

21st April 2020

Australian Competition & Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

By email: adjudication@acc.gov.au

RE: AA1000476 – Battery Stewardship Council – Submission

To Whom It May Concern,

I welcome the opportunity to provide a submission to the ACCC regarding the proposed authorisation for the Battery Stewardship Scheme ('Proposed Scheme').

Please note the view expressed in my submission is my own as a private citizen and should not be taken as the views of my employer or the associations I am involved in.

I support the importance of improving Australia's rate of recycling and working towards a more sustainable nation, however as a retailer for 20 years, I am deeply concerned this Proposed Scheme will substantially reduce competition and disproportionately affect small business.

Restrictive Trade – Small Business

The Proposed Scheme describes a 1000 Equivalent Battery Unit ('EBU') import threshold which applies to importers before the levy obligation is incurred¹, however there is no such threshold for retailers, who are instead intended to pay a membership fee, proposed initially at \$1000². Since members of the scheme will be obligated to only deal with other members, combined with the extraordinarily wide scope of batteries this scheme covers, will mean potentially thousands of small retail businesses will be required to sign up as members and pay \$1000, or be refused the supply of goods.

A few examples include:

- Newsagents – Musical greeting cards, Calculators
- Service Stations – Torches
- Toy Stores – Battery operated toys
- Chemists – Blood pressure monitors, thermometers
- Homeware Stores – Scales, Kitchen timers
- Jewellery Stores – Watches
- Gift Shops – Solar lights, Novelty items

Even if the 1000 EBU threshold were to apply to retail businesses, many of these retailers would far exceed this number. Assuming an average of 2 AA batteries in a toy, it would be reasonable to expect a toy store sold more than 10 battery operated toys per week.

¹ Battery Stewardship Council, [Proposed stewardship scheme for batteries](#), s3.3.4, pg 20 (39).

² Ibid, s3.3.5, pg 20 (39).

Similarly, members are obligated to pass the levy on as a visible fee³ as well as co-operate with surveys and audits⁴, creating a burden of compliance which is disproportionately borne by smaller businesses, not just retailers but importers as well. While major retailers can make IT system changes to adequately track products incorporating batteries and enable visible levy fees, then roll those out to hundreds of stores; smaller businesses will either need to invest in systems which accomplish this or process the information manually.

Faced with limited supply options or the cost of compliance, small businesses may choose to cease supplying batteries and products which include batteries. The proposed enterprise-to-enterprise contract agreements and the “Squeezing non-participants from the market”⁵ intent seems precisely the type of unfair trade and anti-competitive conduct the ACCC was established to prevent.

Embedded Batteries – Unintended Consequences of a Wide Scope

The Proposed Scheme confirms all handheld batteries (sold separately or embedded in products) are within the scope of the scheme, as is an intention to include energy storage systems and electric vehicle batteries⁶. As indicated above, this wide scope captures an enormous segment of the retail market, forcing businesses to pay membership fees and comply with membership obligations or face supply restrictions.

The Proposed Scheme provides the rationale for the inclusion of embedded batteries based on “near universal feedback in support”⁷ and BSC Briefing Note # 6⁸ reports that this was included after meeting with Environment Ministers in December 2018. This decision by the Ministers seems based on the reasoning that “many batteries are embedded in products covered by existing schemes”. Existing schemes primarily include the National Television and Computer Recycling Scheme (‘NCRS’) and Mobile Muster.

I would argue the products which incorporate embedded batteries that fall outside those schemes would vastly outstrip what is included. As indicated in my examples above, products which include batteries can be found right across the retail spectrum.

In addition a scheme like NCRS has much larger thresholds; under NCRS importing 5000 TV’s is required to be included, yet if you consider that a TV will typically come with 2 EBU’s, then only 500 TV’s are required before inclusion in the Proposed Scheme. The exclusion also only applies to prevent existing scheme members from being double charged, so falling under the NCRS thresholds would instead mean they would be subject to the requirements of this Proposed Scheme.

Button Battery Safety

For the past several years, the ACCC has considered the button batteries a priority for product safety, compliance and enforcement to assist in preventing injuries and deaths associated with children ingesting them⁹.

A key element of this initiative has been to educate consumers to “dispose of button batteries immediately” since even ‘flat’ button batteries can represent a hazard to children. Unfortunately the wide scope of the products and types of batteries covered by this Proposed Scheme will instead

³ Ibid, s3.3.2, pg 17 (36).

⁴ Ibid, Appendix 3, pg 46 (65).

⁵ Ibid, s5.2.3, pg 33 (52).

⁶ Ibid, s2.3, pg 11 (30) & s2.5, pg 12 (31).

⁷ Ibid, s2.3, pg 11 (30).

⁸ Battery Stewardship Council, Briefing Note # 6, [Release of Scheme Design Version 3](#), pg 2 & 3.

⁹ [2018 ACCC Product Safety Priorities](#), [ACCC 2019 Product Safety Priorities](#), [ACCC 2020 Compliance & Enforcement Policy & Priorities](#).

require members to encourage consumers to hold onto these button batteries for subsequent collection and recycling.

While I recognise the wide scope of batteries and battery powered products in this Proposed Scheme has in part been motivated by a desire to make recycling simple for consumers¹⁰, safety concerns must take priority and it is important that the messaging to consumers remains that button batteries must be disposed of immediately.

Government Intervention – Potential Competition

The Proposed Scheme raises the spectre of Government regulation in the absence of adopting this scheme^{11, 12}, in order to strengthen the case for the proposal to go ahead. However regulation would result in the production of a Regulation Impact Statement ('RIS') and with it the prospect of greater public scrutiny, extensive stakeholder consultation and increased fairness.

Indeed, with such a wide scope of products covered by the Proposed Scheme, a co-regulatory approach may be preferable. The co-regulatory nature of the NTCRS promotes increased competition between approved co-regulatory arrangements. While by no means perfect, a 2017 evaluation of the NTCRS found that there "was broad consensus among stakeholders that a co-regulatory scheme like the NTCRS is the best way to achieve the desired outcomes of product stewardship"¹³. Were the ACCC to authorise the restrictive enterprise-to-enterprise contractual arrangement of the Proposed Scheme, it would create monopoly spanning a significant proportion of consumer products. Were major participants locked in, competing schemes would be impossible to establish and a market failure would likely result.


Concluding Remarks

While there are many merits to the Proposed Scheme, in its current form it would monopolise the battery recycling industry. The enterprise-to-enterprise contracting requirements and wide scope would create significant financial and compliance burdens to small businesses, especially retailers. Additionally, from a safety perspective, I do not agree that button batteries should be included in a proposed recycling scheme.

Therefore I encourage the ACCC to not grant authorisation for the conduct described in the Proposed Scheme.

If you have any further queries please do not hesitate to contact me.

Yours Sincerely,

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Marcus

¹⁰ Battery Stewardship Council, [Proposed stewardship scheme for batteries](#), s2.3, pg 11 (30).

¹¹ Snedden, Hall & Gallop Lawyers, [Application for authorisation for proposed conduct: Battery Stewardship Scheme](#), s10.3(b), pg 11 (11).

¹² Battery Stewardship Council, [Proposed stewardship scheme for batteries](#), s5.1.1, pg 32 (51).

¹³ Department of Environment and Energy, Evaluation of the National Television and Computer Recycling Scheme (NTCRS), pg 61.