



20 Queens Road, Melbourne
3004
Phone 03 9867 0111
Fax 03 9867 0199
ABN 76 369 958 788
www.aigroup.asn.au

6 April 2011

Mr Stephen Palethorpe
Secretary
Senate Environment and Communications Legislation Committee
PO Box 6100 Parliament House
CANBERRA ACT 2600

Dear Mr Palethorpe

**Product Stewardship Bill 2011
Submission by the Australian Industry Group to the
Senate Environment and Communications Legislation Committee**

The Australian Industry Group (Ai Group) welcomes the opportunity to make this submission in relation to the Product Stewardship Bill 2011.

The Australian Industry Group

Ai Group is a peak industry association which along with its affiliates represents the interests of more than 60,000 small, medium and large businesses in an expanding range of sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other industries. The businesses which we represent employ more than 1 million employees. Ai Group is closely affiliated with more than 50 other employer groups in Australia alone and directly manages a number of those organisations.

Policy Context

Ai Group supports the development of a nationally coordinated and consistent waste policy framework which is founded on achievement of net community benefits. Within a national framework there is a role for product stewardship schemes in circumstances where detailed cost benefit analysis confirms firstly, that there is a genuine market failure causing significant harm that cannot be efficiently addressed by other means; and secondly, the necessary conditions exist for a product stewardship scheme to be effective.

Relationship to State and Territory Laws

The explanatory memorandum to the Product Stewardship Bill states that

“Generally, the Bill does not seek to exclude the operation of State and Territory laws, to the extent that those laws are capable of operating concurrently with the Bill (subclause 9(1)). As the Bill was developed with the support of all Australian Governments to establish a nationally consistent approach to product stewardship, it is unlikely that duplicative schemes for the same class of product will be established.”...”However, if a duplicative scheme is established under State or Territory laws then it will be possible for regulations to prescribe the relevant state or territory law as an ‘excluded law’.
(subclause 9(2))”

It is of concern to Ai Group that passage of the Bill will not deliver a nationally consistent approach to product stewardship. Ai Group does not share the confidence of the Federal Government that the support articulated by all Australian Governments to establish a nationally consistent approach to product stewardship will translate into practice. For example, in relation to Minimum Energy Performance Standards for heaters and air conditioners there have been notable instances where state governments have elected not to adhere to national standards and instead apply separate standards in their state. This has resulted in additional costs and reduced certainty for businesses.

Before a co-regulatory or mandatory product stewardship scheme is implemented, it is essential that:

- relevant pre-existing regulations in all jurisdictions be reviewed for their interaction, overlap or conflict with the proposed product stewardship regulation and
- all appropriate waivers provided to ensure that the agreed product stewardship regulation is the pre-eminent mechanism for addressing managing the environmental, health and safety impacts of those products and in particular the disposal of those products.

Further, all jurisdictions should be required to:

- assess all proposals for new regulation for interaction, overlap or conflict with existing product stewardship regulations; and
- commit to not introduce regulation where such conflict or overlap is identified.

Product Stewardship Criteria

The Bill sets a framework under which regulations would be introduced to support establishment of product stewardship.

It is essential that there is transparency around the process for identification of products to be subject to co-regulatory or mandatory product stewardship schemes.

The Bill specifies (S5 subclause 5) that 2 or more of the following criteria have to be satisfied before the Minister can approve a voluntary arrangement or regulations can be made for the purposes of a co-regulatory or mandatory arrangement:

- (a) the products are in a national market;
- (b) the products contain hazardous substances;
- (c) there is the potential to:
 - (i) increase the conservation of materials used in the products, or increase the recovery of resources (including materials and energy) from waste from the products; and
 - (ii) contribute to reducing the amount of greenhouse gases emitted, energy used or water consumed in connection with products and waste from products;
- (d) reusing, recycling, recovering, treating or disposing of the products involves a significant cost to the Commonwealth, or State, Territory or local governments;
- (e) the consumer is willing to pay for action that reduces the impact:
 - (iii) that the products have on the environment, throughout the lives of those products; or
 - (iv) 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;
- (f) taking action to reduce those impacts will offer business opportunities that would make a contribution to the economy.

As outlined in our submission to the earlier discussion paper on the Product Stewardship Legislation Consultation Paper, Ai Group remains concerned that these criteria are so broad that there are very few instances in which they would not apply.

Ai Group supports the intention that co-regulatory or mandatory product stewardship schemes cannot be introduced unless a Regulatory Impact Statement (RIS) establishes that there is a community net benefit from the intervention. Each product needs to be considered in view of its physical size, materials and componentry (in terms of type, toxicity and intrinsic value), supply chains, processing issues, etc. Without supply-side concentration and a homogenous waste product, product stewardship may not be an appropriate response.

Ai Group further recommends that (5)c is amended as follows:

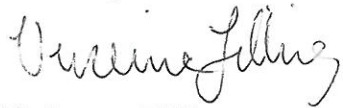
- (c) there is the **significant** potential to:
 - (i) increase the conservation of materials used in the products, or increase the recovery of resources (including materials and energy) from waste from the products; and
 - (ii) contribute to reducing the amount of greenhouse gases emitted, energy used or water consumed in connection with products and waste from products;

For example, even if there is 95% recycling taking place for a given product category, there is still potential for greater recycling. Legislation should only apply if there are significant potential benefits to be gained. Resource recovery will add genuine value to the economy where it offers net community benefits, taking into account the externalities imposed by other waste management methods and the market values of recovered and virgin materials. Policy cannot add value by mandating a level of resource recovery above that which is justified by these factors,

since unnecessarily high costs will flow through to the wider economy and diminish overall welfare.

If you require any further information, please contact me on email vfilling@aigroup.asn.au or phone 03 9867 0283.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Vivienne Filling'.

Vivienne Filling
National Manager
Environment Policy and Membership Services