



Submission in response to

Battery Stewardship Council's
Application for authorization
AA1000476

May 2020

14 May 2020

Mr Darrell Channing
Director Adjudication
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA, ACT, 2601

Dear Mr Channing,

Lighting Council Australia appreciates the opportunity to comment on the Battery Stewardship Council's application for ACCC authorisation of the Battery Stewardship Scheme.

About Lighting Council Australia

Lighting Council Australia (LCA) is the peak body for the lighting industry in Australia, representing 100 of Australia's leading manufacturers and suppliers and around 80% of all lighting equipment supplied in Australia. Lighting Council's goal is to encourage the use of environmentally appropriate, energy efficient, quality lighting systems. The lighting industry represents approximately 5,000 manufacturing jobs across Australia, and many thousands more in related product development and research, engineering, distribution, sales and installation.

About Exitcycle

Exitcycle was originally launched on 7 October 2015 by Queensland Minister for the Environment and Heritage Protection. The Queensland-based pilot scheme aimed to encourage the recycling of emergency and exit lighting batteries. Exitcycle was supported by an \$80,000 contribution from the Queensland Government.

Voluntary product stewardship programs can be highly effective in promoting positive environmental outcomes, especially where the environmental problem to be addressed involves costs being imposed on the disposers of waste. Through a voluntary program, signatories highlight their organisation's commitment to protect the environment through Corporate Social Responsibility (CSR) practices

Emergency and exit lighting are required by law to be installed across a range of commercial and residential buildings. Lighting Council Australia is uniquely well-placed to leverage from its management of the Exitcycle and Fluorocycle programs for the deployment of a nationwide voluntary product stewardship scheme relating to batteries associated with lighting products. Further, Exitcycle is supported by all major emergency and exit lighting manufacturers and suppliers in Australia, accounting for an estimated 90% of all product provided to the market.

Lighting Council Australia's views on improving battery stewardship scheme are as follows:

The Battery Stewardship Council is unjustifiably self-preservative and exclusionary

As outlined in the ACCC Guidelines for Authorization of Conduct the proposed scheme is in breach of both per se and non-per se provisions of the Competition and Consumer Act. Several industry led battery stewardship programs, such as Lighting Council Australia's Exitcycle are already in existence. These schemes have overlapping objectives with the BSC scheme and have demonstrated progress without the need to impose additional import levies.

Whilst the BSC scheme claims to be voluntary, it is admittedly exclusionary and self-preservative in nature. Requiring participants to do business only with other scheme participants is collusive and anti-competitive. Further, the BSC have already demonstrated intent to position their scheme advantageously with respect to any alternative or competitive stewardship schemes that include batteries in scope:

"The BSC Chair has made a submission to the review of the Product Stewardship Act proposing an amendment to provide for the Commonwealth Government to either impose a penalty levy on companies that decline to join an accredited stewardship scheme or establish their own stewardship scheme which is also accredited under the Act."

These actions disadvantage both specialised industries led stewardship schemes that have overlapping objectives with the BSC, as well as socially responsible industry operators who have already implemented their own battery recycling protocols.

Recommendation:

Lighting Council Australia recommends the development of guidelines that outline the conditions for exemption of the proposed BSC import levy for products covered in the scope of existing stewardship (or alternative) schemes. The guidelines should be developed with careful consideration to avoid precedence of the BSC scheme compared with any other stewardship scheme. For example, any reporting or audit requirements, should be submitted to an appropriate third party such as the ACCC or Department of Environment and not the BSC.

A definition of 'embedded batteries' be provided with the suggestion that it includes coverage of common battery containing professional lighting products including exit signs, solar lighting installations and portable luminaires.

Overly onerous for battery importers

Battery importers are a captive audience who under the proposed operation of the BSC scheme will bear the entire cost of administration of the scheme. Unlike consumers, battery sorters or processors, battery importers stand to receive no incentive for participation in the scheme. Battery importers are encouraged to pass these costs on to consumers however, ultimately this will make their products more expensive and less competitive which in turn will encourage non-compliance with the scheme (which will not be regulated) as a cost-cutting measure.

Lighting Council Australia highlights that this scheme will increase battery costs and will encourage individual consumers and battery consuming businesses to import their own batteries and avoid the levy.

Recommendation:

Lighting Council Australia recommends an exemption to the proposed levy and enterprise-to-enterprise agreements for participants in industry led stewardship schemes that have overlapping objectives with the BSC scheme.

Lack of existing infrastructure & Standards regarding the recycling of Lithium

It is Lighting Council Australia's understanding that in Australia only one organisation currently has the established capabilities and authorisation required to facilitate the recycling of Lithium Ion chemistry batteries. It is our view that this industry is still in its infancy in Australia and that it is currently not an appropriate time to implement a scheme that would adversely affect lithium battery recycling competition.

Lighting Council Australia contends that the absence of competition and audit arrangements may lead to the stockpiling of batteries by future scheme participants. If these batteries have been subjected to misuse and even abuse, then the possibility of failure is heightened. If these batteries are stored in mass numbers, the failure condition, particularly if they are lithium-ion batteries, could result in severe and dangerous consequences.

Recommendation:

Lighting Council Australia recommends delaying the implementation of the BSC scheme until suitable infrastructure and competition is established.

Consultation with relevant Stakeholders

Lighting Council Australia members represent an estimated 90% of the Australian manufacturers and suppliers of emergency and exit lighting products as well as a significant proportion of the solar lighting market, all of which require the use of battery technologies.

Under section 5.1 of the application, it states *'The Scheme will engage industry across the entire battery supply chain, as set out in the Scheme Design at 1.6 and Figure 47 ("Participants")'*. This has not been satisfied from the perspective of the lighting industry and further engagement is required.

The proposed levy will impose fees on companies who voluntarily incur costs associated with requirements under the Lighting Council Australia Exitcycle scheme. The application clearly identifies in section 8.2 *'the design of the Scheme intends to prevent a party having to pay a second time for batteries collected by other schemes. BSC proposed that specific guidelines be developed to put into place measures to prevent double charging, in consultation with the appropriate stakeholders operating at the relevant stages of the supply chain'*. We feel further consultation is necessary to satisfy this section.

Furthermore, we are concerned with the enterprise-to-enterprise requirements creating a significant restriction in available business opportunities for manufacturers and suppliers. It is our opinion that this

policy is not in alignment with providing net positive benefit for all stakeholders involved. This particularly applies to companies who voluntarily incur costs associated with requirements under the Exitcycle scheme as well as socially responsible suppliers.

Recommendation:

Lighting Council Australia recommends further consultation be undertaken with relevant stakeholders (e.g. Lighting Council Australia and EXIT CYCLE participants) who could be adversely affected by the proposed BSC Scheme.

Concluding Recommendations

It is our recommendation that until further stakeholder engagement is undertaken and greater clarification on participation requirements are outlined, the ACCC should not grant authorisation for the conduct described in the Proposed Scheme.

Furthermore, consultation between Lighting Council Australia and BSC should occur to leverage the existing operations of Exitcycle to avoid unnecessary costs on industry participants who are already actively achieving the target of increasing resource recovery and recycling to minimise the environmental, health and safety impacts of end-of-life batteries in Australia.

Brodie Easton
Lighting Council Australia
Public Affairs & Environment Manager

