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Dear Mr Janisson

AA1000476

BSC RESPONSE TO SUBMISSIONS OF THE LIGHTING COUNCIL OF AUSTRALIA

I refer to the late submission lodged by the Lighting Council Australia (LCA) on 14 May 2020 in relation to the BSC's application for authorisation of the Battery Stewardship Scheme.

The BSC notes that the LCA opted to have had limited involvement in the consultation process undertaken by the BSC prior to its application to the ACCC. Much of the LCA submission appears to be based on a misunderstanding or misreading of key elements of the scheme. The LCA has subsequently requested a meeting with BSC which is now scheduled for 26 May 2020, which together with this submission will hopefully clarify matters.

Please find below the BSC submissions in response to the matters and recommendations raised by the LCA. For ease of reference, and noting the comments above, the below submissions refer to various sections of the Scheme Design document to clarify the details of the proposed Scheme.

These submissions set out some relevant background information, and then addresses each of the issues raised by LCA, which have been designated numbers to facilitate further discussion.

1. **Background**

- 1.1 Two representatives from LCA participated in the industry meeting of 19 February 2018 at which it was agreed to establish BSC to design an industry-led battery stewardship scheme.
- 1.2 Subsequently, BSC invited LCA to join the scheme, which was declined.
- 1.3 BSC design consultation process was open to any organisation to participate and LCA was aware of the opportunity to provide feedback on the draft design documents. LCA elected not to provide any feedback.

Friday, 22 May 2020

1.4 BSC was aware that LCA was implementing a pilot program for recycling of exit lighting and took that into account in the design of those elements of the Scheme relating to embedded batteries, overlapping stewardship schemes and take-back schemes. This is addressed in further detail in section 2 below.

2. **Issue 1: Overlap with existing stewardship schemes**

As outlined in the ACCC Guidelines for Authorization of Conduct the proposed scheme is in breach of both per se and non-per se provisions of the Competition and Consumer Act. Several industry led battery stewardship programs, such as Lighting Council Australia's Exitcycle are already in existence. These schemes have overlapping objectives with the BSC scheme and have demonstrated progress without the need to impose additional import levies.

2.1 The BSC, in its application to the ACC, is seeking authorisation from the ACCC for the BSC and the Scheme to participate/enable conduct which may ordinarily be prohibited by the Competition and Consumer Act 2010. This process has been undertaken to ensure that the Scheme operates in a manner consistent with the provisions of the Act, as has been done by a number of other stewardship schemes.

2.2 BSC is seeking the same type of authorisation that ACCC has approved for other stewardship schemes and which would most likely be necessary for Exitcycle if it evolves from a pilot project to a full-scale stewardship scheme. On this basis, it is difficult to understand the assertion by LCA that the BSC and/or the Scheme is in breach of the Act.

2.3 The BSC understands that the LCA is claiming that no additional measures are needed because there are other schemes in operation which involve products that have embedded batteries. The BSC position in response to this claim is as follows:

- (a) This claim is not substantiated by market analysis of the scale of the problem with end of life batteries.
- (b) The total of all battery recycling initiatives in Australia has resulted in a recycling rate of less than 10% and embedded batteries constitutes a very small proportion.
- (c) 90% of batteries end up in landfill, which can have adverse impacts on fire safety, human and ecosystem health, and are a waste of a fully recyclable resource.
- (d) Governments and the vast majority of industry represented by the BSC totally reject arguments that the status quo represents a satisfactory situation and nothing more needs to be done.
- (e) As set out clearly in the Scheme Design, schemes that in part overlap the BSC objective i.e. those collecting battery embedded batteries incidental to the primary product such as televisions, computers, mobile phones or lighting can continue to operate and expand battery collection without additional levies or other measures being imposed under the BSC proposal.

Friday, 22 May 2020

- 2.4 The BSC, in its application and Scheme Design, specifically acknowledges that many embedded batteries are being collected for recycling under existing schemes and does not impose any additional burden on companies in those schemes. On the contrary, the BSC proposal:
- (a) enables other schemes to access the rebates and develop new commercial business in collection of loose batteries
 - (b) specifically excludes existing or proposed embedded battery schemes (Mobile Muster, NTCRS) and existing operational markets (lead-acid batteries) from the Scheme.
 - (c) provides an exemption for importers of products that are included in other stewardship schemes from paying the levy (Section 3.3.3);
 - (d) provides for a discounted 'net levy' to be applied for take-back schemes (Section 3.3.2)
- 2.5 As set out in the Scheme Design, companies involved in the schemes identified at 2.4(b) would still be accountable under the BSC Scheme for any loose battery imports. The BSC proposal is based in part on encouraging those schemes to expand their commercial activities and become collection avenues for loose batteries. The BSC proposal also includes a provision for development of agreements with such schemes. This is intended to ensure activities are verifiable and that there is no opportunity for a loophole that would enable companies and other organisations to avoid participation in battery stewardship arrangements in line with the decision of Governments.
- 2.6 To be clear, given that the scope of the Exitcycle pilot is batteries embedded in lighting products, the BSC Scheme would not be applicable to that sector.

3. **Issue 2: The BSC is unjustifiably self-preservative and exclusionary**

- 3.1 This assertion is demonstrably untrue. All Governments of Australia agreed that batteries were to be listed as a priority for stewardship under the *Product Stewardship Act* in 2013. Lack of progress in developing a stewardship scheme led to the establishment of BSC in 2018. In early 2020 the Commonwealth Minister for the Environment stated in a response to a Question on Notice in the House of Representatives that if an industry led scheme was not established legislative options to achieve that the Governments' objective would be considered.
- 3.2 BSC was established by industry to design a battery stewardship scheme. The BSC proposal is based on a leveraging model that would stimulate commercial activity across the battery recycling supply chain using by providing 75% of the levy revenue as rebates to stimulate that activity. BSC does not propose to become a player in that supply chain activity other than in a supporting role. The role for BSC is one of overall coordination, monitoring and strategic management of centralised functions such as marketing, promotion, auditing and reporting to ensure the objectives are being met. This role was identified in the earliest drafts of the design and available for feedback for two years. If

Friday, 22 May 2020

BSC did not perform such a role then industry would still have to identify an organisation to undertake these functions.

3.3 The BSC proposal is not intended to be exclusionary, quite the opposite. Rather it provides a focus for the supply chain to express their support for and commitment to battery recycling and the underpinning principles. The proposed Scheme also recognises that batteries are being collected for recycling under other schemes and does not impose any additional burden on those participants provided that they continue to operate under a transparent stewardship framework (see 3.4 below).

3.4 **LCA Recommendation: Lighting Council Australia recommends the development of guidelines that outline the conditions for exemption of the proposed BSC import levy for products covered in the scope of existing stewardship (or alternative) schemes.**

The BSC Scheme Design states that detailed guidelines would be developed in consultation with industry during the first six months of implementation (section 2.4 – see below).

2.4 EMBEDDED BATTERIES

Embedded batteries fall into two categories, as shown in the table below:

Type	Approach
Batteries embedded in products subject to an existing stewardship scheme (e.g. MobileMuster or the National Television & Computer Recycling Scheme).	<ul style="list-style-type: none"> ▪ Procedures will be established to clarify reporting protocols so that collection, sorting and recovery rates can be tracked. ▪ Liable parties will not be subjected to double payment for batteries collected.
Batteries embedded in products that are not subject to an existing scheme, e.g. toys and appliances.	<ul style="list-style-type: none"> ▪ Work with industry to determine the most appropriate scheme for these products, e.g. NTCRS or BSC. ▪ Importers of these products could be invited to join the Scheme. ▪ The levy and rebate could apply only to the batteries contained in the product. ▪ Providers of collection, sorting and recycling services could be required to accept or reject the product based on their own commercial decisions as they do now for related schemes, for example the NTCRS.

3.5 **LCA Recommendation: The guidelines should be developed with careful consideration to avoid precedence of the BSC scheme compared with any other stewardship scheme. For example, any reporting or audit requirements, should be submitted to an appropriate third party such as the ACCC or Department of Environment and not the BSC**

Other industry led schemes have internalised tracking, monitoring, auditing and reporting within their schemes and already provide precedence for the model proposed by BSC.

Friday, 22 May 2020

The proposal specifically identifies the BSC as the responsible organisation to implement the Scheme and, apart from one party which stating they wanted to administer parts of the battery stewardship scheme, all feedback from industry and Government supported the need for a single focus organisation to provide the high level strategic management and guidance for battery stewardship. Feedback from industry over the past two years has identified a strong belief that it is critical that traceability and health and safety requirements are established and monitored in order to ensure that the Scheme is delivering on its annual performance indicators.

Governments do not impose the level of administration proposed by LCA on any other industry led stewardship schemes. In any event BSC will have reporting requirements to ACCC, Governments and its members and will make reports publicly available on its website.

3.6 LCA Recommendation: A definition of 'embedded batteries' be provided with the suggestion that it includes coverage of common battery containing professional lighting products including exit signs, solar lighting installations and portable luminaires.

The BSC specifically acknowledges (Section 8 of the Application and Section 2.4 and 3.3.3 of Scheme Design) that embedded batteries represent a component of the battery market in Australia.

Most of these are identified in the 2019 Stocks and Flows Report commissioned by BSC, with Government support, to determine the nature of the Australian battery market. The Scheme already makes provision for entering into agreements to manage embedded batteries without requiring imposition of the BSC levy or other measures. Embedded batteries in televisions, computers and mobile phones have already been identified for such agreements. Embedded batteries in toys requires further consultation with industry.

BSC is happy include an agreement dealing with exit lighting batteries in the first tranche of agreements.

4. Issue 3: The submission by the Chair of BSC to the Review of the *Product Stewardship Act* disadvantages specialised industries led stewardship schemes that have overlapping objectives with the BSC.

4.1 The Chair of BSC made this submission based on calls by the battery industry during consultations for strong measures to address potential for free riding.

4.2 The Chair also drew on the experience encountered during development of the Tyre Stewardships Scheme and his previous experience with policy development of legislative drafting as a former senior Commonwealth Public Servant in the Environment Portfolio.

4.3 This submission was created to present an option to Government to strengthen the *Product Stewardship Act* to deal with the issue of free riders, which was being cited as a reason for some manufacturers and importers to not support industry led product stewardship. If adopted by the Government, the provision if adopted would apply to all schemes and any decisions would be the responsibility of the Minister.

Friday, 22 May 2020

- 4.4 The substance of the submission was supported by representatives of other stewardship schemes at meetings on the Review convened in July 2019 by the Department of Environment.
- 4.5 Given the proposed universal application of any amendment to the *Product Stewardship Act*, it is difficult to understand how the LCA considers the submission as advantaging one scheme over another, and/or disadvantage socially responsible operators who implement their own recycling.
- 4.6 It is clear that Governments have decided that the existing recycling rate of less than 10% is not achieving the desired policy outcomes, as set out in the BSC's Application and Scheme Design. Government first identified batteries as a priority in 2013 within the stewardship framework and government has signalled that rather than delays it is looking for fast tracking.
- 4.7 In addition, given that the BSC model recognises existing schemes, there can be no disadvantage to a socially responsible industry operator if a minority who are ambivalent to participation are forced by Governments to participate or contribute. If anything, full participation would advantage the responsible players by lowering the cost burden across more participants.

5. **Issue 4: The Scheme is overly onerous for battery importers:**

Battery importers are a captive audience who under the proposed operation of the BSC scheme will bear the entire cost of administration of the scheme.

The scheme will increase battery costs and will encourage individual consumers and battery consuming businesses to import their own batteries and avoid the levy

- 5.1 One of the key issues leading to the decision by Ministers to list batteries as a priority was the fact that the retail price did not include the cost of recycling end of life batteries, and that cost was being borne by the public in landfill and warehouse fires, clean-up costs and impacts on human health and the environment.
- 5.2 Industry and government now have the option of a flexible industry led scheme or a regulated one, but in either case a levy would be imposed on batteries and thus impact on consumer price. The BSC proposal has been modelled to establish that it would have a lower cost than a regulated scheme and has greater flexibility to lower that cost as the battery recycling market evolves and economies of scale are achieved. It is clear from the statements provided by Government that importers will not be able to just import batteries without meeting an obligation under one of those options – an industry led scheme or a higher cost regulated one.
- 5.3 The BSC proposal does in fact provide an incentive to manufacturers/ importers to lower the levy rate if they improve the design and packaging of their products to make them more suitable for the recycling stream. For example, the cost of sorting different batteries by chemistry could be made far more cost efficient through design to facilitate electronic or optical sorting rather than the manual process which dominates this activity in the Australia and elsewhere.

Friday, 22 May 2020

5.4 **LCA Recommendation: an exemption to the proposed levy and enterprise-to-enterprise agreements for participants in industry led stewardship schemes that have overlapping objectives with the BSC scheme.**

Please refer to section 2 and paragraphs 5.1 to 5.3 above.

BSC would welcome the opportunity to work with LCA to prepare an agreement on exit lighting batteries to ensure there is no duplication of levies or effort.

6. **Issue 5: Lack of existing infrastructure & standards regarding the recycling of Lithium**

The BSC has worked closely with the recycling sector during the 2-year consultation process to identify infrastructure capacity and needs and has included provision for market development and government investment in the Scheme Design.

Indeed, without the certainty provided by the rollout of a stewardship scheme, it is unlikely the required investment will occur to increase capacity.

6.1 **LCA Recommendation: Lighting Council Australia recommends delaying the implementation of the BSC scheme until suitable infrastructure and competition is established.**

The BSC strongly rejects this recommendation for maintaining the status quo or the “do nothing option” whilst indeterminate discussions take place and the problems associated with the low rate of recycling continues to grow and adversely impact on the human health, safety and the environment.

This recommendation is not supported by all Governments of Australia which have collectively contributed to meeting the costs of this first stage work of the BSC. The “do nothing option” is not supported by the membership of BSC and certainly not by the companies and organisations which have publicly expressed their support to the ACCC throughout this process.

7. **Issue 6: Consultation with Relevant Stakeholders:**

7.1 In this section of its submissions, LCA makes a number of assertions which require clarification or correction, extracted below:

- (a) Under section 5.1 of the application, it states ‘*The Scheme will engage industry across the entire battery supply chain, as set out in the Scheme Design at 1.6 and Figure 47 (“Participants”)*’. This has not been satisfied from the perspective of the lighting industry and further engagement is required.
- (b) The proposed levy will impose fees on companies who voluntarily incur costs associated with requirements under the Lighting Council Australia Exitcycle scheme.

Friday, 22 May 2020

- (c) The application clearly identifies in section 8.2 *'the design of the Scheme intends to prevent a party having to pay a second time for batteries collected by other schemes. BSC proposed that specific guidelines be developed to put into place measures to prevent double charging, in consultation with the appropriate stakeholders operating at the relevant stages of the supply chain'*. We feel further consultation is necessary to satisfy this section.
 - (d) Furthermore, we are concerned with the enterprise-to-enterprise requirements creating a significant restriction in available business opportunities for manufacturers and suppliers. It is our opinion that this policy is not in alignment with providing net positive benefit for all stakeholders involved. This particularly applies to companies who voluntarily incur costs associated with requirements under the Exitcycle scheme as well as socially responsible suppliers.
 - (e) Lighting Council Australia recommends further consultation be undertaken with relevant stakeholders (e.g. Lighting Council Australia and EXIT CYCLE participants) who could be adversely affected by the proposed BSC Scheme.
- 7.2 The BSC Application documents the extensive consultation undertaken with industry and governments over a significant period of time (Attachment D) and identifies the numerous opportunities that were provided to all parties, including the general public, to provide feedback. This included numerous meetings, webinars, and public calls for feedback.
- 7.3 The fact that LCA chose not to participate in that consultation process, either in response to direct invitation or as part of the public process notified on the BSC website, is not a valid reason to delay a decision on authorisation.
- 7.4 As stated repeatedly, the BSC does acknowledge that further consultation will take place during development of the detailed operational procedures. Further consultation has already been planned for in the design process. The BSC Scheme Design and the application for authorisation both state that operational procedures will be developed in consultation with industry during the first stage of implementation (section 11.2 of the Application and section 1.2 of the Scheme design).
- 7.5 For clarity, and as explained in sections 2 and 5 of these submissions, the assertion at 7.1(b) above is not correct. Existing and proposed schemes with overlapping objectives are recognised in the BSC proposal which states that the levy would not be duplicated (Scheme Design section 8.2).

Friday, 22 May 2020

8. Concluding LCA Recommendations:

- 8.1 It is our recommendation that until further stakeholder engagement is undertaken and greater clarification on participation requirements are outlined, the ACCC should not grant authorisation for the conduct described in the Proposed Scheme.**
- 8.2 Furthermore, consultation between Lighting Council Australia and BSC should occur to leverage the existing operations of Exitcycle to avoid unnecessary costs on industry participants who are already actively achieving the target of increasing resource recovery and recycling to minimise the environmental, health and safety impacts of end-of-life batteries in Australia.**

The BSC urges ACCC to reject this recommendation on the grounds that:

- (a) there has been an extensive documented consultation process (Attachment D of the Application); and
- (b) there is strong industry and government backing for timely implementation of the Scheme, provided to the ACCC both in the BSC proposal and public submissions.
- (c) LCA has not acknowledged that most of the matters they raise are in fact addressed specifically in the BSC proposal and do not disadvantage other schemes.

The BSC proposal specifically states that it recognises existing and proposed schemes dealing with embedded batteries and would leverage those schemes to achieve its own objective to increase the recycling rate (section 2.5). The BSC has designed the Scheme to leverage other related schemes, however it is unclear the status of the Exitcycle pilot or the collection rate currently being achieved.

None-the-less BSC would welcome the opportunity to work with LCA to address their concerns and ensure that batteries are managed in accordance with government priorities.

Sincerely

EMILY SHOEMARK

