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Monday, 11 May 2020

Mr Robert Janisson
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Dear Mr Janisson

AA1000476
BSC RESPONSE TO ISSUES RAISED IN ACCC CONSULTATION PROCESS

BSC has reviewed the following eight submissions received by the ACCC on its application for authorisations to implement the battery stewardship scheme:

- ACT Government, 1 May 2020 (ACT);
- Woolworth's Group Limited, 24 April 2020 (Woolworths);
- South Australian Environment Protection Authority (SAEPA) and Green Industries SA (GISA) 24 April 2020;
- Marcus, 21 April 2020 (Marcus);
- Techtronic Industries Australia Pty Ltd, 21 April 2020 (TTI);
- Consumer's Federation of Australia, 20 April 2020 (CFA);
- Consumer Electronics Suppliers Association, 20 April 2020 (CESA);
- Australian Battery Industry Association (ABIA).

Whilst the submissions indicate support for the proposed authorisations, except for one submission, a number of issues or concerns were raised which were either not sufficiently clear in the BSC submission or had been considered and rejected in the earlier consultation and design process and therefore not addressed in the submission.

The BSC sets out below its response to the issues raised in the submissions, with reference where appropriate to the Scheme Design, provided at Attachment A to the BSC application dated 13 March 2020.

Monday, 11 May 2020

1. **BACKGROUND**

- 1.1 In developing the scheme, the BSC appreciated that the rate of battery recycling in Australia is less than 10% which compares very unfavourably with most developed countries and which is no longer acceptable to Governments, industry and the broader community. The Commonwealth Minister for the Environment advised Parliament in early 2020 that unless industry solved this issue, the Government would develop a regulatory approach.
- 1.2 Against this background, industry developed the proposed scheme which is designed to use the collective power of individual company activities to influence behaviour in the battery supply chain and which uses a well understood financial mechanism of a levy and rebates to facilitate that change in behaviour.
- 1.3 The proposal does not establish a monopoly as individual companies are not compelled to become accredited or participate. However, Government has indicated an expectation companies may have to develop their own stewardship arrangements with the battery supply chain to meet the Governments' objectives or be forced to comply with alternative regulatory intervention in their activities.
- 1.4 The BSC proposal provides an incentive for new investment in the battery recycling industry, resulting in increased employment and development of local secure waste management solutions. Its cost effective and flexible mechanism is intended to lower costs and accommodate changes in the battery recycling market as new investment and initiatives increase the rate of recycling.

2. **FREE RIDERS (CESA, SAEPA, GISA, ACT)**

The issue of free riding arising from non-participation of liable parties is acknowledged as a potentially significant issue particularly if major players in the market decline to participate. BSC has identified the following measures to address this issue.

- 2.1 The design of the scheme includes the enterprise to enterprise mechanism as the primary means by which the market itself can be used to bring commercial pressure on all the supply chain to participate. The strong industry and government support for the Scheme expressed in the 47 letters included at attachment C of the BSC application strongly suggests the likelihood that the major supply chain companies will participate in an authorised scheme. It is noted that the submission from Woolworth's strongly supports the need for enterprise-to-enterprise agreements.
- 2.2 If the largest liable parties participate, then the potential for free riding would be reduced to a manageable level. In the early operational phase other liable parties will be identified, provided with relevant information on their option and requested to join the scheme. In addition, other mechanisms such as strong branding and marketing will be used to incentivise participation.

Monday, 11 May 2020

- 2.3 The BSC has written to the Commonwealth Government recommending a suitable mechanism to achieve this objective of reducing free riding would be to strengthen the Product Stewardship Act by inclusion of a regulation that sets out the options for companies and a penalty for non-compliance. The Department of Agriculture, Water and Environment has recently commissioned a report to consider options and the possibility of developing a Regulatory Impact Statement for new measures relating to stewardship which will “consider measures such as free-rider controls or minimum standards that maybe needed to support those stewardship schemes and help eliminate or reduce competitive disadvantage”.

3. **DISCOUNT ON LEVY PAYABLE FOR COMPANY TAKEBACK SCHEMES (TTI)**

- 3.1 TTI has suggested that a preferable alternative to the scheme levy and rebate process would be to offer a reduction in the proposed levy for companies proactively collecting the batteries for recycling. However, the proposed scheme already includes provision for a full discount of that component of the levy that would be applicable to take-back or similar company recycling schemes. This is set out on page 2 of the Scheme Design as a net levy. As rebates for collecting, sorting and processing represent 75% of proposed expenditure of levy revenue, it would be this amount discounted off the levy liability.
- 3.2 The remaining levy 25 % of levy revenue to be allocated to on education, marketing, tracking, safety, auditing and operation administration and would not be include in the discount. It is proposed that any net levy would be subject to audit to verify the relevant physical and financial transactions.

4. **SCHEME SCOPE & EXCLUSIONS OF BATTERY TYPES**

The lodged submissions raise a range of issues regarding the exclusions of specific battery types, summarized as follows:

- A. Exclusion of certain battery chemistries from the scheme
 - a. Lithium ion batteries (TTI)
 - b. all lead acid batteries (ABIA)
 - B. Exclusion of toys and embedded batteries (Woolworths Group, Marcus)
 - C. Exclusion of button batteries (Marcus)
- 4.1 The issue of exclusion of various batteries by chemistry type or technology was raised during industry consultations with a few manufacturers proposing that their products be excluded. Exclusion by chemistry was opposed by majority of industry and local governments. The issue and taken to the Meeting of Environment Ministers for a clear policy decision where all State and Commonwealth governments of Australia decided that all batteries were to be included in the stewardship scheme.

Monday, 11 May 2020

4.2 Lithium ion batteries

The suggestion to exclude lithium ion batteries and button batteries were not raised in earlier industry consultations and runs counter to the Governments' policy setting and the views of the broader industry. Inappropriate disposal of lithium batteries is a significant cause of battery related fires in waste streams and landfill. Lithium batteries represent an increasing proportion of the battery market and can be fully recycled. Therefore, exclusion of lithium batteries of any type is not supported by BSC.

4.3 Embedded batteries

Embedded batteries have been excluded from the design of the scheme – please refer to section 2.4 of the Scheme Design.

Ministers noted BSC advice that embedded batteries in mobile phones, televisions and computers were being managed through MobileMuster and the National Television and Computer Recycling Scheme (NTCRS) and there was no need for a change to this arrangement. The issue of how to manage embedded batteries in toys and similar products not covered by existing schemes is still matter for consultation with industry.

4.4 Button batteries

The ACCC has recently released an Assessment of Regulatory Options for Button Battery Safety for public consultation. The primary focus of these options is on addressing the need for safer packaging and clearer labelling of button batteries to reduce the risk of ingestion by young children in the home. The Consultation Paper identifies the need for a stronger education campaign for consumers on handling and disposal of the batteries.

The BSC stewardship proposal provides for revenue from the proposed levy to be allocated to, inter alia, community and school education on battery safety and correct disposal of end-of-life batteries for recycling. BSC would therefore be in a position to provide the necessary funding for a button safety education campaign as an element of its overall program under the stewardship scheme.

4.5 Energy storage and electric vehicles

Governments decided that energy storage batteries and electric vehicle batteries would be included in the BSC scheme and consultation is continuing with those industries on the most effective mechanism to achieve this objective.

4.6 Used lead acid batteries

There has been an effective market that has supported the recycling of lead acid batteries (>95%). We had identified these as automotive in the submission as that is by far the primary use of such batteries. There is a small proportion of lead acid batteries from other uses entering other collection streams and potentially leading to unwanted contamination.

Nevertheless, we agree with the ABIA position that all lead acid batteries should be treated in the same manner. BSC will keep this under review with industry particularly as the current COVID pandemic has caused disruption to the lead acid battery recycling industry.

Monday, 11 May 2020

5. SAFETY & STOCKPILING CONCERNS – TTI, ACT

We note the concerns about safety and potential stockpiles with battery collection and recycling and have identified this as an issue to be addressed in the operational procedures for the scheme to ensure that risks are mitigated.

It is also noted that a core objective of the Scheme is to improve safety by ensuring that lithium batteries are in fact properly and safely managed.

6. PROPRIETY TECHNOLOGY - TTI

This issue is propriety technology such as control board inside power tools was identified during consultation and is addressed on page 18 of the Scheme Design. The primary mechanism to handle this issue are the contractual arrangements between manufacturer, retailer and recycler.

Nevertheless, BSC recognises the commercial sensitivity for proper management of these propriety technologies and included a specific requirement for accreditation under the scheme that such technology be disposed of in a manner agreed between the relevant parties.

7. IMPACT OF BUSINESS TO BUSINESS ON MARKET COMPETITION - TTI, MARCUS

- 7.1 The purpose of the enterprise to enterprise arrangement is to enable individual companies to give expression to their commitment to the circular economy for batteries by using their market position to influence other companies that they interact with on a regular commercial basis. If a company in the supply chain is accredited under the scheme i.e. they publicly commit to the objectives of the Scheme, then one of the actions they may implement to give effect to that commitment, is to purchase or pass on batteries for recycling to others who share that commitment.
- 7.2 BSC recognises that existing contracts may have some time before renewal so new arrangements would most likely be made when contracts are reviewed or renewed.
- 7.3 The scheme design does not specifically detail the process for re-dress as it is an operational matter, however this component will be audited and as such if a member does not provide evidence that they are operating in good faith, this may lead to their accreditation being revoked. In addition, all governments have decided that batteries are a priority for stewardship and as such companies not participating in the BSC scheme would have to develop their own stewardship arrangements with the supply chain with the endorsement by the Federal Government as being consistent with the Product Stewardship Act. Section 3.4.9 of the Scheme design does explain the audit arrangements proposed to govern compliance, and Appendix 4 of the Scheme Design sets out the proposed member commitments.

Monday, 11 May 2020

8. BSC MEMBERSHIP ARRANGEMENTS - MARCUS

8.1 The scheme design details two categories of membership for BSC.

- (a) There is a Financial membership which will cost \$1000 per annum or payment of the levy by liable parties, i.e. importers. Financial membership entitles the member to voting rights for Directorships and other matters brought to members for decision.
- (b) The second category of membership is an Associate membership which is has no fee, but which does not include voting rights.

In all other matters there is no distinction drawn between the benefits of membership between the two categories in relation to access to information, inclusion in consultation processes on development of policies and strategies that may impact on their business, and promotion of their organisation's position through the website and other means.

8.2 Companies and other organisations will participate in the scheme primarily through being accredited which will provide the opportunity to publicly express their support for stewardship and the circular economy for batteries. It will enable BSC to promote the company or organisation and its role in recycling to others in industry and more widely to the consumer. Accreditation involves a commitment to the proposed safety, tracking and audit programs so that their activities can be verified, and data gathered to understand the manner in which the recycling industry evolves. This activity is critical as it will enable BSC, government and the wider community to have confidence that the Scheme is performing in accordance with its stated objectives and annual performance measures.

8.3 Participation in the scheme occurs via accreditation. This accreditation does not involve payment of fees and is independent of membership of the BSC. However, with the two categories of membership, we anticipate that most accredited parties will seek membership and BSC will be actively encouraging them to join. By joining the BSC as associate member at no cost, smaller retailers would receive additional benefits such as receiving marketing materials and battery safety information, and by being promoted by the BSC as responsible battery stewards.

9. PERFORMANCE INDICATORS SAEPS GISA, ACT

9.1 BSC agrees with the need for performance indicators and have identified this is Section 3.7 of the Scheme Design.

9.2 It is proposed these be developed in the first stage of the scheme operation and reviewed by the board on a regular basis.

Monday, 11 May 2020

10. **BOARD MEMBERSHIP – CFA**

- 10.1 The BSC recognises the need for all parties in the battery supply chain to have representation in decision-making process, reflected at section 3.8.1 of the Scheme Design. Although the Board of Directors is one part of decision-making process, the constitution provides for the inclusion of independent Directors to ensure the objective of broad representation is achieved.
- 10.2 Decisions on appointment Directors is primarily a matter for the Board and the members of BSC rather than the ACCC. The BSC has noted the position of the CFA and will included that in future decisions.

The BSC would be happy to provide further information about the above issues on request from the ACCC.

Sincerely

EMILY SHOEMARK

