion would set appropriate boundaries.

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.⁶

Dr Diana Wright of the Department of Sustainability, Environment, Water, Population and Communities gave evidence that:

4 Dr Diana Wright, First Assistant Secretary, Environmental Quality Division, DSEWPAC, *Proof Committee Hansard*, 13 April 2011, p. 40.

5 Mr Tony Mahar, Director, Sustainable Development, Australian Food and Grocery Council, *Proof Committee Hansard*, 13 April 2011, p. 6.

6 Mr Jeff Angel, Executive Director, Total Environment Centre and boomerang Alliance, *Proof Committee Hansard*, 13 April 2011, p. 16.

...not every product or material will get through the regulatory impact assessment and be a suitable candidate for regulation.⁷

The Coalition considers that the bill needs to do much more work in 'setting the boundaries', particularly given that the bill can result in every substance and every product being subject to the bill, not only in terms of dealing with it at the 'end' of its life, but also during its life. While the bill is largely concerned with impacts at end-of-life, it is misleading to think it is entirely so - for example, reducing hazardous content could arguably reduce negative impact during the working life of a product.

Coverage of the bill – where does industry start?

The Main Report conveys the sentiment of many witnesses lamenting the fact that the bill fails to give industries 'wanting to do the right thing' any sense of where they could most constructively start. They talked about 'low hanging' fruit.

Coalition Senators note the recommendations in the Main Report as to developing a 'priority list'. This would help. Whilst we acknowledge that developing a 'prescriptive' list would not help, it is not clear how the recommended 'priority' list would interact with the provisions of the bill. If the bill could result in substances or products additional to the 'priority list' being subject to the bill, then witnesses concerns about the breath of and uncertainties inherent in, the bill, remain relevant.

Coverage of the bill – insufficient checks or balances

For industry seeking guidance, the 'requirements' set out in paragraph 3.14 of the Main Report are not necessarily reassuring.

Taking some of those key 'requirements' in turn:

- Consultation thus far, has been criticised, and the objects of the Act lack clarity.
- The six criteria of the bill, two of which must be met before a product or substance can be subject to the bill, are so broad as to either apply to every product and substance (eg criterion (f)) and/or to be meaningless.
- Parliamentary processes allowing disallowance of regulation are a last resort.

Criteria too broad to 'filter' much

The Coalition notes comments in the Main Report paragraphs 3.7–3.14, highlighting concerns about the broad and wide ranging nature of the product stewardship (a) to (f) criteria contained in clause 5 of the bill.

Each of the criteria has been criticised as being broad and insufficient as a filter, and could mean the product stewardship could apply to every substance and every product. Here are some examples.

The Food and Grocery Council agreed with the proposition that criterion (a) was very broad, stating that all of its products are sold in the national market and they would

7 Dr Diana Wright, First Assistant Secretary, Environmental Quality Division, DSEWPAC, *Proof Committee Hansard*, 13 April 2011, p. 36.

struggle to think of any products which aren't. Therefore their members' products arguably could all qualify under criterion (a) of this bill.⁸

The Food and Grocery Council also referred to criteria (c) and (e):

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.⁹

When Mr Russ Martin of the Global Product Stewardship Council was asked if criterion (f) could apply to any product, he conceded that it could.¹⁰

In its supplementary submission, the National Association of Retail Grocers of Australia referred to criterion (b) and noted:

Requirement (b) is problematic because the Bill does not define 'hazardous', and in the absence of a definition many materials can be described as hazardous even though they have little or no impact and present no risk in regular usage or disposal. The lead contained in CRTs and solder is an example and there are many others. This criterion needs to be reworded in terms of the material in question presenting a genuine hazard in use or if disposed of in a way other than proposed under a scheme.¹¹

Given that the six criteria in (a)–(f) of the bill, two of which must be met before a product or substance can be subject to the bill, are so broad as to either apply to every product and substance (eg criterion (f)) and/or to be meaningless, it would not help to increase the threshold requirement from 2 to (as suggested by some) 3. Rather, each of the criteria should be re-worked so as to have a clear and limited meaning, relevant to the objects of the Act. Failure to do so makes a mockery of any 'filter' claims.

That done, it might then also make sense to increase the threshold number of criteria to be met.

Recommendation 2

That the Government re-work each of criteria to be met before a product or substance is to be subject to the bill, so as to have a clear and limited meaning, relevant to the objects of the Act.

8 Mr Tony Mahar, Director, Sustainable Development, Australian Food and Grocery Council. *Proof Committee Hansard*, 13 April 2011, p. 5.

9 Mr Tony Mahar, Director, Sustainable Development, Australian Food and Grocery Council. *Proof Committee Hansard*, 13 April 2011, p. 6.

10 Mr Russ Martin, President, Global Product Stewardship Council, *Proof Committee Hansard*, 13 April 2011, p. 22.

11 National Association of Retail Grocers of Australia, Supplementary Submission

That the Government then consider increasing from two, the threshold number of criteria to be met.

Trademark issues – late submission

Coalition Senators note the late submission from the Law Council of Australia, and that the committee was unable to consider it. That said, Coalition Senators urge the Government to consider and consult about the issues raised in that submission, to ensure that the bill does not cause trademark issues.

Senator Mary Jo Fisher
Deputy Chair

Senator Simon Birmingham

Appendix 1

Submissions, tabled documents, additional information and answers to questions taken on notice

- 1** Australian Food and Grocery Council
- 2** Australian Packaging Covenant Industry Association
- 3** Global Product Stewardship Council
- 4** Vinyl Council of Australia
- 5** Australian Industry Group
- 6** AgStewardship Australia
- 7** CropLife Australia
- 8** Keep Australia Beautiful NSW
- 9** Keep Australia Beautiful
- 10** Lighting Council Australia
- 11** Australian Local Government Association
- 12** Western Australian Local Government Association
- 13** Total Environment Centre
- 14** Confidential
- 15** Local Government Association of Tasmania
- 16** Australian Information Industry Association and Product Stewardship Australia
- 17** Australian Network of Environmental Defender's Offices
- 18** Australian Council of Recycling Inc
- 19** South Australian Government
- 20** National Association of Retail Grocers of Australia
- 21** National Farmers' Federation
- 22** Office of Environment and Heritage, NSW Government
- 23** Local Government Association of South Australia
- 24** Australian Chamber of Commerce and Industry
- 25** Law Council of Australia

Tabled documents

AFCG Briefing note for appearance at Senate Committee of the Environment and Communications inquiry into the Product Stewardship Bill 2011, tabled by Australian Food and Grocery Council, 13 April 2011, Canberra

Voluntary Stewardship at Work, tabled by AgStewardship Australia, 13 April 2011, Canberra

Opening statement, tabled by CropLife Australia, 13 April 2011, Canberra

Agsafe Code of Conduct – Accreditation Program for the Australian Agricultural and Veterinary Chemical Industry, tabled by CropLife Australia, 13 April 2011, Canberra

CropLife Australia Code of Conduct, tabled by CropLife Australia, 13 April 2011, Canberra

Guide for Industry on the Implementation of the FAO Code of Conduct on the Distribution and Use of Pesticides (revised version), tabled by CropLife, 13 April 2011, Canberra

International Code of Conduct on the Distribution and Use of Pesticides (revised version), tabled by CropLife, 13 April 2011, Canberra

Additional information

- 1 Additional information received from Mr Gerard van Rijswijk, National Association of Retail Grocers of Australia Pty Ltd (NARGA) dated 18 April 2011
- 2 Additional Information received from AgStewardship Australia, dated 20 April 2011
- 3 Additional information received from the Department of Sustainability, Environment, Water, Population and Communities dated 28 April 2011
- 4 Letter, received from the Department of Sustainability, Environment, Water, Population and Communities, dated 2 May 2011, clarifying evidence given at the public hearing in Canberra, 13 April 2011

Answers to questions taken on notice

- 1 Global Product Stewardship Council - Answers to questions taken on notice (from public hearing, Canberra, 13 April 2011)
- 2 CropLife Australia and AgStewardship Australia - Answers to questions taken on notice (from public hearing, Canberra, 13 April 2011)

- 3** Department of Sustainability, Environment, Water, Population and Communities - Answers to questions taken on notice (from public hearing, Canberra, 13 April 2011)

Appendix 2

Public hearings

Wednesday, 13 April 2011 – Canberra

Australian Food and Grocery Council

Mr Tony Mahar, Director, Sustainable Development

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

AgStewardship Australia

Ms Karen Gomez, Chief Executive Officer

CropLife Australia

Mr Matthew Cossey, Chief Executive Officer

Mr Ben Stapley, Policy Manager, Crop Protection and Stewardship

Total Environment Centre and Boomerang Alliance

Mr Jeff Angel, Executive Director

Global Product Stewardship Council

Mr Russ Martin, President

WA Local Government Association

Ms Rebecca Brown, Manager, Waste and Recycling

Australian Council of Recycling Inc

Mr Rod Welford, Chief Executive

Department of Sustainability, Environment, Water, Population and Communities

Dr Diana Wright, First Assistant Secretary, Environmental Quality Division

Mr Michael Bennett, Director, Environmental Quality Legislation

Appendix 3

Assessment process for a class of product to be covered by a product stewardship scheme under the Act¹

Items	Requirement	Source of requirement
1	Environment Ministerial Council recommends consideration of regulatory options for a class of products or a candidate class of products is indentified through the treaty making process.	Australian Government Policy
2	A consultation Regulation Impact Statement is published, canvassing different options.	Australian Government and COAG Policy
3	A final Regulation Impact Assessment, which assesses the overall community benefit of each option, is cleared by the Office of Best Practice Regulation and published.	Australian Government and COAG Policy
4	In light of the decision on the Regulation Impact Statement, the responsible Minister and the Government endorse regulations under the Product Stewardship Act as the preferred option.	Australian Government Policy
5	The Government consults on the proposed regulations.	Section 17, <i>Legislative Instruments Act 2003</i>
6	The obligations imposed by the regulations relate to one or more of the matters specified in proposed section 21(3) and 37(2). ²	Product Stewardship Bill 2011, subclauses 21(3) and 37(2)

1 Department of Sustainability, Environment, Water, Population and Communities, Answer to questions taken on notice, 13 April 2011 (received 21 April 2011), p. 6.

2 These are drawn from the National Waste Policy. They include, for example, actions related to recycling of products.

7	The Minister is satisfied that making the regulations will further the objects of the Act.	Product Stewardship Bill 2011, subclause 19(3) and clause 39
8	The Minister is satisfied that the product stewardship criteria are met.	Product Stewardship Bill 2011, subclause 19(3) and clause 39
9	The regulations are made and tabled in each House of Parliament.	Part 5, <i>Legislative Instruments Act 2003</i>

Appendix 4

**Product Stewardship Australia and Australian
Information Industry Association**

Media Release 3 May 2011

**Proposed Legislation on E-waste and
Product Stewardship Gives Industry Certainty**

MEDIA STATEMENT

3rd May 2011

Proposed Legislation on E-waste and Product Stewardship Gives Industry Certainty

Australia's peak industry bodies representing the TV and computer industries have welcomed the introduction of the Product Stewardship Bill into the Federal Parliament. Industry expects that the Bill will be passed in the winter sitting of Parliament, allowing the industry-funded scheme to commence later in 2011.

The two peak bodies representing IT and consumer electronics companies have been relentless in their efforts to ensure that Federal Legislation is put in place so that they can deliver a national e-waste recycling service to the community.

The Australian Information Industry Association (AIIA), which is nation's peak body on ICT matters, believes that the Bill is a significant and positive step towards supporting industry efforts to deliver a national scheme. The Legislation will also provide much needed business certainty to ensure all manufacturers participate.

Similarly, Product Stewardship Australia (PSA), the peak environmental body representing TV manufacturers, has applauded the Product Stewardship Bill after many years of advocating the need for intelligent legislation that will help achieve major environmental benefit by diverting obsolete TVs and computers from landfill.

Both PSA and the AIIA have played a critical role in working collaboratively with Government to inform the development of the Bill and how it would be applied to the operational aspects of e-waste recycling in Australia. Both industry associations (and their member companies) have invested significant funds to date in various e-waste recycling pilot projects, standards development and detailed planning and design of the permanent scheme.

In anticipation of the Legislation, both PSA and the AIIA have formally agreed to create a single industry body known as a 'Product Stewardship Organisation'. This new joint industry body will be the primary organisation charged with delivering the national TV and computer recycling scheme under the Product Stewardship Legislation.

PSA and the AIIA have a shared vision to implement a national e-waste recycling service, however Legislation is needed to address free-riders who may seek to avoid their corporate environmental responsibilities. Voluntary efforts have been insufficient and the electronics industry now welcomes a shared co-regulatory approach that will be provided for under the Bill. A range of environmental and economic benefits will flow from the Legislation, including the creation of new jobs in the waste management sector.

"The AIIA and its Environmental Special Interest Group are very pleased to see the Federal Government act on such an important environmental issue. Our members have been especially pro-active in developing computer recycling solutions through the ByteBack program currently in operation in Victoria" said Ian Birks, CEO of the AIIA.

Stuart Clark, the Chairman of PSA and head of Service at Sony Australia & New Zealand, also welcomed the Bill's introduction. *"PSA has been a strong supporter of legislation which balances Government intervention, environmental outcomes and social demand. The importance of Government regulation which meets community expectation but enables industry to operate efficiently, is paramount"* said Clark.

Both PSA and the AIIA agree that the Product Stewardship Bill is an important Government initiative and must be passed in a timely manner so that industry can commence delivering its national TV and computer recycling scheme. The forthcoming sub-ordinate e-waste regulations, which will accompany the Legislation, will provide the certainty that industry and other key stakeholders are expecting from the Government.

For more information:

John Gertsakis – Executive Director
Product Stewardship Australia (TV companies)
M 0409 422 089

Ian Birks – Chief Executive Officer
Australian Information Industry Association (IT companies)
M 0408 64 11 22