



Submission to the Inquiry into the Product Stewardship Bill 2011

Status of this Submission

This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). The Municipal Waste Advisory Council is a standing committee of the WA Local Government Association, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management).

The Regional Councils members of MWAC include the Eastern Metropolitan Regional Council, Mandarie Regional Council, Southern Metropolitan Regional Council, Rivers Regional Council, Western Metropolitan Regional Council and the City of Geraldton-Greenough. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate. This Submission therefore represents the consolidated view of Western Australia Local Government. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

Due to meeting schedules and the short timeframe of the consultation, this Submission has not yet been endorsed by MWAC, however, it will be put before the Council at the earliest opportunity (Wednesday 20 April 2011) and the Environment and Communications Legislative Committee will be informed of any changes to this Submission following consideration by the Municipal Waste Advisory Council.

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Executive Summary

Local Government made a Submission on the Department of Sustainability, Environment, Water, Population and Community Consultation Paper on Product Stewardship Legislation; this highlighted Local Governments strong support for the development and implementation of National Product Stewardship Framework Legislation to enable the development, accreditation and implementation of Product Stewardship Schemes.

There needs to be a fundamental shift in how responsibility for waste management is assigned. The current assumption that Local Government will continue to provide services for all products is not sustainable. Waste is no longer simple, cheap or easy to deal with, as waste increases in volume and complexity so does our understanding of the impacts of waste on the environment, society and the economy. The proposed Product Stewardship Bill 2011 provides a positive step toward making this shift.

This Submission includes comments on the Product Stewardship Bill and the general process of selecting products for and developing Product Stewardship Schemes.

Key Recommendations

Key Recommendation: The Department of Sustainability, Environment, Water, Population and Community develop guidance for Product Stewardship regulation development including consideration of:

- Equity of service delivery and outcomes in Product Stewardship Scheme design – nationally consistent application may not result in consistent outcomes.
- Negotiation and assignment of roles and responsibilities.
- A well publicised complaints process, as one mechanism to monitor compliance.

Key Recommendation: The Commonwealth Government develop a list of priority products for product stewardship schemes in consultation with State and Territory Governments, Local Government and the community.

PART 1 - Introduction

In Western Australia, under the Waste Avoidance and Resource Recovery Act 2007, Local Government is responsible for Local Government waste - this is defined as material collected from households and generated by the Local Governments own activities. Local Government provides waste services to the majority of households in the State. In the metropolitan area, a collection service for waste and recycling is provided to the vast majority of households. In the non-metropolitan area, the majority of regional centres have both kerbside waste and recycling services; in the regional areas waste and recycling services vary dependent on population. In addition to service provision, Local Government also has a role as a community representative and regulator.

From Local Governments point of view, there needs to be a fundamental shift in how responsibility for waste management is assigned. The current assumption that Local Government can continue to provide services for all products is not sustainable. Waste is no longer simple, cheap or easy to deal with, as waste increases in volume and complexity so does our understanding of the impacts of waste on the environment, society and the economy. Given that situation, Local Government strongly supports the development and implementation of National Product Stewardship Framework Legislation to enable the development, accreditation and implementation of Product Stewardship Schemes.

Costs and responsibility for disposal of material will always be borne, ultimately, by society and the environment, however through Product Stewardship schemes the responsibility and cost can be negotiated and directed toward the producer. For producers this means there is an imperative to think through the life cycle of their product, considering waste minimisation and intelligent product design and ensuring there are disposal or recycling options available.

The WA Local Government Association has developed a Policy Statement on Extended Producer Responsibility (included as Appendix 1).

1.1 Local Government Comments on the Product Stewardship Consultation Paper

Local Government made a number of recommendations regarding the development of Framework Product Stewardship Legislation, some of these have been included in the Product Stewardship Bill. Table 1 outlines Local Government concerns and the extent to which they have been incorporated into the Product Stewardship Bill. Some of the issues raised may be outside the scope of the Product Stewardship Bill itself, but are necessary for the implementation of effective Product Stewardship Schemes.

Recommendation	Comment
Key Recommendation: Increasing cost of waste management, for the community and Local Government, should be included as a key driver for Product Stewardship.	Recommendation partly met: Cost to Commonwealth, State, Territory and Local Government is recognised as one of the criteria for a product stewardship scheme. The key driver for Product Stewardship in the Bill is reducing the impacts products have on the environment and the health and safety of human beings.

<p>Key Recommendation: Need to ensure consistency between the drivers for the legislation, object clause and the product selection criteria.</p>	<p>Recommendation not met: there is still some inconsistency between the drivers for the legislation (as identified in the Consultation Paper), the Objects of the Act and the product stewardship criteria. These inconsistencies largely centre on the inclusion of greenhouse gas emission reduction, energy use and water consumption. Although the aim is supported it was not initially identified as a driver for Product Stewardship and it could be argued is already covered by the objective of reducing environmental impacts of products throughout their lives.</p>
<p>Key Recommendation: The need for industry to take greater responsibility for end-of-life product management be recognised as a key driver for regulation.</p>	<p>Recommendation partly met: the method identified for achieving the Object of the Act is by encouraging or requiring manufacturers, importers and other persons to take responsibility for products.</p>
<p>Key Recommendation: A list of priority products for product stewardship is developed by the Federal Government in consultation with State/Territory Governments, Local Government and the community.</p>	<p>Recommendation not met: discussed further under Section 1.5 of this Submission.</p>
<p>Recommendation: Equity of service delivery be a consideration in Product Stewardship Scheme design – nationally consistent application may not result in consistent outcomes.</p>	<p>Recommendation not met Equity of service provision is not included in the conditions for Schemes. If not included in the Act, the equity provision will need to be included in each Regulation relating to a Product Stewardship Scheme.</p>
<p>Recommendation: That roles and responsibilities in relation to the collection of materials be clearly negotiated for all product stewardship schemes.</p>	<p>Recommendation not met Roles and responsibilities are not addressed in the Bill. If not included in the Act, the negotiation relating to roles and responsibilities will need to occur on a case by case basis in each Regulation relating to a Product Stewardship Scheme.</p>
<p>Recommendation: The conditions of accreditation be clearly articulated and should include clear aims, auditing and review mechanisms to ensure voluntary schemes are meeting the objects of the Government.</p>	<p>Recommendation met There is a requirement for meeting measurable outcomes relating to the Objects of the Act. The Minister can also apply conditions to Accreditation including review. The wording is broad enough that this could include requirements for audit.</p> <p>The process of accrediting voluntary schemes is likely to be useful to Local Government as it will ensure that due diligence is undertaken on the way the products are collected and</p>

	recycled and will mean that individual Local Governments / or the Association does not have to undertake this task before recommending a scheme.
Recommendation: To ensure co-regulatory schemes meet Government Objectives these schemes should include clear and binding aims, auditing and review mechanisms.	Recommendation met Clear outcomes related to achieving the outcomes of the Act are included. There is a requirement for review and auditing included.
Recommendation: That mandatory schemes not be limited in their potential application.	Recommendation met A mandatory scheme has the same level of requirement as the co-regulatory approach.
Recommendation: Sufficient resources be allocated within government to ensure that compliance and enforcement activities can occur.	Recommendation not met It does not appear that specific staff will be allocated to this task, existing staff (Commonwealth/State/Territory Government) may be appointed as inspectors to investigate compliance with the Act.
Recommendation: A well publicised complaints mechanism be included as a method of monitoring compliance.	Recommendation partly met Specific details of Schemes are not addressed in the Bill. There are penalties and inspection provisions within the Bill which may address the complaints issue. However, these will need to be clearly publicised to ensure the complaints process is know.

Table 1: Comparison of Local Government comments and Product Stewardship Bill

1.2 Current Product Stewardship Schemes

Local Government, as a service provider, has direct experience with a number of existing Product Stewardship schemes. Information on these schemes is included in this Submission to highlight some of the potential consequences of different scheme design, that a nationally applied scheme will not necessarily have the same outcome everywhere and the need to ensure producer responsibility for products.

Product Stewardship for Used Oil Scheme

Experience with existing product stewardship schemes, such as the Product Stewardship for Used Oil (PSO) Scheme, indicates that problems can arise when producers do not have a practical interest in the material collected through a scheme, where governments are in the position of being 'responsible' for the disposal of this waste and where there is a limited market for materials.

Local Governments have expressed concerned that the product stewardship philosophy does not adequately resolve the issue of shared responsibility for product disposal. For example, in the case of the PSO, it is assumed that Local Government will be responsible for the disposal of products. This approach does not provide compelling drivers for significant change in producer or consumer behaviour. If producers take some responsibility for their products at end-of-life, they acquire a direct incentive to maximise the ease and affordability of discharging that responsibility.

The current PSO arrangements have lead to a situation in WA where market failure has occurred in regards to used oil. Oil recovery has increased with only limited market development. Currently Local Governments are paying for the recycling of used motor oil. This situation is not the case in other states, where sufficient volumes and market options mean free collection has continued.

DrumMUSTER

DrumMUSTER is an industry-run scheme where the collection and recycling of the material is organised by industry (and the material collected at Local Government sites). As industry runs the scheme, responsibility lies with them to organise the recycling and ensure that it occurs.

1.3 Objects of the Act

The Objects of the Act are identified as to reduce the impact:

- That products have on the environment, throughout their lives; and
- That substances contained in products have on the environment, and on the health and safety of human beings, throughout the lives of those products.

The Objects also include:

- To contribute to Australia meeting its international obligations concerning the environmental and health and safety impacts of products.
- To contribute to reducing the amount of greenhouse gases emitted, energy used and water consumed in connection with products and waste from products.

Local Government raised the issue in the initial consultation that reducing the cost of waste management to government (Commonwealth, State, Territory or Local) should be included as an objective for the legislation.

1.4 Product Stewardship Criteria

The product stewardship criteria outlined in the Bill are discussed in Table 2.

Product Stewardship Criteria	Comment
The products are in a national market	Support, clarification requested The definition of a national market is requested. If a product or material were in (or a material of concern in) the majority of states/territories it could be argued that rather than the individual jurisdictions legislating a more systematic approach would be for national legislation.
The products contain hazardous substances	Support
There is the potential to: <ul style="list-style-type: none"> - increase the conservation of material used in the products, or increase the recovery of resources (including materials and energy) from waste from the products; and - contribute to reducing the amount of greenhouse gases emitted, energy used 	Support, with Amendment Previous comments regarding the drivers for the Act and the contribution to reducing greenhouse gas etc have been outlined in Table 1. The second part of the criteria may be difficult to quantify, while the recovery of the resource itself may be easier to model. This

or water consumed in connection with products and waste from products.	is likely effect the Regulatory Impact Assessment stage of the process and may make it more difficult to assess whether the scheme will address a particular problem. Therefore it is recommended that these two sections be separate criteria.
Reusing, recycling, recovering, treating or disposing of the products involves a significant cost to the Commonwealth, or State, Territory or Local Government.	Support The cost to Local Government has been identified as a significant concern by the sector.
The consumer is willing to pay for action that reduces the impact: <ul style="list-style-type: none"> - that the products have on the environment, throughout the lives of those products; or - that substances contained in the products have on the environment, or on the health or safety of human beings, throughout the lives of those products. 	Support This could be seen as a proxy for the community concern criteria established in the WALGA Policy Statement.
Taking action to reduce those impacts will offer business opportunities that would make a contribution to the economy.	Support Local Government supports the development of local markets and uses for materials. If there are linkages between product stewardship schemes and market development this will assist in ensuring the long term success of Product Stewardship Schemes.

Table 2: Product Stewardship Criteria

1.5 How will products come to be subject to the legislation?

From the Consultation Paper and Product Stewardship Bill there does not seem to be a specific process envisioned for how products will be selected for product stewardship; rather a range of approaches are proposed including industry 'self selection' for voluntary schemes and a political process for determining other priority products.

Local Government would like to propose that a list of priority products needs to be developed. This list of priority products needs to be established using information from an open and accessible consultation. This would assist in identifying the range of products that are (or are becoming) a problem. Such a process would allow Government to show leadership in this area and clearly identify problems for action, rather than wait for industry to self select. In a previous *WALGA Submission on the EPHC Industry Discussion Paper: Co-regulatory Frameworks for Product Stewardship (2005)* the advantage of this approach was also highlighted, "the system of creating priority lists...invest a systematic responsibility in government for identifying whether an industry has reached the point where it must act, rather than leaving that question to industry to resolve". If a particular list of priority products is developed, this shows clear leadership from Government and puts industries 'on notice' that Product Stewardship is required.

PART 2 - Conclusion

Several issues have been identified in this Submission which may well be outside the scope of the actual legislation but are still significant if Product Stewardship scheme are to be successfully implemented. These issues include:

- Equitable service provision;
- Roles and responsibilities for Schemes; and
- Complaints mechanisms.

In order to ensure that these issues, and others, are included in future Product Stewardship Schemes it is recommended that clear guidance for such schemes be developed.

Key Recommendation: The Department of Sustainability, Environment, Water, Population and Community develop guidance for Product Stewardship regulation development including consideration of:

- **Equity of service delivery and outcomes in Product Stewardship Scheme design – nationally consistent application may not result in consistent outcomes.**
- **Negotiation and assignment of roles and responsibilities.**
- **A well publicised complaints process, as one mechanism to monitor compliance.**

The consultative approach the Department of Sustainability, Environment, Waster, Population and Community has taken in the development of the TV's and Computers Product Stewardship scheme has been greatly appreciated by Stakeholders. This could provide a basis for the development of future schemes. The resources needed to undertake the development of the regulations, and from the stakeholder point of view to engage in their development have been substantial. To ensure the effort put in by government and stakeholders has the best environmental, social and economic outcome a clear and agreed process for considering products is needed.

Key Recommendation: The Commonwealth Government develop a list of priority products for product stewardship schemes in consultation with State and Territory Governments, Local Government and the community.

Specific comments regarding the Product Stewardship Bill include:

- Potential inconsistency between the drivers identified for Product Stewardship, the Objects of the Act and the criteria for Product Stewardship;
- Separation of the two points under Section 5 c) of the Product Stewardship Criteria; and
- Sufficient resourcing for the implementation of the Act.

These areas are highlighted for consideration by the Legislative Committee in this Inquiry.

Appendix 1: WALGA Extended Producer Responsibility Policy Statement