Review of Product Stewardship Act 2011

Issues Paper
May 2018
**Aim of this paper**

The aim of this paper is to assist councils in providing a response to the Department of the Environment and Energy (the Department) review of the *Product Stewardship Act 2011* (the Act) by highlighting issues that affect South Australian Councils.

The issues highlighted in this document are not an exhaustive list of those that you may want to comment on as part of the review, and is provided for guidance purposes only.

**Background**

**What is product stewardship?**

Product stewardship is an approach to managing the impacts of products and materials. The concept acknowledges that those involved in producing, selling, using and disposing of products have a shared responsibility to ensure that those products or materials are managed in a way that reduces their impact on the environment, human health and safety.

Product stewardship schemes are a way of driving waste from landfill and back into the productive economy. Such schemes encourage industry to fund the collection and recycling of goods once they reach the end of their productive life.

**The Review**

The Act sets up a legal framework for product stewardship. Section 109 of the Act requires an operational review to be undertaken as soon as possible after five years from the date of commencement. Review was scheduled for early 2017, however was delayed until 2018.

The Department is undertaking the review and consultation process, and is seeking input from industry, governments and the general public to ensure the Act is effective and delivering its intended outcomes.

As part of the review, the Department is also reviewing the National Television and Computer Recycling Scheme (NTCRS), which is established under the *Product Stewardship (Televisions and Computers) Regulations 2011*. A Consultation Paper outlining the reviews Terms of Reference was released in March 2018 and the LGA recommends that councils providing submissions read the document.

**Improvements made in conjunction with the Act’s review**

In conjunction with the Act’s review, the Department is also undertaking a number of related activities. These activities include:

- making minor amendments to the NTCRS, to take effect from 1 July 2018;
- developing a Product Impact Management Strategy; and
- reinvigorating the scheme for accreditation of voluntary product stewardship arrangements.

The draft Product Impact Management Strategy was released to support a shared approach to product stewardship by the federal, state, territory and local governments. Two documents were provided as part of the Strategy, these being the Assessment I Action I *Escalation* (AAE) Process and the 2018-19 Product Impact Management (PIM) Work-plan. Following consultation with members through Circular 13.7, the LGA provided a submission, which can be found [here](#).
LGA position on product stewardship

Product stewardship is aligned with LGA Policies relating to waste management, which seek to:

• provide ‘ecologically sustainable waste and resource recovery services to the community’;
• ‘continually improve the efficiency and environmental sustainability of local government waste resource management’; and
• ‘contribute to innovation in waste sector markets.’

The LGA has previously highlighted to the Federal Government the preference for mandatory product stewardship as a strong regulatory response, and will continue to lobby for the regulation of wastes posing concerns for local government.

General overview of the Act

The Act establishes that product stewardship criteria are satisfied in relation to a class of products if:

a) the products in the class are in a national market; and
b) at least one of the following applies in relation to the products in the class:
   i) the products contain hazardous substances;
   ii) there is the potential to significantly increase the conservation of materials used in the products, or the recovery of resources (including materials and energy) from waste from the products;
   iii) there is the potential to significantly reduce the impact that the products have on the environment, or that substances in the products have on the environment, or that substances in the products have on the environment, or on the health or safety of human beings.

The Act establishes three levels of product stewardship management, these being mandatory product stewardship, co-regulatory product stewardship and voluntary product stewardship.

• **Voluntary product stewardship** is usually carried out by industry and can be accredited under the Act. To date, there are only two accredited voluntary arrangements (Mobile Muster and FluoroCycle), while there are several unaccredited schemes, for example tyre, paint and mattress schemes.

• **Co-regulatory product stewardship** schemes are delivered by industry and regulated by the Australian Government. Under such a scheme, liable parties acquit their responsibility by joining a co-regulatory arrangement, which delivers the outcome on their behalf. The only current co-regulatory scheme is the NTCRS.

• **Mandatory product stewardship** places a legal obligation on parties to take specific action in relation to a product. There are currently no mandatory product stewardship schemes mandated by the Act; however the Product Stewardship (Oil) Act 2000 is a mandatory product stewardship scheme operating at the Federal level, but not operating under the Act.

Annual product list

Under the Act, the Minister is required to publish an annual product list encompassing classes of products the Minister is proposing to consider during the next financial year. These products must satisfy the product stewardship criteria. Since 2013, eight product classes have been considered.

Pursuant to section 108A of the Act, the Minister must explain the reasons for listing an item, however is not required to explain why an item is removed from the list, or to provide an update on the progress of listed products.

The following table indicates the items listed by the Minister and action taken to date.
Key issues for consideration

Following initial review of the Act and the Consultation Paper, the LGA wishes to highlight the following key issues to councils. As mentioned above, the below discussion is for guidance purposes only, and the LGA encourages councils to also undertake their own analysis.

A stronger approach to product stewardship

The LGA recommends that councils use this opportunity to consider and comment on the Act’s general purpose and whether a stronger approach towards product stewardship and recycling needs to be adopted at the Federal level in Australia.

The LGA believes the Act should take a stronger approach in order to better support the development of a circular economy. While consumers and other levels of government may place pressure on manufacturers and industry to improve their sustainability performance, the LGA believes the Federal Government should take a leadership role and adopt a stronger product stewardship position.

Furthermore, in light of the current waste and recycling crisis and the endorsement by Environment Ministers for 100 percent of Australian packaging to be recyclable, compostable or reusable by 2025, the LGA believes the Act’s review presents an opportunity to firmly establish the standard of recycling and level of responsibility that should be adopted by manufacturers and users.

Relevance of the objects of the Act

The LGA encourages councils to review the objects of the Act and assess whether they remain relevant.

Section 4 of the Act states the following:

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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Waste architectural and decorative paint</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>Paintback Scheme launched in 2016 (voluntary industry scheme)</td>
</tr>
<tr>
<td>Batteries</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>Ongoing development of a scheme</td>
</tr>
<tr>
<td>Packaging</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>No action taken</td>
</tr>
<tr>
<td>Refrigerators and air-conditioners</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>No social benefit found, therefore product dropped from list</td>
</tr>
<tr>
<td>Plastic microbeads and products containing them</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td>No action taken</td>
</tr>
<tr>
<td>Photovoltaic systems</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td>No action taken</td>
</tr>
<tr>
<td>Electrical and electronic products</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td>Inclusion of these products in the NTCRS is being consider in the Act’s review</td>
</tr>
<tr>
<td>Plastic oil containers</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td>No action taken</td>
</tr>
</tbody>
</table>
Object—reducing impact of products

1. It is an object of this Act to reduce the impact:
   a. that products have on the environment, throughout their lives; and
   b. that substances contained in products have on the environment, and on the health and safety of human beings, throughout the lives of those products.

2. It is Parliament’s intention that this object be achieved by encouraging or requiring manufacturers, importers, distributors and other persons to take responsibility for those products, including by taking action that relates to the following:
   a. avoiding generating waste from products;
   b. reducing or eliminating the amount of waste from products to be disposed of;
   c. reducing or eliminating hazardous substances in products and in waste from products;
   d. managing waste from products as a resource;
   e. ensuring that products and waste from products are reused, recycled, recovered, treated and disposed of in a safe, scientific and environmentally sound way.

Other objects

3. The following are also objects of this Act:
   a. to contribute to Australia meeting its international obligations concerning the impacts referred to in subsection (1);
   b. to contribute to reducing the amount of greenhouse gases emitted, energy used and water consumed in connection with products and waste from products.

The LGA believes the objects of the Act remain appropriate, however believes an object should be added in subsection 2 to emphasise that product stewardship aims to promote the reuse of products and reduce the extraction of natural resources. The LGA suggests that councils consider making this or their own recommendation.

The need for enforcement

The LGA recommends that councils consider whether the Act’s objectives are adequately carried out through the mechanisms established under the Act.

The LGA views the lack of mandatory schemes and the few regulatory and accredited voluntary schemes operating under the Act as a sign that the current legal framework is not working as intended. Although there is scope for a stronger regulatory response to be made in the legislation, it does not appear the current framework is being embraced as intended. Furthermore, the lack of action taken on products listed by the Minister since 2013 suggests the Federal Government has not taken an active role in forwarding the Act’s objectives.

The LGA therefore suggests that councils reflect upon whether the legislative framework (i.e. the different levels of product stewardship management and the Minister’s list) should and could be strengthened to both encourage participation by manufacturers and users, and to enforce recycling standards. The LGA also encourages councils to provide suggestions for other items to be included on the Minister’s list.

Interactions with other initiatives

The LGA recommends that councils consider how the Act interacts with state and local government policies and initiatives.

While the LGA acknowledges that the Department has developed the Product Impact Management Strategy to support a shared approach to product stewardship between Federal, State, Territory and Local
Governments, as highlighted in our Submission, the LGA believes the proposed process is too onerous on councils.

In providing a submission, councils may therefore wish to suggest ways in which the Act and the proposed Product Impact Management Strategy can better support local governments.

**The National Television and Computer Recycling Scheme (NTCRS)**

The LGA encourages councils to consider the scope and the operation of the NTCRS. In providing a submission, the LGA recommends that councils consider whether they:

- have found there is an equitable distribution of NTCRS collection services in South Australia; and
- believe the NTCRS should be expanded to include other electrical and electronic products, and if so, how this should be carried out.

While the LGA is supportive of the NTCRS, we believe that it could be improved by expanding its scope and by placing a nationwide ban on the disposal of e-waste to landfill. Councils may wish to consider support of a nationwide ban, given the South Australian ban on e-waste and the benefits this has created for our environment and our economy.

**Conclusion**

As this review provides an opportunity to make meaningful change to the way in which products are used and recycled in Australia, the LGA encourages all councils to provide the Department with a submission.

**Review forum**

The Department is holding a free forum on the Act’s review on 6 June 2018. More information and registration details are available on the Department’s website.

**Making a submission**

Submissions can be made until 29 June 2018. To make a submission, please visit the Department’s website. Should a council be providing a submission, the LGA would appreciate receiving a copy via email to Emily Heywood-Smith at emily.heywoodsmith@lga.sa.gov.au by 18 June 2018 to help inform the LGA submission.