

Battery Stewardship Council – Application for authorisation AA1000476 (National Battery Stewardship Scheme) – ACCC Draft Determination: July 2020

Powercell (Australia) Trading Pty Ltd Response Submission – July 2020

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Powercell has been importing and distributing batteries since 1980. The batteries we import are those that would be covered by the Scheme proposed by the BSC application.

Powercell has always taken a responsible approach to the stewardship of the products we import and distribute. For more than 25 years, after being penalised by the Trade Practices Commission for encouraging the safe disposal and recycling of batteries, Powercell has actively promoted and encouraged the responsible handling and disposal of our End-of-Life (EOL) battery products. In that time, we have expanded our stewardship role, offering our customers the ability to return EOL batteries to avoid them entering the general waste stream. Despite prohibitive government legislation, that has previously discouraged stakeholders in the battery supply chain from offering recycling, we have been collecting and continue to collect and recycle the EOL battery products collected.

Whilst noting the irony, Powercell welcomes the work being undertaken by the ACCC along with the BSC to establish an inclusive national scheme that will effectively address safe battery disposal, deliver improved environmental outcomes and create an opportunity to recover valuable resources.

In saying that, we hold concerns in respect to the scheme proposed and the findings of the draft determination and the proposed Scheme.

A summary of these concerns are listed below, with further details following:

- The costs of implementation, compliance and management (to both suppliers and consumers) of such a scheme and its ability to exclude “free-riders”
- Membership requirements for the scheme are not clear and the circumstances allowing for exceptions / exemptions are equally vague and unclear.
- The potential for this scheme to reduce competition within the battery industry and distort the market (products available and prices)
- Suitability of the scheme proposed to deliver the objectives outlined. The onus of responsibility for this scheme is almost entirely carried by the supply-side stakeholders (from importer to retailer). Apart from the levy suggested, there is no responsibility apportioned to users of battery products and only a small portion to government (all levels).

Powercell agrees that there are overall benefits that can be gained from a circular approach to the supply, use and disposal of battery powered products (or those that rely on batteries in some way). It has been demonstrated elsewhere that battery collection / recycling improves not only environmental outcomes, but can also improve product safety outcomes – especially for safe disposal of used button cell batteries.

We note that EOL battery collection and storage can be dangerous, and that safety may be an issue, but with the correct protocols and processes in place for collection and storage, the dangers of stockpiling should be minimised and the benefits will far outweigh the costs.

Powercell has been collecting, sorting and storing/stockpiling EOL batteries using internally developed protocols for doing so, for over 25 years (as noted and as directed by the EPA) and have not experienced any adverse incidents as a result of these activities.

Costs of Scheme Implementation

The draft determination seems dismissive of the additional compliance burden or cost as “unlikely to constitute a material public detriment”, but this is done without quantification of the costs, including:

- Cost of resources required by individual participants to manage the proposed collection, storage, tracking, safety, reporting and auditing requirements of the scheme. Powercell has been undertaking limited collection and sorting of EOL batteries for a significant period and can confirm that there are additional administrative and operational compliance costs associated with collection, pre-sorting (which is a requirement due to chemistry differences and the current sorting capabilities of recyclers), storage and documentation.
- The costs of accreditation – all resources (financial, human, infrastructure) and what would be involved in accreditation if it is independent of the BSC
- The broad figures published in the determination (2) in respect to current battery recycling does not seem to reconcile with the figures published in section 3.3.1 of the Scheme (Scheme Funding).

This leads to questions in respect to actual funds that will be realisable once the scheme is implemented?

- The projected figure for support for the scheme (in first full year of operation – presumably year 2) is based only on assumption (3.3.1). If current recycling rates are only 10%, how can 75% be achieved in the time frame outlined?
- Under section 4.47 – 4.53 (increased Eligible Battery Prices) the determination suggests that the proposed levy will result in only a 6% increase in the retail price (Eveready Gold Example provided). This suggestion is commercially unrealistic (and unsustainable / naïve), as it ignores the following:
 - The landed unit cost (LUC) of AA batteries varies widely depending on the grade and type of cell.
 - The proposed levy of \$0.04 /EBU which would apply to a AA size battery imported by Powercell, currently represents an increase of 42% on current LUC for an extra heavy duty AA battery, 19% increase on current LUC for an alkaline AA battery and around 2.2% for a standard capacity AA rechargeable battery
 - There is no allowance for scheme compliance costs in the product cost (only for the levy proposed).
 - Participants in the battery supply chain (wholesalers and retailers) work on a % mark-up or % margin to gross sales, which would result in there being a multiplier effect on the absolute increase in retail price attributable to the increase in the levy. How will the scheme be managed to ensure that supply-side participants are not out of pocket, if the true costs along the supply-chain of scheme implementation are not able to be recovered? How will the scheme ensure that the levy does not create a multiplier effect?

Scheme Membership and Exceptions

- It is not clear whether importers are members or associate members (1.14)

- It is not clear how equipment importers will be captured by the scheme (where the quantity and value of batteries included in equipment cannot be readily identified) – (1.17, 4.41- Free-rider issue and cost of scheme management/compliance)
- It is not clear how sales of batteries online (from offshore suppliers) will be captured. Large volumes of certain battery types are supplied direct from overseas (1.17, 4.41 – Free-rider issue).
- It is not clear how exceptions or exemptions will be allowed - how will exception criteria be determined? Will it be assessed based on location (regional retailers), battery turnover (independent retailers / specialty retailers), product application (medical equipment)?
- The scheme is described as voluntary (4.42), and relies on EtoE requirement to be effective. This will create a prohibitive barrier for many businesses that may currently sell batteries as a value add item (lower volumes / small independent retailers), and forces suppliers under the scheme to restrain trade (or it may provide an incentive for suppliers under the scheme to avoid compliance)
- The ACCC does not guarantee legal protection (1.2) for suppliers where such arrangements are in place that may be harmful to competition

Impact of the Scheme on Competition in the Battery Retail Market

Whilst batteries are a ubiquitous commodity in our portable world, many batteries that are not “embedded” are specialty products, where volumes can be far lower than the common household batteries. In addition, most batteries – whether they be general household batteries or more specialised products - are only replaced when they reach EOL and they are not a planned purchased.

These two factors result in batteries being sold across a broad range of retail channels – from large supermarkets to small independent retailers (convenience stores, petrol stations etc).

Equally, the specialised nature of some battery types means there is a wide range of importers that import batteries – as either a product for resale, such as battery importers / distributors like Powercell and larger market leading battery brands and channel specific importers who resell batteries into the channels they supply (eg stationery, electronics etc), to equipment importers, whose equipment may be powered by a battery or have components that require batteries.

It is acknowledged (sec 4.4) that the Scheme proposed may result in a reduction in the number of participants in the battery supply chain (depending on how exceptions are granted), which may in turn lead to detrimental outcomes:

- Importers of specialised battery powered equipment or specialised batteries (especially smaller importers), may find that the burden of compliance and administration may impact on the commercially viability of battery importing / distribution for some of the lower volume products.
- Independent retailers that sell batteries as a convenience line (especially in regional areas) or specialised retailers may find participation in the scheme costly in comparison to the turnover derived from selling batteries, which could result in withdrawal of batteries from their range
- The cost of compliance and administration favours larger stakeholders in the battery supply-chain

- Where battery cost is increased significantly as a production input or replacement cost (vs the cost of the equipment in which it is used), the increased cost may affect the product life

These factors are likely to reduce the battery offer available to consumers and reduce competition, and the ACCC acknowledges that any detriment will only be partially offset, but this offset is not quantified in any way.

Effectiveness / Suitability of the Scheme

The scheme proposed is based on stakeholders in the supply-chain bearing the majority of the cost and responsibility for implementation and maintenance of the scheme. It is very likely that there will still be a significant quantity of batteries entering the waste stream that are not captured by the proposed scheme. Waste management is a “whole of society” issue and it is unlikely that a scheme will work without some responsibility being taken by the consumers who use battery products and government (federal, state & local), who must ultimately take responsibility for ensuring that desirable social outcomes are achieved.

Government Input Required:

- Waste collection, recycling infrastructure support / funding
- Oversight / funding to ensure ALL stakeholders (including consumers and suppliers) are aware of their responsibilities and obligations under the scheme.
- Consistent legislation, where required, to ensure the scheme is “universal” and captures all jurisdictions and all targeted products and does not impose unreasonable cost burdens on individual stakeholders.

Consumer Input/Engagement Required:

- Awareness of the impact of batteries and the need for recycling and their responsibilities to ensure that EOL batteries are safely and responsibly handled and disposed of, so that adverse health, environmental and social outcomes are avoided.
- Awareness of and engagement in the proposed scheme
- Understanding of Health and safety issues surrounding EOL batteries (especially button cell batteries) – the efforts of the ACCC to ensure button battery safety will be wasted if consumers are ignorant of the dangers that EOL batteries pose and that awareness, safe handling and recycling of EOL button batteries are the best strategies for harm minimisation

The budget for marketing under the scheme proposed is only \$1,100,000 is less than the scheme’s budget for auditing. This amount is unlikely to support the awareness campaigns that will be required to ensure engagement.

Given the majority of applications where batteries are used and the nature of materials that can be recovered from EOL batteries, Powercell believes that the issue of battery waste management should fall under the broader umbrella of e-waste more generally – as a sub-set of this waste management sector. Powercell maintains that an effective solution can only be achieved with a holistic approach to all e-waste and it’s component parts.

Without significant government support at all levels to create awareness of the need for battery recycling and provision of supporting infrastructure and legislation, consumers engagement is likely to be poor and the scheme will be ineffective and unsustainable.