



**Minister for Environment; Disability Services; Electoral Affairs
Deputy Leader of the Legislative Council**

Your Ref: AA1000476
Our Ref: 62-19890

Mr Darrell Channing
Director – Adjudication
Australian Competition & Consumer Commission
adjudication@acc.gov.au

Dear Mr Whitby

Thank you for your correspondence, received in this office on 27 March 2020, seeking a submission on the Battery Stewardship Council (BSC) Application for Authorisation (AA1000476) to the Australian Competition and Consumer Commission (ACCC) for a levy to support a product stewardship scheme for batteries.

The State Government supports and continues to advocate for effective national product stewardship arrangements that align with the waste hierarchy and circular economy principles, while protecting human health and the environment from the impacts of waste. This approach is reflected in the *Western Australian Waste Avoidance and Resource Recovery Strategy 2030*.

The State Government seeks to ensure efficient and effective frameworks are used to support product stewardship arrangements as they can improve waste management outcomes and increase overall resource recovery.

The State Government also recognises voluntary product stewardship schemes can face challenges, such as insufficient resourcing for scheme operations, an inequitable distribution of performance, and reduced scheme performance from non-participation ('free riders'), which creates market distortions and impacts.

Please find attached the Western Australian Government's submission as part of the ACCC's Interested Party Consultation for Application for Authorisation (AA1000476).

Yours sincerely

Hon Stephen Dawson MLC
MINISTER FOR ENVIRONMENT

Encl.
21 APR 2020

Western Australian Government Submission

Battery Stewardship Council Application for Authorisation (AA1000476) to Australian Competition and Consumer Commission for a levy to support a national product stewardship scheme for batteries

Overview

The Western Australian Government provides the following points in support of the Application for Authorisation (AA1000476) from the Battery Stewardship Council (BSC) to the Australian Competition and Consumer Commission (ACCC) for a levy to support their proposed national product stewardship scheme for batteries (Scheme).

On balance, the Western Australian Government supports the proposal and its approach, along with the proposed scope.

The main points that this submission covers are:

- BSC has set clear objectives that can be measured, but some further objectives might be warranted to ensure equitable coverage occurs;
- BSC has proposed an approach where suitable outcomes can be obtained, as the risk of under-resourcing scheme operations has been minimised;
- BSC has set out measures that aim to manage risks from scheme free riders, but this may be an risk that requires continued scrutiny; and
- scheme activities will need to comply with Western Australian regulatory requirements. The State Government is open to discuss any issues with BSC or any scheme administrator.

Issue – Risks from inability to measure performance without clear objectives

Where product stewardship schemes fail to set clear objectives that can be measured against a baseline or business as usual modelling, measuring performance and recognising success can be challenging.

Without any clear way of determining the performance of a scheme, this can lead to a poor allocation of resources within the operations and activities under the scheme.

Response

In response, the BSC has set out scheme objectives to:

- increase resource recovery and recycling and minimise the environmental, health and safety impacts of end-of-life batteries in Australia;
- achieve a net benefit for the broader recycling system by removing a potentially significant contaminant;
- ensure that the whole supply chain participates in the stewardship of batteries in the Australian market;
- develop an efficient and innovative domestic battery recycling industry;
- create new job opportunities, including jobs with social outcomes; and
- foster a circular economy where batteries are recovered for recycling and reused to make batteries or other products.

The scheme objectives all seem capable of being measured, including:

- resource recovery (by mass and by recovery rate versus annual battery distribution into the Australian market);
- net waste management benefit (via waste audits of batteries in other waste streams);
- participation of battery supply chain (by participants market share at each stage supply chain);
- increase battery industry (increased tonnages of sorting and processing throughput and/or capacity);
- jobs increase in the sector (additional FTE equivalents, for different skill types); and
- fostering circular economy (via percentage of market with recycled content and average recycled content by battery type and chemistry).

The Western Australian Government would be interested to have an access objective that could be measured by the percentage of the metropolitan and regional Australia within set distances of a scheme collection location. This could be similar to what was done under the Paintback Scheme to ensure all Australians have opportunities to return waste products.

Issue – Risks of inability to achieve objectives with low allocation of resources

Voluntary schemes can carry risks of being under resourced and unable to achieve their intended objectives and targets.

This could result in money being wasted to establish a scheme that could not meet its objectives, which may be considered an economic cost.

A well designed scheme that is adequately resourced should justify disruptions for the scheme's establishment, and be designed and operated to minimise net scheme economic cost (which includes public costs, encompassing market and non-market costs, and also private costs).

Response

To manage this issue the BSC has based the scheme on a cost recovery model. Rebates (per kilo) to cover cost of collection, sorting and processing, being: Metropolitan collections; \$2.50, regional collections; \$3.50, sorting; \$1.00, and processing; \$1.00. BSC has indicated its intention for a review process to consider the performance of the scheme and its relation to the levy amount, which would then could be submitted to ACCC under its review and reauthorisation processes.

A cost recovery model is similar in approach to the Paintback Scheme, which has shown to be a robust system that has been performing well for a voluntary approach.

Rebates are provided per unit collected with no caps, which suggested Western Australia can be involved in an equitable manner. It seems existing Western Australian Household Hazardous Waste Program collection points could receive rebates if they become members of the scheme, which may reduce State Government and local government costs.

Additionally, a suitably resourced scheme that effectively captures a significant proportion of batteries, is likely to reduce risk.

Issue – Risks from non-participation

Voluntary schemes carry free-rider risks, with non-participants benefiting from the efforts of scheme participants.

This creates a risk of market distortion from different cost structures for different market players based on their participation in a scheme.

Response

To manage this issue, the BSC proposes enterprise to enterprise agreements to establish purchasing preferences to reduce free riders, and encouraging major player participation.

The BSC proposes (with support from other stewardship organisations) to encourage the introduction of a regulation under the Commonwealth *Product Stewardship Act 2011* (PS Act) to address free rider issues in product stewardship schemes. The BSC made a submission to the review of the PS Act seeking an amendment to provide for 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 PS Act.

There has been mixed success with reigning in free-riders under other voluntary schemes, and this will be an issue requiring scrutiny to help with early action to address free-riding. A well-functioning voluntary scheme is preferred, but underpinning a scheme with regulation may be needed if significant issues emerge.

Issue – Need to minimise risks to human health and the environment, and comply with Western Australian legislation

Any product stewardship scheme should minimise risks to public health and the environment from its operations, and comply with relevant legislation. In Western Australia there may be regulatory requirements around aspects of battery collection, transport and management associated with the proposed scheme.

In Western Australia, certain waste premises categories are regulated under the *Environmental Protection Act 1986* and the *Environmental Protection Regulations 1987*.

The transport of controlled wastes on a road for gain or reward is regulated, with licences required by controlled waste carriers and holders of controlled waste that use controlled waste carriers. The requirements of carriers and holders of controlled waste are set out in the *Environmental Protection (Controlled Waste) Regulations 2004*. These Regulations do not apply to householders transporting batteries to a collection location.

Response

The Western Australian Government will work with the BSC and any scheme administrator to ensure the proposed scheme operations are conducted to minimise risks to human health and the environment and meet environmental legislation.

Some battery types and chemistries pose risks to the environment and human health when disposed of to the wrong waste stream. Examples include fires caused by damaged lithium ion batteries disposed of in general waste or recycling, and toxic metals entering the environment from the improper disposal of batteries, such as cadmium or mercury. Effective battery stewardship offers a safer management pathway for these wastes which is a key potential benefit of the scheme.