**Ingenious**
An industry-led initiative to divert paint from landfill

**20,000,000 + kg**
of unwanted paint collected so far

**160 + drop off locations**
across Australia

14 September 2020

Stephen Palethorpe
Secretary
Standing Committee on Environment and Communications
Via email: ec.sen@aph.gov.au.

Dear Mr Palethorpe

**Paintback Submission Inquiry into the Recycling and Waste Reduction Bills 2020**

Thank you for inviting Paintback Limited to provide feedback to the Standing Committee on Environment and Communications, with respect to the Waste and Recycling Bills 2020 (the Bill).

As Paintback is a voluntary product stewardship scheme, our comments focus on the voluntary product stewardship aspects of the Bill and accreditation.

**About Paintback**

Paintback's vision is to take unwanted paint and packaging's colourful past to a brighter future of responsible disposal and innovative reuse. It is an industry-led, voluntary product stewardship scheme to divert unwanted paint and packaging from landfill, and to research new ways to reuse and extend its lifecycle.

Under the Paintback scheme, consumers and trade painters can take a wide range of unwanted paint products and packaging to a Paintback collection site or mobile collection event. Paintback's waste services contractor then transports the unwanted paint and packaging from the collection point for treatment or recycling where possible. In this way, Paintback gives millions of consumers and trade painters an opportunity to responsibly dispose of a wide range of unwanted paint and packaging.

Paintback was established in 2016 by paint industry leaders DuluxGroup, Haymes, PPG, Resene and The Sherwin-Williams Company. Rust-Oleum Australia and Tint Paints have since joined the program. Together, these companies supply over 90% of architectural and decorative paint sold in Australia.

Paintback is funded through a 15 cents per litre levy on the retail sale of eligible architectural and decorative paint and woodcare products from 1-20 litres (inclusive).

In our 4 short years since we began, Paintback through collaborating with local government has established a collection network of 160 sites nationally, and when combined with the mobile collection events, we provide a responsible disposal pathway to 88% of the population.

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Our market research shows that approximately one in 10 households know of the Paintback brand and 85% of people who have used the scheme thought it was a good service and would use it again.

This has resulted in measurable impact, with over 8,000 tonnes of paint waste collected in 2019/20 and 20,400 tonnes since we began.

Our target is to achieve 90% or more diversion from landfill and currently we are achieving approximately 85%. This shortfall can be explained by the implications of a waste supply chain designed for linear economy, which sits at the end of the take, make, use, and dispose consumption model.

This is why Paintback undertakes research to innovate circular economy opportunities and is committed to working with its supply chain to help make this a reality. Our research programs have the objective of substituting the materials we collect into higher value products on the resource recovery hierarchy, such as recycled content plastic packaging and building and construction products.

Paintback exemplifies how voluntary product stewardship can successfully foster innovation, underpinned by for purpose governance, to address the external costs of consuming products.

**The Recycling and Waste Reduction Bills 2020**

Paintback's following comments are through the lens of whether the amendments to the Product Stewardship Act 2011, as incorporated into the Bill, would encourage businesses that design, manufacture and distribute products to take greater responsibility for the products' environmental impacts by creating or participating in voluntary product stewardship schemes.

While the Bill seeks to streamline the administration of voluntary product stewardship accreditation, much of the accreditation design, and therefore the effectiveness in encouraging more businesses to establish product stewardship schemes or for existing schemes to seek accreditation, is left to the Rules. The Rules are yet to be released. Thus, this submission provides assessment of the relevant parts of the Bill only and cannot assess the Rules.

**Minister's Priority List**

Combining timeframes for action (which currently exists in the Product Stewardship Act 2011 in the form of a 12-month timeframe) with Ministerial recommendations for specific action to form an arrangement should improve the effectiveness of the Priority List. This is because if recommendations are specific enough and the timeframe is achievable, there can be no ambiguity for industry on what they should do by when, or face being regulated.

This would benefit by requiring the Minister to consult with industries that are in the process of preparing new schemes as part of the recommendation process, to align the Minister's focus with the requirements for successful implementation.

Recent experience shows that there are companies that will not take responsibility for their products without being regulated. Thus, the effectiveness of this section will be driven by the certainty the Minister will act should companies or an industry not fulfill its obligations as set out in the recommendations.

The Priority List should also apply to voluntary arrangements (accredited or not) where there is a persistent problem with free-rider companies that refuse to join a voluntary scheme or undertake their own equivalent stewardship activities. This would provide a mechanism for voluntary schemes that seek to move to being a coregulatory arrangement to reduce free riding.

**Accreditation of Voluntary Product Stewardship**

The main objective of accrediting voluntary product stewardship is to avoid “greenwash”, where disinformation is provided to present a better than actual environmental performance. For this to be effective, the community needs to be aware of what the accreditation scheme is and does. And there should be coverage of stewardship arrangements. Currently there is only one accredited voluntary scheme in Australia.

An important consideration for voluntary product stewardship schemes is the benefits derived from accreditation by the Commonwealth compared to the costs. These include the compliance costs in addition to the cost recovery fees (which will be set by the Rules). This is because every dollar consumed in fees and compliance costs is a dollar diverted from achieving the stewardship scheme’s purpose.

While reducing fees would improve the relative value of accreditation, removing reporting and regulatory duplication and Government funding a logo to achieve reasonable brand equity and awareness in the community should be addressed as well.

The funding crucial to the logo’s promotion is determined within the Australian Government’s budget. The legislation leaves reporting requirements and recovery fees to the Rules. The Bill is silent on how it interacts with other regulation. It is important that duplication is avoided if voluntary accreditation is to meet regulatory best practice and offer value to prospective product stewardship schemes and industry.

**Regulations that May Already Apply to Voluntary Product Stewardship Schemes**

Voluntary product stewardship schemes that are administered by body corporates are subject to a range of other regulatory obligations, which accreditation should not duplicate.

For example, arrangements that are companies limited by guarantee are regulated by ASIC, where there are annual return requirements for audited financial statements and directors’ reports in accordance with the Australian Accounting Standards. There are duties and obligations on directors of the body corporate to fulfil their fiduciary duties and not trade while insolvent, as set out in the Corporations Act 2001.

Arrangements may also be registered charities with the Australian Charities and Not For Profit Commission (ACNC). Since it commenced in 2012, all charities registered with the ACNC have had to meet certain obligations and responsibilities, including annual reporting and governance. The Commission licenses its “Charitable Tick” logo to signify the arrangement is a registered charity regulated by the ACNC.

It also requires registered charities to give 28 days’ notice if they are unable to meet their charitable obligations (similar to Section 72 of the Bill). It has a range of compliance powers from providing directions through to deregistering a charity that does not meet its obligations. Thus, a product stewardship scheme that is a registered charity has these obligations, based on the environmental purposes for which it was formed.

The ACNC has established a “report once, use often” principle, to reduce compliance burden on charities. For example, registered charities do not have to report to both ACNC and ASIC, except for certain matters.

Voluntary stewardship schemes and their participating companies are subject to other regulations to enable the formation of the scheme. For example, under the Competition and Consumer Act 2010, some schemes’ funding arrangements require ACCC authorisation. The authorisation process involves public consultation, to establish whether the benefits of a scheme meet the public interest test. The evidence considered and findings of the ACCC are a matter of public record and needs to be renewed through this public process from time to time.

Further, companies participating in a voluntary arrangement may also be subject to the National Environment Protection Measures, such as for used packaging. Those that have elected to join APCO, prior to the advent of the Product Stewardship Act 2011, also have packaging reporting requirements.

**Adding Value to Voluntary Arrangement Accreditation**
There are two opportunities to add value to accreditation, and reduce red tape, through the Bill:

1. Taking immediate steps to streamline the duplication of regulatory mechanisms that have been introduced over time, and now superseded by the Product Stewardship Act (as incorporated into the Bill), such as the National Environmental Protection Measure for Used Packaging (NEPM). The Bill should allow for where an accredited arrangement has equivalent objectives to the NEPM, then exemption from the NEPM should be granted to such accredited arrangements by the Minister. This could be assessed through the accreditation application process. Free-rider companies would not benefit from this exemption, providing more incentive for them to join the accredited arrangement. If an arrangement ceases to be accredited or a company leaves it, then they would cease to be eligible for the exemption.

2. The accreditation process can rely on existing reporting obligations under different legislation schemes. The ACNC's “report once, use often” principle is an exemplar in reducing red-tape and increasing efficiency. For example, accredited arrangements that are also registered charities could be deemed to meet financial information reporting rules while they remain accredited by the ACNC. The Rules for accreditation should consider the obligations on directors and officers of body corporates, under ACNC or the Corporations Act 2001.

Well-designed, well-targeted and fit-for-purpose regulation supports achieving policy priorities effectively. While the Bill seeks to foster voluntary approaches to product stewardship, which Paintback supports, the design of accreditation could act as a handbrake if its costs outweigh the benefits to prospective arrangements.

Thank you for your interest in Paintback's review of the Bill. I would be pleased to discuss any further questions the Committee may have.

Yours sincerely

Karen Gomez

**Chief Executive**