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Thursday, 13 August 2020

Mr Robert Janisson
Australian Competition & Consumer Commission
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Dear Mr Janisson

BSC SUBMISSION IN RESPONSE TO SUBMISSIONS ON DRAFT DETERMINATION APPLICATION FOR AUTHORISATION AA1000476

The Battery Stewardship Scheme (BSC) is pleased to provide more information in relation to issues raised by third parties in their submissions made in relation to the Draft Determination. This response should be read in conjunction with the earlier submission of the BSC dated 31 July 2020 in response to specific questions raised by the ACCC in relation to the ACCC draft determination on authorisations dated 14 July 2020 (Draft Determination).

The BSC welcomes the support for the proposed Scheme and the Draft Determination in the submissions made by Kidsafe, Ecocycle, CESA and Tooltechnic Systems.

In addition to the support, the third-party submissions have also raised some issues or concerns about the Scheme and/or the Draft Determination.

BSC notes the submissions made by CESA and Tooltechnic Systems in relation to the issues of button batteries and the option of a regulated scheme. These issues have previously been addressed in the BSC application or subsequent submissions. For ease of reference and clarity, we have addressed those matters again below with reference to that material.

In relation to the submissions now made by the ATA and Powercell, the BSC notes that the majority of the issues raised by the ATA and Powercell have either been addressed by governments or considered throughout the extensive two-year consultation on design of the proposed Scheme by the BSC.

In these further submissions, the BSC will address the approach now taken by ATA and Powercell in raising this issues, as well as addressing each issue in turn with reference to the:

- previously submitted material and the extensive consultation
- design process which has taken place prior to the application for authorisations being made.

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1. ATA and Powercell Submissions

- 1.1 By way of background, as set out in Appendix D of the BSC Application, the BSC underwent an extensive consultation and design process prior to making its application to the ACCC. That process, with reference to specific matters raised by the ATA, is expanded on at section 2 below.
- 1.2 Many of the issues now raised by ATA and Powercell at this late stage of the process are not new, and could have been raised by either party during the consultation process and preparation of the final Scheme design document or in response to the ACCC public call for written submission on the BSC application some months ago. No written submissions were received, even though both parties were aware of the BSC's application to the ACCC and the consultation process being undertaken by the ACCC.
- 1.3 The BSC is concerned that by raising these matters at this late stage, the ATA and Powercell are seeking special consideration of their views. It reflects a lack of respect for all those other companies and organisations that actively participated in and invested in the development of the proposed Scheme, and also for the ACCC process following receipt of the BSC's application. To reopen the agenda on the broad range of issues that have now been raised by the ATA and Powercell would give special consideration to the view of these two parties without other interested parties having an opportunity to provide their input, and is contrary to the efficiency of the ACCC authorisation process.
- 1.4 Some issues raised have already been identified by the BSC as needing additional consultation or development of more detailed operational procedures, as will be highlighted below. This work was identified for action in the first stage of implementation, and in some cases priority consideration. The BSC has also determined that the Scheme would be reviewed annually to consider its effectiveness in achieving its objectives and whether adjustments are needed to address any unintended consequences.
- 1.5 In the interest of providing clarity on its application for authorisations, the BSC offers the following further comments as the BSC position is important to the ACCC, governments and the BSC membership. Where appropriate we have also highlighted the location of additional information either in the Scheme design or supplemental documentation.

2. ATA: Consultation process (ACCC Application Appendix D)

- 2.1 The BSC consultations involved industry and all governments and is well documented in the BSC application. This process, which first commenced in 2014 and then gained significant momentum in December 2017, involved the identification of issues and options that were then tested through feedback on draft design documents, webinars, industry meetings and face-to-face meetings. The final design was arrived at through consensus or, in a few instances, a clear majority view.

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- 2.2 Reasons why ideas were not adopted were provided as feedback from BSC in one or more of the draft design documents, through BSC Briefing Notes, or during webinars and face to face meetings. The briefing notes remain on the BSC website and clearly show the process followed, feedback provided and request for feedback on specific issues to ensure the Scheme design took into account industry and stakeholder views.¹
- 2.3 The BSC therefore rejects the claim by ATA that the design consultation process was inadequate or that their feedback was not considered by BSC.
- 2.4 The BSC has already advised ATA and governments, and noted in its ACCC application, that the issue of embedded batteries in toys required further consideration with that industry. This is because there was a lack of information on battery chemistries embedded in toys and a paucity of the information on the toy market that would be necessary to determine levy liability.
- 2.5 BSC recently advised ATA in writing that toys would not be included in the first year of operation of the Scheme. That advice also recognises that the Federal Government recently announced an expansion of e-waste stewardship which may impact on toys and could involve inclusion of toys in the National Television and Computer Recycling Scheme.

3. ATA: Call for a different approach (Scheme Design Section 3.2)

- 3.1 The BSC rejects the suggestion from ATA that consultation should begin again with the idea developing some other “robust” Scheme. This equates to maintaining the status quo which has been rejected by all governments² and most of the industry.³ No other scheme design was proposed by any other party during the extensive consultation process that has been conducted during the last two and half years.
- 3.2 ATA did suggest the implementation of a “Blue Bin” kerbside collection system for e-waste. However, this is not an alternative stewardship scheme but rather a collection system that would be a matter for each of the 500 plus local governments who have responsibility for rubbish and bin collection, to decide.
- 3.3 At the time it was raised the BSC had no position on such a system other than to note that as a collection system it could be eligible as a Scheme collection channel if BSC health, safety, and traceability criteria could be met.

¹ <https://bsc.org.au/document-types/briefing-notes/>

² Scheme Design at 2.1.

³ Application Attachment C; public submissions made in support of the scheme published on <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/battery-stewardship-council>.

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4. **ATA: Request for a whole of government and industry response (ACCC Application Appendix C)**

4.1 The proposed BSC approach does provide a whole of government and industry response as evidenced by the support of all state and federal governments, industry and key industry associations across the entire battery supply chain including:

- Australian Battery Recycling Initiative
- Australian Battery Industry Association
- Australian Council of Recycling
- Australian Mobile Telecommunications Association (MobileMuster)
- Australian Industry Group
- Clean Energy Council
- Consumers Federation of Australia
- Consumer Electronic Suppliers Association
- Electric Vehicle Council
- National Retailers Association
- Outdoor Power Equipment Association
- National Waste and Recycling Industry Council
- Waste Contractors Industry Association (NSW).

4.2 It is difficult for the BSC to understand the assertion by the ATA that the Scheme does not have high levels of industry support noting the letters of support from the BSC initiators and participants and the submissions in support of the Scheme from across the battery product lifecycle and industry, as well as government.⁴

5. **ATA: Embedded batteries (Scheme Design Section 2.4)**

5.1 The option of inclusion of all batteries in the National Television and Computer Recycling Scheme (NTRCS) was considered as part of the consultation process but rejected by majority of industry during the early stage of BSC consultations.⁵

5.2 BSC has indicated that the issue of embedded batteries in toys would be the subject of further consultation with industry in order to determine the most appropriate stewardship model. This could be a new scheme, an expansion of the National Television and Computer Recycling Scheme or expansion of the BSC. What is clear is that the current lack of action in relation to embedded batteries is not acceptable to government and a solution is needed as a matter of priority.

⁴ Application Attachments C, D and E; public submissions made in support of the scheme published on <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/battery-stewardship-council>

⁵ Scheme Design at 1.12.

6. Tooltechnic Systems: Regulated Scheme

- 6.1 The submission from Tooltechnic Systems suggests that a regulated Scheme would ensure a 100% participation of importers. However, the experience with regulated Schemes elsewhere in the world is that achievement of such a goal would be unprecedented.⁶
- 6.2 The BSC has drawn on the success of other Schemes to introduce Enterprise to Enterprise Agreement as a successful mechanism for engaging importers and reducing free riders.
- 6.3 In Europe battery stewardship operates under a regulatory framework. The recycling rates vary from a high of over 70% to a low of around 35%. In Canada which has governance, geographic and market similarities with Australia, the best regulated Scheme that has been operating for several years has a recycling rate of approximately 34%.⁷
- 6.4 Most of the industry involved in development of the BSC proposed Scheme expressed a preference for an industry-led Scheme that would offer industry control, flexibility to adjust as markets responds to change and a lower cost. Governments also advised that they preferred industry to lead a battery stewardship initiative.⁸

7. CESA and ATA: Exclusion of Button Batteries (BSC responses to ACCC request for further information)

- 7.1 We note the views expressed on button batteries and the call for exclusion of these batteries from the stewardship Scheme by CESA and ATA. The BSC does not consider that there is any justification for exclusion of button batteries as the lack of improvement in safe use, storage or disposal is unacceptable.
- 7.2 All governments have made the decision that all batteries are in scope for the stewardship.⁹ This position is supported by most of the industry which have highlighted the importance of a comprehensive regime to enable efficiencies and economies of scale to be achieved.

⁶ Industry Working Group Report: Preliminary Feasibility Assessment of Regulatory Options for Achieving Battery Stewardship in Australia: <https://bsc.org.au/wp-content/uploads/2019/05/04.-Preliminary-Feasibility-Assessment-of-Regulatory-Options-for-Battery-Stewardship-180308.pdf>

⁷ Industry Working Group Report: Summary of Product Stewardship Case Studies, February 2018, <https://bsc.org.au/wp-content/uploads/2019/05/05.-Summary-of-Product-Stewardship-Case-Studies-180308.pdf>.

⁸ Scheme Design at 1.12.

⁹ Scheme Design at 2.3.

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7.3 The BSC application and its subsequent button battery submissions have addressed questions raised with regard to risks associated with ingestion of button batteries and recognised the need for action to reduce the incidence of button battery ingestion as a matter of priority.¹⁰ The approach taken by BSC is supported by the submissions of Kidsafe Australia and Ecocycle.

8. ATA: Impact on Competition (Scheme Design Sections 1.6, 1.13, 3.2.2)

8.1 Contrary to the ATA conclusion, the BSC Scheme is specifically designed to impact on the whole market in a way that encourages growth and innovation.

8.2 The suggestion of a stewardship scheme significantly disrupting the market or lessening competition is not supported by the experiences of other stewardship Schemes that have used the levy model with enterprise-to-enterprise agreements authorised by the ACCC.¹¹

8.3 There has been no evidence presented to suggest that the impacts on the battery market would be any different.

9. ATA: Cost of the Scheme (Scheme Design Section 3.3)

9.1 Responsible management of batteries at end of life does have a cost, however the Scheme enables suppliers to pass this cost on to consumers. The levy/rebate model is intended to stimulate the battery recycling industry by enabling existing companies to grow their business whilst at the same time encouraging new entrants. The proposed leveraging model is designed to address the need to expand collection systems and will encourage competition and innovation of the collection and sorting systems.

9.2 The costings used by BSC in the design the Scheme are based on three independent studies and the input of industry on costs of recycling. The studies, which are referenced in the Scheme Design are:

- (a) a study on costs undertaken by the former Battery Industry Working Group
- (b) two studies undertaken by BSC on collection channel characterisation and market analysis.

9.3 The input from industry highlighted the significant opportunities for cost reduction for battery collection and sorting in particular through economies of scale and adoption of new technologies. For that reason, BSC proposed that the rebate level be set at a rate significantly below the current costs of recycling to ensure there is a downward pressure on these costs.

¹⁰ BSC Submissions dated 11 May 2020 and 31 July 2020.

¹¹ Industry Working Group Report: Summary of Product Stewardship Case Studies, February 2018, <https://bsc.org.au/wp-content/uploads/2019/05/05.-Summary-of-Product-Stewardship-Case-Studies-180308.pdf>.

9.4 The BSC has committed to an annual review of the cost structure of a levy and rebate to ensure it is achieving the Scheme's objectives to ensure the cost to suppliers is reduced as the system improves.

10. ATA: Comparison with the European costings

10.1 ATA has provided an unreferenced assertion comparing the costs of the proposed scheme with an unnamed European Scheme. Each country in Europe has a different scheme and cost structure. The cost information is not generally available and has not been reported as an aggregate or an average amount.

10.2 Comparisons with the European cost to suppliers is misplaced as it is important to recognised that:

- those Schemes have been in place since 1991
- since that time, economies of scale have been achieved, as is expected to occur with the proposed Scheme following implementation¹²
- Australia presents quite different conditions for battery recovery in terms of population and geography
- the cost of transporting batteries over larger distances is significantly higher.

11. ATA: Advantage to suppliers who do not participate (Scheme Design Section 3.5)

11.1 Feedback from, and analysis of, other Schemes indicates that this scenario does not reflect their experience.¹³

11.2 By promoting Scheme participants and naming non-participants, other schemes have found that consumer behaviour gives clear preference to product stewards.

12. ATA: Online sales (Scheme Design Section 2.6)

12.1 Online sales are an issue that is impacting products across the whole of the retail sector, and is addressed in section 2.6 of the Scheme Design.

12.2 No evidence has been presented that batteries are any different to other products. The market analysis study could not identify a significant contribution from online sales or whether they were domestic or offshore. There is no exclusion from the Scheme for online imports so BSC will endeavour to identify all liable parties and ensure they contribute to the levy revenue.

¹² Scheme Design at 3.2.1 – 3.2.4; 3.4.

¹³ Industry Working Group Report: Summary of Product Stewardship Case Studies, February 2018, <https://bsc.org.au/wp-content/uploads/2019/05/05.-Summary-of-Product-Stewardship-Case-Studies-180308.pdf>

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- 13. Powercell: Cost of participants to manage collection, storage, tracking etc. (Scheme Design Section 3.4)**
- 13.1 The design of the BSC Scheme enables participants to access a rebate which is designed to offset the cost of collection, storage, tracking and accreditation. The cost of collection, storage, and processing will reduce over time as economies of scale are realised.
- 13.2 The rebate is explained in detail in Scheme Design section 3.4.
- 14. Powercell: Unclear as to whether importers are members or associate members (Scheme Design Section 3.3.5)**
- 14.1 Importers who pay the levy under the Scheme become full members of the Battery Stewardship Council with voting rights.
- 14.2 Other parties who are not importers have the option to become full members by paying a membership fee set at \$1000, or alternatively be associate members, which are non-financial members with no voting rights.
- 15. Powercell: Cost burden (Scheme Design Sections 1.6, 1.13, 5.1.3)**
- 15.1 Powercell asserts that the cost burden is borne by the supply chain, however contrary to this, the ACCC authorisation will enable the supply chain to pass this cost on to the consumer.
- 15.2 Powercell argues that government input is required. BSC notes the significant government input and action to date, reflected in Appendices 3 & 4 of the Scheme Design. This clearly outlines the significant government action expected to support the Scheme. Some of this additional support has been announced recently by the Federal Government¹⁴.
- 16. ATA & Powercell: Consumer engagement and Scheme Marketing (Scheme Design Sections 3.3.2, 3.5 & Appendix 3 & 4)**
- 16.1 BSC has indicated that a significant budget will be dedicated to creating the Scheme marketing strategy, including a review mechanism with a goal of continuous improvement based on progress and results.
- 16.2 Much has been learned from European and North American Schemes regarding effective incentives and marketing, and BSC will build on this work. In addition to the BSC budget, the actual investment in marketing will be much higher as it will be leveraged by members who agree as part of their membership to promote the Scheme.

¹⁴ Joint Media Release The Hon Trevor Evans and The Hon Sussan Ley, 9 July 2020.

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17. Pre-decision Conference

- 17.1 BSC is willing to participate in a pre-decision conference should one be called.
- 17.2 However, BSC would request that the purpose of such a conference be made clear to all parties noting that none of the submissions have raised matters that were not considered during the consultation process over the past two and half years.

18. Conclusion

- 18.1 The Battery Stewardship Council is committed to a practical, cost effective and efficient scheme that creates an environment in which battery safety and resource recovery are significantly improved. We look forward to working with industry to establish operational procedures that achieve this aim.

The BSC is happy for this submission to be published by the ACCC.

Sincerely

EMILY SHOEMARK

