

Australian Competition & Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601
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Dear Sir / Madam

AA1000476 – Battery Stewardship Council – submission

1. This submission is made by the Australian Toy Association (ATA)
We represent approximately 300 suppliers of children’s toys, games and entertainment products including both retailers and wholesalers. The toy industry has a value at retail of approximately \$2.5 b.
2. ATA members strongly support the concept of a circular economy through the responsible re-use and recycling of materials.
In this regard we are working with third party providers including the Salvation Army, St Vincent de Paul Society and TerraCycle to establish a robust industry solution to maximise the re-use of products and their component materials.
3. The ATA further supports the diversion of toxic battery waste materials from landfill.
4. The management and diversion of battery waste is complex and becoming increasingly so as technology improves.
 - There is a much higher proportion of batteries that are embedded in products and not removeable by consumers.
 - Some newer technology batteries, e.g. lithium have higher energy densities which makes them more hazardous for consumers to collect.
 - Certain batteries are particularly hazardous to children.

The ATA submits that the effective management of battery waste requires a ‘whole of government’ approach in conjunction with the waste management industry and suppliers of batteries and battery-operated goods.

Batteries are a subset of e-waste and should be managed within that context. Effective management requires strong collection mechanisms, disassembly, sorting, recovery and appropriate treatment of non-reusable materials.

5. The ATA has reviewed the ACCC’s draft determination with regard to the proposed Battery Stewardship Scheme and notes the ACCC’s intention to authorise the scheme to engage in anti-competitive conduct, primarily in the requirement for participants to agree not to trade with non-participants for battery related goods and services.
6. The ATA requests that the ACCC review the determination and **not** authorise the anti-competitive conduct for the following reasons:
 - 6.1. The scheme seems unlikely to achieve high rates of collection and in this case would not be an effective waste management option

The scheme is based on an expectation that consumers will collect batteries and take them to drop-off points. This will require that they have a place to collect and store old batteries in their homes for weeks or months in order to have a stockpile sufficient to justify a trip to a collection point.

The messaging to induce this behaviour will be expensive to produce and place in a manner that it would be effective. Even with the very best of media campaigns, we are uncertain how many Australian households would be convinced to participate in comparison to the easy option of discarding their used batteries along with other household waste.

There are also questions on the safety of such collection activities as different types of batteries may retain some charge and given enough time and bulk, create a risk of fire or leakage of toxic chemicals. Other messaging, e.g. for button batteries advises consumers to discard the batteries immediately.

It seems likely that a significant quantity of batteries is currently discarded within the product that is powered by them and this would take more effort by consumers to recover and in an increasing proportion of products, it would not be possible or desirable that they do this.

The above seems to contrast unfavourably with the high collection rates and cross benefits that could be expected from a fortnightly curb-side collection of e-waste with professional sortation and disassembly.

- 6.2. The scheme is already expensive and is likely to become more so to try and drive increases in consumer participation.

We understand that the regulated approach in Europe costs suppliers approximately 50 Euro cents per kilo, compared to the initial cost of this scheme at \$1.67 per kilo.

It also seems likely that higher participation rates will be increasingly expensive to achieve.

- 6.3. The scheme does not provide for the increasing complexities of managing battery waste, e.g. as the batteries become less accessible.
- 6.4. The scheme does not provide for changing distribution and selling models, e.g. as consumers increasingly buy products directly via online shops.

The member levy model gives a competitive price advantage to sellers that are not members and the trade restrictions won't have any impact on direct to consumer sellers. The model will therefore favour less responsible sellers, many of whom operate in this way.

- 6.5. The scheme has not provided certainty with its responses to questions. It has provided vague answers with promises of prioritisation, consultation, and future clarification. There is no clarity on what is a 'battery related good or service', how parties would be exempted from the arrangements or how the safety of consumers collecting batteries would be assured. In some cases, the responses directly contradict a stated intent of the scheme, e.g. that the levy should be visible to consumers.

A trade restriction applied in these circumstances would create confusion and has the potential for negative unanticipated consequences. We believe that trade restrictions such

as that requested by the BSC should only be allowed in tightly defined situations where the impact can be better anticipated.

- 6.6. The scheme suggests that the levy should be visible to consumers, but their own response to the ACCC seems to confirm that this is not practical. Realistically, the levy will be treated as a part of the product cost, the same as freight and duty. The administrative burden of complying with the scheme would be added to overhead. Suppliers will continue to maximise margin and while this may be reduced as a result of the levy, it would not be practical to apportion a specific part of the retail price to the levy or any other aspect of managing participation in the scheme.
- 6.7. There are many other aspects of the scheme that are unknown, but that may have serious implications to cost and operations for suppliers, e.g. any requirement with regard to branding would impact the ability of suppliers to utilise multi-jurisdictional packaging.
- 6.8. The scheme does not seem to have high levels of industry support. This was apparent in the consultation sessions that we attended and has been further identified during our internal consultation process to prepare this response. Responses from the BSC to our concerns have been intermittent and inconsistent. They declined to investigate suggestions for a more robust approach.

Industry is a very broad term and there are actually many industries impacted by the proposed stewardship scheme. It may be that the application of the scheme could be narrowed down to a particular industry to allow the scheme to be more manageable and effective for that group.

The BSC had previously advised us that the toy industry would be specifically excluded because of the complexities in applying the scheme to products that include batteries. We were therefore surprised to find that this was not reflected in the application to the ACCC.

- 6.9. The trade restrictions would be particularly onerous for those in the middle of the supply chain in that they would be restricted in their dealing on both the supply and the sale side. Their customer base would potentially be reduced resulting in less sales and their supplier base would also be reduced resulting in less competitive (and therefore higher) pricing. It feels like a very threatening and unfair position for business.
 - 6.10. Lastly, and perhaps most importantly for the sustainable management of waste, the authorisation would remove any chance of a competing and perhaps more robust scheme being put in place. The BSC would have the power of a regulator without the responsibility or controls. This may work ok but would be easily open to abuse.
7. In the case that the ACCC decides to continue with its approval of the scheme, there should be strong conditions and limitations to the approval in order to limit the harm to the economy and to the potential for more effective waste management solutions.

The ATA believes that there is strong demand for effective sustainability solutions by both consumers and industry. When robust and effective solutions are offered, they are prepared to pay for them without the need for anti-competitive concessions / trade restrictions. Examples are the many industry and brand arrangements that are being set up with businesses such as TerraCycle.

8. The ATA would like to request a pre-decision meeting to further explain our issues

Yours sincerely



Richard Hayman
Australian Toy Association
Product Safety and Compliance