Senate Environment and Communications Committee Inquiry into the Product Stewardship Bill 2011 - Questions Taken On Notice

1. Regulatory impact assessment (Senator Cameron)

Senator Cameron requested advice on the definition of 'net benefit' and how net benefit is determined.

<u>What is the definition of 'net benefit'?</u>

The Australian Government's requirements for regulatory impact assessment are outlined in the Best Practice Regulation Handbook, June 2010 (the Handbook).[1] The independent Office of Best Practice Regulation (OBPR) assesses whether Regulation Impact Statements comply with the Best Practice Regulation requirements. The OBPR reports annually on compliance for both the Australian Government and COAG best practice regulation requirements and all Regulation Impact Statements are published on their website.[2]

Regulatory impact assessment requires a case to be made for acting in response to a perceived policy problem. The assessment involves identifying the problem to be addressed, explaining the objectives of government action, identifying a range of policy options (both regulatory and non-regulatory), undertaking an impact analysis and consulting on the options and impact analysis (refer pp 46-47 Handbook).

Policy options are assessed or analysed against a base case which is defined as the status quo or business-as-usual. A clear picture is required of how each option changes the status quo.

The impact analysis assesses the net impact of each option on the community as a whole taking into account all costs and benefits (refer p17 Handbook). Net benefit is the term commonly applied to the outcome of the impact analysis or of a benefit/cost analysis.

Assessments of costs and benefits can be either quantitative or qualitative but need to be based on evidence; with data sources and clearly articulated assumptions (refer 3.55). The Handbook recognises that some costs and benefits are difficult to quantify but indicates that such impacts still need to be considered (refer 3.55 Handbook).

There are a number of methodologies that can be used in assessing net benefit. These include cost-benefit analysis, net present value and cost effectiveness.

The Handbook (Appendix E) provides advice on cost-benefit analysis. It notes that cost-benefit analysis is useful because it:
- provides decision makers with quantitative and qualitative information about impacts
- encourages decision-makers to take account of all the positive and negative effects
- assesses impacts in a standard manner
- captures various linkages
- helps identify cost-effective solutions to problems by identifying and measuring all costs.

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[1] http://www.finance.gov.au/obpr/proposal/gov-requirements.html#handbook.
[2] http://www.finance.gov.au/obpr

The net present value of a policy or regulation is the present value of estimated benefits minus costs. Discount rates may be used to adjust for benefits and costs over time.

The Handbook (Appendix E) indicates that cost-effectiveness analysis can be used in circumstances where the most important aspects cannot be monetized. It compares alternative options using a single common measure eg lives saved. (Refer p73 Handbook).

Other methodologies that have been used in regulatory impact assessments where there are difficulties in quantifying impacts include:
- multi-criteria analysis where options are evaluated against a set of criteria which can reflect the desired conditions or outcomes that are sought eg equity, administrative simplicity, efficiency;
- analysis of alternative states where different possible worlds are evaluated in terms or risk and pay off (also known as the insurance approach);
- willingness-to-pay which surveys individuals on the price that they would accept to pay for avoiding an environmental or other impact.

The assessment methodology used in a Regulation Impact Statement will depend on the nature of the problem being addressed.

Practical examples

For products or materials to be subject to product stewardship regulation, a net community benefit must be established through the Government's requirements for Regulation Impact Statements.

The Decision Regulatory Impact Statement: Television and Computers, October 2009 used net present value to analyse different options for product stewardship of waste televisions and computers, including using a willingness-to-pay methodology to quantify non-market costs. The analysis established there was a net community benefit from the government imposing requirements for the collection and recycling of waste television and computers.[3] The process for gathering evidence and for reaching this conclusion included substantial research (such as into the magnitude of the problem, hazardous materials and their impacts) and stakeholder and community consultation before and during the preparation of the regulation impact statement.

The Stockholm Convention Regulation Impact Statement (2009) considered the associated costs and benefits to Australia of listing nine additional persistent organic pollutants on the Convention. The cost-benefit analysis was largely qualitative and drew on extensive scientific information on environmental and health impacts.[4]

Regulatory impact assessment does not always result in regulation. A Consultation Regulatory Impact Statement on plastic bags was released in January 2007[5]; this found that regulatory options for a phase-out had economic costs which significantly out weighed the environmental benefits. In April 2008, the Environment and Heritage Ministerial Council noted the analysis presented in a Decision Regulatory Impact Statement on plastic bags, particularly the financial costs of regulatory options, and resolved to not endorse uniform regulatory action at this time to ban or place a charge on plastic bags.

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[3] www.ephc.gov.au/sites/default/files/PS_TV_Comp__Decision_RIS__Televisions_and_Computers__200911_0.pdf
[4] www.environment.gov.au/settlements/chemicals/international/publications/pubs/ris.pdf
[5] www.ephc.gov.au/taxonomy/term/54

2. Submissions on the Product Stewardship Bill Consultation Paper (Senator Fisher)

Senator Fisher requested information concerning submissions on the Product Stewardship Legislation Consultation Paper. A total of 46 submissions were received in response to the consultation paper. The submissions are listed below. A summary of submissions on the consultation paper is available online.[6]

Submissions were received from a wide range of interested parties, including state government agencies, local government, individuals and NGOs. A large number of submissions were made by industry associations and companies, and included the Packaging Council of Australia, Australian Food and Grocery Council, waste management companies and the National Farmers Federation. The Australian Industry Group made a confidential submission. While the Australian Chamber of Commerce and Industry did not make a submission, it is represented on the Legislation Stakeholder Reference Group.

Submissions on the Product Stewardship Legislation Consultation Paper

| Submission No	Name
1	Lyndall McCormack *(confidential)*
2	Derek Fiddler
3	Veolia Environmental Services
4	Australasian Paper Industry Association
5	Western Australian Local Government Association
6	Lighting Council Australia
7	CropLife Australia Ltd
8	Tasmanian Department of Primary industries, Parks, Water and the Environment
9	AgStewardship Australia
10	Local Government Association of South Australia *(confidential)*
11	Condamine Alliance
12	Vinyl Council of Australia
13	Butt Free Australia
14	RENEW NSW
15	Winemakers' Federation of Australia
16	Global Product Stewardship Council
17	Local Government Association of Tasmania
18	The Packaging Council of Australia
19	Net Balance Management Group
20	Mornington Peninsula Shire
21	Close the Loop Ltd
22	Marian Wheatley
23	Western Television
24	Australian Industry Group *(confidential)*
25	Community Recycling Network Australia
26	Total Environment Centre
27	Australian Food and Grocery Council
28	Australian National Retailers Association
29	Product Stewardship Australia and the Consumer Electronics Suppliers Association

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[6] www.environment.gov.au/settlements/waste/product-stewardship/consultation/pubs/ps-legislation-submissions-summary.pdf

30	Australian Local Government Association
31	Australian Information Industry Association
32	Tony Shadwell *(confidential)*
33	Infoactiv Group
34	Sustainable Engineering Group, Curtin University
35	Tony Backhouse
36	Metropolitan Waste Management Group
37	EPA Victoria
38	Encycle Consulting *(confidential)*
39	Publishers National Environment Bureau
40	Queensland Department of Environment and Resource Management *(confidential)*
41	National Farmers Federation
42	Australian Network of Environmental Defender's Offices
43	Western Australian Waste Authority
44	Plastics and Chemicals Industries Association
45	Australian Tax Office *(confidential)*
46	NSW Department of Environment, Climate Change and Water *(confidential)*

3. Application of product stewardship criteria (Senator Birmingham)

Senator Birmingham requested "a serious example that you would want to have fit the criteria that could not manage to clear the hurdles of either proposed sections 5(b) or 5(c) were you to make one of those two mandatory".

In answering this question, consideration needs to be given to the range of "hurdles" that would have to be cleared before voluntary product stewardship arrangements could be accredited or obligations imposed under the co-regulatory or mandatory provisions of the Bill. The basic process for the co-regulatory and mandatory provisions is illustrated in the following diagram.
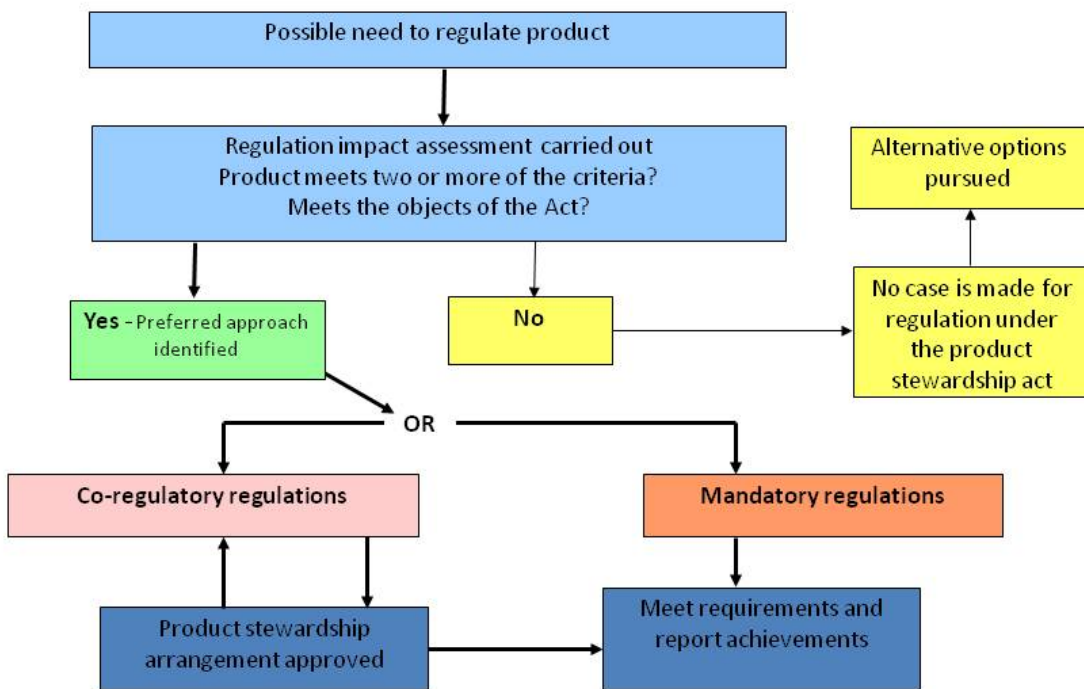
The Bill requires the Minister to consider the product stewardship criteria before recommending the making of regulations, these criteria are also intended to identify key matters that are relevant in the assessment phase (items 1-3 in the table below).

Items	Requirement	Source of requirement
1	Environment Ministerial Council recommends consideration of regulatory options for a class of products or a candidate class of products is indentified through the treaty making process.	Australian Government Policy
2	A consultation Regulation Impact Statement is published, canvassing different options.	Australian Government and COAG Policy
3	A final Regulation Impact Assessment, which assesses the overall community benefit of each option, is cleared by the Office of Best Practice Regulation and published.	Australian Government and COAG Policy
4	In light of the decision on the Regulation Impact Statement, the responsible Minister and the Government endorse regulations under the Product Stewardship Act as the preferred option.	Australian Government Policy
5	The Government consults on the proposed regulations.	Section 17, *Legislative Instruments Act 2003*
6	The obligations imposed by the regulations relate to one or more of the matters specified in proposed section 21(3) and 37(2).[7]	Product Stewardship Bill 2011, subclauses 21(3) and 37(2)
7	The Minister is satisfied that making the regulations will further the objects of the Act.	Product Stewardship Bill 2011, subclause 19(3) and clause 39
8	The Minister is satisfied that the product stewardship criteria are met.	Product Stewardship Bill 2011, subclause 19(3) and clause 39
9	The regulations are made and tabled in each House of Parliament.	Part 5, *Legislative Instruments Act 2003*

In practice it is the regulation impact assessment process that has the greatest impact on whether a product might be regulated and the form regulation may take. It provides the mechanism for articulating the problem to be addressed by regulation, the objectives for taking action to address that problem, and allows for the analysis of the costs and benefits of a range of options. This could include options relating to regulation under the Product Stewardship legislation (either co-regulatory or mandatory), other regulatory mechanisms, or voluntary action. The product criteria assist in determining the magnitude of the impact of a product and influence whether using the voluntary, co-regulatory or mandatory provisions of the Product Stewardship legislation would be considered as options and the factors taken into account in the analysis of those options.

In relation to the question regarding 5(a) and 5(c) being mandatory criteria, the following information is provided. While many classes of products that are candidates for voluntary, co-regulatory or mandatory product stewardship may fall within either 5(b) or 5(c), retention of the all the other criteria is necessary to identify key matters that are relevant in the regulatory impact assessment process and in consideration of voluntary product stewardship proposals.

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[7] These are drawn from the National Waste Policy. They include, for example, actions related to recycling of products.

Paragraph 5(b) of the Bill directs the Minister's attention to whether products contain hazardous substances. This criterion was included because hazardous substances in products can increase the impacts of products on the environment and human health and safety. This criterion is relevant to Australia's international obligations, as Australia has responsibilities with respect to hazardous substances arising from a number of international agreements, including the Stockholm Convention on Persistent Organic Pollutants. If 5(b) was made mandatory then, for example, packaging would not be a suitable candidate for the legislation. The stated intention of Environment Ministers is that when the Packaging Covenant is next reviewed then consideration would be given to inclusion of packaging under this legislation. Tyres, which are not hazardous under Australia law, would also not qualify for voluntary accreditation

Paragraph 5(c) relates to material conservation and resource recovery, and associated benefits such as reducing greenhouse gas emissions. This criterion may be satisfied, for example, where reuse or recycling requires less energy or water than production of a new product. If 5(c) was mandatory then consideration could not be given to product stewardship of products that contain hazardous substances that need safe destruction and should not be recovered. For example, the collection of chemicals and paint may not qualify and ChemClear or the Australian Paint Manufacturers Federation's Pilot Waste Paint Scheme may not be able to seek voluntary accreditation. Stockholm Convention listed persistent organic pollutants in products could not be managed by the Bill. Reducing hazardous substances in products at design stage would also not then be covered by the legislation.

If either 5(b) or 5 (c) were mandatory criteria, voluntary action to reduce plastic bags, for example, is unlikely to be able to be accredited (NB: EPHC decided not to progress national regulation of plastic bags in 2008) – based on the regulatory impact statement on plastic bags, there appears to be little resource recovery or conservation of resources to be gained from reducing the use of light weight plastic bags and while they can have impacts on wildlife as a result of ingestion or entanglement – these impacts are not technically hazardous.

4. Product Stewardship Priorities (Senator Ludlam)

Senator Ludlam requested information and documentation concerning the Commonwealth's priorities for product stewardship.

The Product Stewardship Bill 2011 is part of a broader national product stewardship framework established by the National Waste Policy, which was endorsed by the Council of Australian Governments (COAG) in 2010. The bill provides the legislative underpinning for this national framework and will enable Australia to more effectively manage the environmental, health and safety impacts of products. It will support and encourage voluntary action, but also provide regulatory support where needed. Current priorities for product stewardship action identified in the National Waste Policy Implementation plan (see extract from plan below), agreed by all jurisdictions, are: computers/televisions, tyres, mercury containing lights and packaging/litter.

The bill is supported by other components of the national framework, in particular the existing governance structures and activities of the Environment Ministerial Council (the Environment Protection and Heritage Council). As part of COAG's agreement to the National Waste Policy, the primary role of establishing priorities for product stewardship rests collectively with Australia's Environment Ministerial Council. Strategy 1 of the National Waste Policy provides that "Consultation on additional products that might be regulated in the future will be through EPHC" (p.9). This is the long-standing mechanism for identifying priorities and has a history of active and broad consultation with stakeholders on a range of products. The use of the Council makes practical sense as the Council undertakes this role already, it includes all jurisdictions and local government, has well established consultative mechanisms and experience with regulatory impact analysis of products (currently undertaking impact analysis on packaging).

The work of the Ministerial Council is supported by a Product Stewardship Working Group which has responsibility for providing advice on strategic and emerging product stewardship issues and priorities. The Terms of Reference for the Group are available online and are at Attachment A.[8]

There are a range of products on the Ministerial Council's work program, as well as those on which industry is already taking voluntary action, which align with action being taken on products internationally and with those on state lists (see the table below for a summary and Attachment B for more detail). In Australia there are six products or materials that are either currently subject to assessment for product stewardship or that have been previously assessed by the Environment Ministerial Council. These are Packaging, Plastic Bags, Mercury Containing Lights, Computers and Televisions, Tyres and Packaging and litter (including Beverage Containers).

This assessment by the Ministerial Council has resulted in two national co-regulatory approaches (one in place and one under development), two voluntary (one in place and one under development); one left to individual approaches following regulation impact assessment demonstrating a net cost of action (plastic bags), and one currently being subject to regulation impact assessment. There are seven other products or materials that already have voluntary arrangements in place and one for which there is an effective domestic market. There are a further two mandatory schemes subject to Commonwealth legislation since 1998 and 2001. Of these 16 products and materials 12 are subject to product stewardship in a number of countries in North America, the EU and the Asia Pacific region. Those not currently broadly adopted internationally for product stewardship are PVC, Cigarette Butts, Chemical Containers, and Treated Timber.

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[8] http://www.ephc.gov.au/sites/default/files/WG_1__Product_Stewardship__ToR_Dec2010.pdf

Product Stewardship Approaches and Status in Australia and Internationally - Summary

	Product/Material	Type: Voluntary Coregulatory Mandatory	Status	Lead	Details	International Product Stewardship North America EU Asia Pacific
1	Refrigerant Gases	Mandatory	1998		Commonwealth legislation	YES
2	Newspapers	Voluntary	1998		Industry Scheme	YES
3	Chemical Containers	Voluntary	1998		Industry Scheme	
4	Packaging	Coregulatory	1998	EPHC	Industry & jurisdictions through regulation in each jurisdiction	YES
5	Batteries	Voluntary	1998		Industry market	YES
6	Mobile Phones	Voluntary	1999		Industry Scheme	YES
7	PVC	Voluntary	2000		Industry Scheme	
8	Used Lubricating Oil	Mandatory	2001		Commonwealth legislation	YES
9	Cigarette Butts	Voluntary	2003		Industry	
10	Timber	Voluntary	2007		Industry Scheme	
11	Plastic Bags		2008	EPHC	Industry & individual jurisdictional action Did not meet requirements for regulation in 2008	YES
12	Paint	Voluntary	2011		Trial in progress	YES
13	Mercury Lights	Voluntary	2010	EPHC	Voluntary developed with industry	YES
14	Computers and TVs	Coregulatory	2011	EPHC	Met requirements for regulation in 2009 Implementation in progress	YES
15	Tyres	Voluntary	2011	EPHC	Voluntary scheme under development with industry Did not meet requirements for regulation in 2009	YES
16	Packaging (including beverage containers) & Litter	Mandatory-Coregulatory-Voluntary	2011	EPHC	Subject to regulation impact assessment 2011	YES

The National Waste Policy Implementation Plan,[9] published in July 2010, identifies the product stewardship legislation and schemes for televisions/computers, packaging/litter, mercury containing lights and tyres as the priority for the first two to three years. The Ministerial Council is consulting both directly with key stakeholders and/or publically on these products.

Other strategies under the National Waste Policy support the delivery of the national product stewardship framework, for example, Strategy 12 addresses the hazardous content of wastes and Strategy 5 seeks to remove market impediments to the use of wastes.

Extract from the National Waste Policy Implementation Plan

Strategy 1: To establish a national framework underpinned by legislation to support voluntary, co-regulatory and regulatory product stewardship and extended producer responsibility schemes to provide for the impacts of a product being responsibly managed during and at end of life.		
National Action	*Initiatives*	**Major Milestones**
Lead: Australian Government **Support:** States & Territories Link to National Waste Policy outcomes: 1,3,4,7,8	Develop and enact Commonwealth national product stewardship framework legislation.	Stakeholder reference group established May 2010 Discussion paper released July 2010 Bill introduced into Parliament in spring 2010 sitting period (NB: delayed by Federal Election). Legislation in place by 2011
	Develop and implement national television and computer product stewardship scheme	Implementation Working Group established March 2010 Stakeholder consultation from April 2010 Draft scheme developed by industry by July 2010 Scheme commences by mid 2011 National code of practice for e-waste recyclers developed and transitioned to an Australian Standard by December 2012
	Develop and implement national tyre product stewardship strategy	Implementation Working Group established April 2010 Strategy developed by industry by May 2011 Strategy commences by end 2011
	Develop and implement Fluorocycle scheme for mercury containing lamps	Program commences by September 2010 (has commenced)
Strategy 3: To better manage packaging to improve the use of resources, reduce the environmental impact of packaging design, enhance away from home recycling and reduce litter.		
Lead: Australian government **Collaboration:** State, territory &,	Develop and implement the Australian Packaging Covenant	Consultation Regulatory Impact Statement by May 2010 Decision Regulatory Impact Statement released by June 2010 National Environmental Protection (Used Packaging

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http://www.ephc.gov.au/sites/default/files/WasteMgt__National_Waste_Policy_Implementation_Plan_Final_201007.pdf

local governments, industry and the community		Materials) Measure amended by end June 2010 Australian Packaging Covenant commences July 2010
Link to National Waste Policy outcomes: 1,2,4,7	Scope and develop national standards	Draft Australian Standard for biodegradable plastics in home composting released for comment in February 2010. Research on the rate and extent of biodegradable plastics in relevant Australian soil and marine environments completed by September 2010 Australian Standard for degradable plastics in home composting finalised September 2010. Two additional standards on plastics and biodegradable plastics by 2012. Scope need for other packaging standards by 2012.
	Additional measures to improve recycling of packaging and reduce litter	Survey of community attitudes on willingness to pay to improve recycling of packaging and to reduce litter (choice modeling) completed by July 2010. Environment Protection and Heritage Council consider choice modeling report by July 2010.

5. Approaches under other legislation (Senator Cameron)

Senator Cameron asked whether there are examples of how legislation has moved from providing a framework to operating effectively.

Examples of framework legislation include:
- *Waste Avoidance and Resource Recovery Act 2001* (NSW)
- *Waste Avoidance and Resource Recovery Act 2007* (WA)
- *Waste Minimisation Act 2008* (NZ)
- *Environmental Management Act* (British Columbia, Canada)
- *Act to Provide Leadership Regarding the Responsible Recycling of Consumer Products* (Maine, US)

One of the tests of effectiveness for framework legislation is whether it actually deals with any products in practice. On this basis, the voluntary product stewardship provisions of the *Waste Minimisation Act 2008* (NZ) are effective. Under this Act, voluntary product stewardship schemes may be accredited subject to basic requirements being met. Five schemes have been accredited to date (collection of used oil, recycling farm plastics, glass packaging, agrichemical plastic containers and chemicals, and refrigerant recovery), and two are under assessment. The New Zealand experience suggests that voluntary proposals can come forward in the absence of a government position on priority products.

Under the same test, of whether legislation actually deals with any products in practice, British Columbia's *Environmental Management Act* has operated effectively. This Act has a broad regulation-making power, with no reference in the legislation to how products should be identified for regulation or possible regulation. It simply provides (in section 138) that regulations may be made:

> *(j) regulating and imposing requirements and prohibitions respecting*
> > *(i) the transportation, labelling, handling, treatment, recycling, recovery, storage, disposal and destruction, and*
> > *(ii) the selling, giving or otherwise transferring of the ownership or possession,*
> *of recyclable materials or wastes or classes of wastes or reusable resources, including energy potential recovered from wastes*

The *Recycling Regulation*, made under this provision, has established product stewardship schemes for beverage containers, solvent and flammable liquids, pesticides, gasoline, pharmaceuticals, lubricating oil, empty oil containers, oil filters, paint, electronic and electrical products and tyres.

Similarly, *Act to Provide Leadership Regarding the Responsible Recycling of Consumer Products* (Maine, US) (and several other US Acts) has very similar criteria to the Product Stewardship Bill:
"The department may identify a product or product category as a candidate for a product stewardship program if the department determines one or more of the following criteria are met:
A. The product or product category is found to contain toxics that pose the risk of an adverse impact to the environment or public health and safety;
B. A product stewardship program for the product will increase the recovery of materials for reuse and recycling;
C. A product stewardship program will reduce the costs of waste management to local governments and taxpayers;
D. There is success in collecting and processing similar products in programs in other states or

countries; and
E. Existing voluntary product stewardship programs for the product in the State are not effective in achieving the policy of this chapter."
Maine has taken product stewardship action on Dry cell mercuric oxide and rechargeable batteries, Mercury auto switches, Electronic waste, Cell phones, Mercury thermostats, Mercury-added (fluorescent) lamps.

In contrast to the above examples, the *Waste Avoidance and Resource Recovery Act 2001* (NSW) does establish a process for identifying priority products.[10] Section 18 of the Act provides that:

> *(1) The Director-General is required to publicly advertise each year a priority statement with respect to the extended producer responsibility schemes the Director-General proposes to recommend for implementation under this Part.*
>
> *(2) The advertisement is to be published in at least 2 newspapers circulating throughout the State and in such other publications as the Director-General considers appropriate.*
>
> *(3) The advertisement is to invite written submissions to the Director-General on any relevant matter relating to the priority statement and state the period (being not less than 1 month after the advertisement is last published) within which submissions may be made.*
>
> *(4) The Director-General is, not later than 3 months after the closing date for submissions, to publish a report on any submissions received by the Director-General and to make the report available to the public.*

Pursuant to this provision, 3 priority statements have been produced (2004, 2005, 2007) and a draft statement was released in 2010 for public comment. Each statement has identified "wastes of concern", 16 wastes were identified in 2005 with 17 such wastes being identified in the 2010 statement, and some recommendations have been made for regulatory action. However, no regulations have been made under the 2001 Act to establish extended producer responsibility schemes.

While there are clearly different factors at work across these examples (including in the NSW case, where they identified a need for national legislation for products like televisions/computers and tyres) they do illustrate that statutory mechanisms to identify "priority products" do not necessarily result in more product stewardship activity.

The international examples of framework legislation also do not suggest that framework legislation results in any real difference, when compared to adhoc legislation or those using a listing approach, in the number and type of products being regulated or having voluntary arrangements put in place because of industry and community concern. The significant difference appears to be that framework legislation applies a consistent rather than piecemeal, approach to regulation of products and hence reduces regulatory red tape.

Some framework legislation contains procedural requirements, such as requirements for adequate consultation before regulations are made.[11] The introduction of requirements of this kind into the Product Stewardship Bill 2011 would involve duplication, and possibly inconsistency, with

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[10] The *Waste Avoidance and Resource Recovery Act 2007* (WA) has similar provisions.
[11] See, for example, the requirement in the *Waste Minimisation Act 2008 (NZ)* that the Minister must be satisfied that there has been adequate consultation with persons or organisations that may be significantly affected by the regulations.

consultation requirements in section 17 of the *Legislative Instruments Act 2003* and under Commonwealth policy concerning regulatory impact assessment.

There are a number of examples of "framework" legislation, in the sense of legislation that can apply to a range of products identified in legislative instruments, dealing with issues other than waste. For example, other Acts provide for levies to be imposed with respect to primary products identified in regulations (*Primary Industries (Customs) Charges Act 1999,* Schedule 14 and *Primary Industries (Excise) Levies Act 1999* Schedule 27.) and for water efficiency and labelling standards to apply to products identified in a Ministerial determination (*Water Efficiency Labelling and Standards Act* 2005, section 18).

6. Products have been covered by legislation overseas (Senator Cameron)

Senator Cameron requested links to two studies commissioned by the Department. These studies are:
- Perchards, *Product Stewardship in North America and Europe* (June 2009), available at www.environment.gov.au/settlements/waste/publications/product-stewardship-na-eu.html
- Institute for Sustainable Futures, *Product Stewardship Schemes in Asia: China, South Korea, Japan and Taiwan* (2009), available at www.environment.gov.au/settlements/waste/publications/product-stewardship-asia.html.

The studies consider a number of the overseas product stewardship schemes- table below refers.

Examples of product stewardship schemes in Europe, North America Asia

Product	Country	Legislation and/or programs
Waste electrical and electronic Equipment	European Union	Directive 2002/96/EC on waste electrical and electronic equipment and Directive 2002/95/EC no restriction of use of hazardous substances in electrical and electronic equipment
	United Kingdom	*Waste Electrical and Electronic Regulations*
	Netherlands	*Waste Electrical and Electronic Equipment Decree of July 2004*
	USA (23 states)	For example, *Minnesota Electronics Recycling Act 2007*
	Canada	*Waste Diversion Act 2002 (Ontario), Recycling Regulation (British Columbia)*
	China	Management Regulation on the Recycling and Treatment of Disposal Appliances and Electronic Products
	Taiwan	*Waste Disposal Act 1988*
	Japan	*Law for the promotion for the effective utilisation of resources 2003*
Batteries	European Union	Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators
	Belgium	Belgian Battery Take-back Scheme (BEBAT)
	Canada	Waste Diversion Ontario Battery Scheme
	South Korea	*Product Recycling System 2003*
	Taiwan	*Waste Disposal Act 1988*
Mercury containing Products	European Union	Directive 2002/95/EC Reduction of Hazardous Substances
	USA	Lamp and other Mercury-containing Products Programs
	South Korea	*Product Recycling System 2003*
Packaging	European Union	Directive 94/62/EC on packaging and packaging waste
	France	*Household packaging decree*
	Germany	*Closed-Loop Substance and Waste Management Act 1994* (includes the German Packaging Ordinance)
	Switzerland	*Beverage Container Ordinances of 1990 and 2000*
	United Kingdom	*Producer Responsibility Obligations (Packaging Waste) Regulations*
	Japan	Containers and packaging recycling law
	Taiwan	*Waste Disposal Act 1988*
General consumer products (e.g., tyres whitegoods, lubricants,)	European Union	Directive 2005/64/EC on approval of motor vehicles with regard to their re-sale, recycling and recovery
		Council Directive 75/439/EEC on disposal of waste oils
	Netherlands	*Management of White and Brown Goods Decree 1998*
	Canada	*Ontario's Waste Diversion Act 2002, British Columbia's Waste Recycling Regulation 2004*
	South Korea	*Product Recycling System 2003*
	Japan	*Home Appliance Recycling Law 2001, Law for Promotion of Effective Utilisation of Resources*

7. Advisory committees (Senator Cameron)

Senator Cameron requested examples, including international best practice, on establishing a committee to assist government in managing waste and determining priorities.

There appears to be no definitive information available on what is best practice in relation to waste or product advisory committees (eg reviews of practice or individual arrangements). Advisory committees are used widely in waste management, just as they are in many aspects of government, they range from those with broad roles, such as advisory committees set up to assist with broad strategic planning (eg state level waste strategies) and subject matter or expert advisory committees to provide advice on specific products or issues like the management of hazardous waste (eg Stakeholder reference groups on tyres, packaging, television and computers in the context of the Environment Protection and Heritage Council or mercury advisory committees at state and federal levels in the US).

As a rule advisory committees tend to be established to provide expert advice or as representative of stakeholders that are impacted by legislation, or a combination of both. It is a general principle of committees that to be effective they need to be small and have clear terms of reference. In looking at best practice, given the very different natures of products and associated industries (eg agricultural chemicals vs tyres), consideration needs to be given to what is more effective in achieving the desired outcome. Will such a committee duplicate existing governance arrangements or enhance them? Can a single standing committee adequately represent or provide expertise on a broad range of products (such as in the New Zealand Waste Advisory Board) or is it more appropriate to target activities through industry or product specific advisory committees (the approach used by the EPHC and by Standards Australia)? The limitations on a single standing advisory committee may disenfranchise those not represented on the committee (eg the suggestion by one witness that they heard about the NSW Advisory Committee's recommendations when they were published).

One example of a committee being established to manage waste and determine priorities is New Zealand where a statutory Waste Advisory Board has been established to advise the responsible Minister on a range of issues, including the waste levy and whether products should be declared to be "priority products" (but does not require them to develop a list) for the purposes of the Waste Minimisation Act 2008 (NZ). The Minister is required by the Act to obtain and consider advice from the Board before recommending the making of relevant regulations.

New Zealand is a small country, similar in population to NSW and, unlike Australia, is not a federation and therefore does not have to consult with the States and Territories, as the Australian Government does through the Environment Minister's Council. Similarly, as a jurisdiction NSW does not deal with the complexities of a national market and stakeholders, this may make it easier to select representatives for a committee.

The Waste Avoidance and Resource Recovery Act 2001 (NSW) provides for a non-statutory committee with expert, business and non government organisation representatives was established to assist the Director-General of the Department of Environment and Conservation in identifying "wastes of concern" and products that should be subject to regulation also provides for an advisory committee.

In addition, there are a number of difficulties with establishing a single, standing advisory committee including:

- Given the very different natures of products and associated industries, even a large advisory committee could not practically represent and/or provide expert advice on all products and the supply chain related to those products.
- The National Waste Policy, agreed by all jurisdictions, states that consultation on additional products that might be regulated would be through the Environment Ministers Council and a governance structure is already in place (see diagram at page 8 above) – a separate advisory committee would duplicate the work of the Council.
- There would be little value to be gained from an advisory committee identifying candidate products, given the range of products already identified by Ministerial Council, states and industry.

The approach taken under the National Waste Policy is to establish specialist consultative committees to address particular products, as has been done for televisions/computers, tyres, packaging and mercury-containing lighting. Rather than establishing a single standing advisory committee it would be more effective to continue current practice of establishing stakeholder reference groups and/or working groups relevant to products and their supply chain.

8. Agricultural chemicals (Senator Fisher)

Senator Fisher asked whether it is intended that the bill be able to apply product stewardship requirements to, for example, farmers applying chemicals to their crops.

This is not intended. The way in which chemicals are applied to crops is covered by the National Registration Scheme for agricultural chemicals, administered by the Australian Pesticides and Veterinary Medicines Authority.

9. Submissions on the consultation paper on television and computer regulations (Senator Fisher)

Senator Fisher requested a copy of the submissions provided in response to the consultation paper concerning the proposed regulations on the National Television and Computer Product Stewardship Scheme.

62 submissions have now been received. Submissions have been received from a wide range of interested parties, including local government, NGOs, waste management companies, importers of televisions and computers, and key industry associations such as the Australian Industry Group, Australian National Retailers Association, Product Stewardship Australia and the Australian Information Industry Association.

The majority of submissions are now available on the department's website.[12] There are 17 submissions that have not been published on the department's website. 12 of these were confidential submissions and 5 were provided as a draft-in-confidence, pending final approval from the submitting organisation. The Department will provide copies of these submissions to the Committee separately. The confidential submissions are provided to the Committee on the understanding that they will be treated as confidential and will not be disclosed outside of the Committee or specifically referenced in the Committee's report.

Submissions on the National Television and Computer Product Stewardship Scheme: Consultation Paper on Proposed Regulations

Submission No.	Name
01	Cr Jerome Appleby *(confidential)*
02	Above Capricorn Technologies
03	Clare Cox
04	Mike Ritchie and Associates
05	Qubator Pty Ltd
06	Mai-Wel E-cycling Services
07	Calder Regional Waste Management Group
08	RAMROC Riverina Waste Group
09	Brisbane City Council
10	Advanced Recycling Technologies *(confidential)*
11	TEAC Australia Pty Ltd *(confidential)*
12	City of Whitehorse
13	GreenFix Environmental, on behalf of the Victorian Alliance of Australian Disability Enterprises
14	City of Mount Gambier
15	Close the Loop Ltd
16	North East Victorian Regional Waste Management Group
17	Southern Sydney Regional Organisation of Councils
18	Palsonic *(confidential)*
19	City of Marion
20	Waste Authority of Western Australia
21	Environment House
22	Eastman Kodak Company
23	PGM Refiners *(confidential)*

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[12] http://www.environment.gov.au/settlements/waste/ewaste/consultation/index

24	South Western Regional Waste Management Group *(confidential)*
25	PENTAQ Technology Pty Ltd
26	Australian Industry Group
27	Western Metropolitan Regional Council
28	Ashfield Council
29	Centre for Wireless Monitoring and Applications, Griffith University
30	Green Technology Management *(confidential)*
31	TES-AMM Australia Pty Ltd *(confidential)*
32	Total Environment Centre
33	Local Government and Shires Associations of NSW *(draft-in-confidence)*
34	ACT NOWaste
35	South East Resource Recovery Regional Organisation of Councils
36	Cash for Computers
37	Sony Australia Limited
38	Net Balance Management Group
39	Buyequip Pty Ltd
40	Australian Mobile Telecommunications Association
41	Western Australian Local Government Association
42	Hisense Australia *(confidential)*
43	SITA Environmental Solutions *(confidential)*
44	Infoactiv Group *(confidential)*
45	Community Recycling Network Australia
46	Lake Macquarie City Council
47	Municipal Association of Victoria
48	Local Government Association of South Australia *(draft-in-confidence)*
49	Local Government Association of Tasmania
50	Metropolitan Waste management Group
51	Sims Recycling Solutions
52	Apple Pty Ltd *(confidential)*
53	Gippsland Regional Waste Management Group
54	Australian National Retailers' Association
55	Central Murray Regional Waste Management Group
56	Product Stewardship Australia and the Australian Information Industry Association, supported by the Consumer Electronics Suppliers' Association
57	Australian Information Industry Association
58	Riverina Eastern Regional Organisation of Councils
59	City of Sydney *(draft-in-confidence)*
60	National Association of Charitable Recycling Organisations *(draft-in-confidence)*
61	NSW Office of Environment and Heritage *(draft-in-confidence)*
62	Western Sydney Regional Organisation of Councils

National Waste Policy Strategy Cluster 1
Product Stewardship Working Group
Terms of Reference[13]

Background

On 5 November 2009, the Environment Protection and Heritage Council (EPHC) endorsed the *National Waste Policy: Less waste, more resources* (the NWP).

At the 5 July 2010 meeting of the EPHC, the NWP Implementation Plan was endorsed. The Implementation Plan contains a number of high level priorities and timeframes that have been agreed by EPHC. It also sets out priority initiatives and milestones for each of the 16 strategies for the first five years. These strategies are grouped into seven clusters and a working group is to be established to implement the work program for each strategy cluster.

A key outcome of the NWP is that there is shared responsibility for reducing the environmental, health and safety footprint of manufactured goods and materials across the manufacture-supply consumption chain and at end of life. The NWP Implementation Plan includes a suite of initiatives and milestones aimed at supporting business and consumers to appropriately manage end of life products, materials and packaging. The Product Stewardship Working Group, chaired by the Australian Government with state and territory government representation, is dedicated to the implementation of strategies one and three of the NWP (see Attachment A).

Work on these initiatives is already underway and a number of groups have been established that variously involve the three tiers of government, business, industry, NGOs and the community. These groups will continue to operate until they have delivered on their objectives. They are:

- Product Stewardship Framework Legislation Stakeholder Reference Group;
- National Television and Computer Product Stewardship Scheme Implementation Working Group;
- National Television and Computer Product Stewardship Scheme Stakeholder Reference Group;
- Tyres Implementation Working Group;
- FluoroCycle Administrative Committee[14] and Stakeholder Advisory Group;
- Senior Officials Oversighting Group for the packaging waste and litter consultation regulatory impact statement; and
- Australian Packaging Covenant Council[15].

New initiatives that are developed or suggested by existing working groups may be taken on by the Product Stewardship Working Group, where this is appropriate. In this way, the work program of some existing working groups may transition to the Product Stewardship Working Group over time.

The Implementation Plan acknowledges that in addition to these priority initiatives, individual jurisdictions will continue to manage waste in line with their strategic objectives and constitutional responsibilities. This may include developing and funding their jurisdictional initiatives in addition to initiatives within the work plan of the Product Stewardship Working Group.

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[13] ToR approved by EPH Standing Committee on 6 December 2010.

[14] The Fluorocycle Administrative Committee and the Australian Packaging Covenant Council are existing bodies with independent governance and reporting requirements separate to those of the Product Stewardship Working Group and agreed by EPHC that guide their operations.

[15] Ibid.

Role of the Product Stewardship Working Group

The role of the Product Stewardship Working Group is to facilitate implementation of the 'Taking Responsibility' key direction in the National Waste Policy (NWP) by providing a collaborative forum which:

- Provides advice to the Environment Protection and Heritage Council Steering Committee (EPHSC) and Ministers on strategic and emerging product stewardship issues and priorities and, as directed, develops appropriate strategies and evaluation frameworks.

- Shares knowledge, discusses potential opportunities for improved product stewardship practices and outcomes in the short and long term and develops and implements new initiatives under the auspices of the NWP.

- Supports the Australian Government to establish a national framework underpinned by legislation to support voluntary, co-regulatory and regulatory product stewardship to provide for the impacts of a product being responsibly managed during and at end of life;

- Supports all governments to bring about better management of products (and materials) throughout their life cycle to improve the use of resources, reduce the environmental impact of product design, reduce the amount of waste for disposal and reduce litter;

- Liaises with the chairs of relevant product stewardship bodies to regularly report progress against NWP Implementation Plan milestones, and identify, discuss and report on cross-cutting emerging issues to the EPHSC and Ministers[16] (see reporting section below);

- Submits requests for cross-jurisdictional projects under the agreed work plan for the Product Stewardship Working Group to the EPHSC for approval prior to proceeding; and

- Establishes and co-ordinates subgroups to oversee new product stewardship schemes, as required.

Work Plan

A Work Plan will be required for new NWP product stewardship initiatives.

The Work Plan, using the Implementation Working Group (IWG) template, is to be developed by the Product Stewardship Working Group. The Work Plan will include a breakdown of key activities, associated timeframes and costs, funding sources, responsibilities, stakeholder engagement, and risk management strategies.

Where funding is required for cross-jurisdictional projects to implement elements of this Work Plan and cost sharing is agreed by the Product Stewardship Working Group members, a draft proposal using the funding template provided by the IWG is to be submitted for approval to the EPHSC through the IWG.

Once finalised, this Work Plan must be provided to EPHSC for endorsement, and will form an attachment to these Terms of Reference.

Membership

The Product Stewardship Working Group will be chaired by the Australian Government and comprise representatives from state, territory and local governments.

The Product Stewardship Working Group may establish one or more sub-groups to implement specific initiatives under the NWP.

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[16] Following the 2009 COAG Review of Ministerial Councils, the EPHC will be wound-up by December 2010. Therefore in this document all references to EPHC and EPHSC can be read to mean any other forum that is created to replace EPHSC and EPHC.

If the Product Stewardship Working Group requires expert advice, participation of an expert will be at the discretion of the Chair. The Chair may invite representatives to attend meetings from relevant government departments, organisations or businesses as required.

Where a member cannot attend, a nominated proxy will be accepted. Observers may attend at the Chair's discretion. Members will fund their own participation.

Administrative support

The National Environment Protection Committee Service Corporation (NEPSC) may provide administrative support to the group[17]. Alternatively, the Chair, co-Chair or meeting hosts may provide some of these services.

Administrative support may involve arranging meetings and distributing papers, as well as managing Product Stewardship Working Group cross-jurisdictional contracts and coordinating reports for EPHSC and EPHC. The Product Stewardship Working Group members will be provided with an agenda prior to each meeting, and a summary record of the meeting and actions arising will be distributed to all working group members as soon as practicable after each meeting.

Frequency and conduct of meetings

The Product Stewardship Working Group will meet regularly or as required to progress its work. Teleconferences will be used where appropriate to minimise time and expense to members and other participants.

Reporting

The Chair of the Product Stewardship Working Group will be responsible for:

- Co-ordinating reports twice a year on the progress of existing and new initiatives under NWP strategies one and three to EPHSC and once a year to EPHC; and
- Reporting through the NWP IWG using the IWG templates.

The IWG is responsible for co-ordinating reports and funding requests from the seven working groups for EPHSC and EPHC on the activities and progress of the NWP.

Confidentiality

Discussions of the Product Stewardship Working Group are 'government-in-confidence'. The Working Group will agree on what, if any, information should be released into the public domain.

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[17] NEPSC's role in providing administrative support to working groups will be subject any changes to EPHC arrangements arising from the 2009 COAG Review of Ministerial Councils.

National Waste Policy Priority Initiatives and Major Milestones[18]

Strategy Cluster 1: Product Stewardship

Strategy 1: To establish a national framework underpinned by legislation to support voluntary, co-regulatory and regulatory product stewardship and extended producer responsibility schemes to provide for the impacts of a product being responsibly managed during and at end of life.

- Develop and enact Commonwealth national product stewardship framework legislation:
    - Stakeholder reference group established May 2010;
    - Discussion paper released July 2010;
    - Bill introduced into Parliament in spring 2010 sitting period; and
    - Legislation in place by 2011.
- Develop and implement national television and computer product stewardship scheme:
    - Implementation Working Group established March 2010;
    - Stakeholder consultation from April 2010;
    - Draft scheme developed by industry by July 2010;
    - Scheme commences by mid 2011; and
    - National code of practice for e-waste recyclers developed and transitioned to an Australian Standard by December 2012.
- Develop and implement national tyre product stewardship strategy:
    - Implementation Working Group established April 2010;
    - Strategy developed by industry by May 2011; and
    - Strategy commences by end 2011.
- Develop and implement Fluorocycle scheme for mercury containing lamps:
    - Program commences by September 2010.

Strategy 3: To better manage packaging to improve the use of resources, reduce the environmental impact of packaging design, enhance away from home recycling and reduce litter.

- Develop and implement the Australian Packaging Covenant:
    - Consultation Regulatory Impact Statement by May 2010;
    - Decision Regulatory Impact Statement released by June 2010;
    - National Environmental Protection (Used Packaging Materials) Measure amended by end June 2010; and
    - Australian Packaging Covenant commences July 2010.
- Scope and develop national standards:
    - Draft Australian Standard for biodegradable plastics in home composting released for comment in February 2010;
    - Research on the rate and extent of biodegradable plastics in relevant Australian soil and marine environments completed by September 2010;

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[18] Milestone dates are as per the NWP Implementation Plan and are subject to change, pending EPHSC approval. The 2010 extended caretaker period has already resulted in delays in achieving deadlines.

- o Australian Standard for degradable plastics in home composting finalised September 2010;

  o Two additional standards on plastics and biodegradable plastics by 2012; and

  o Scope need for other packaging standards by 2012.

- Additional measures to improve recycling of packaging and reduce litter:

  o Survey of community attitudes on willingness to pay to improve recycling of packaging and to reduce litter (choice modeling) completed by July 2010; and

  o Environment Protection and Heritage Council consider choice modeling report by July 2010.

Table 1: Existing National Schemes in Australia		
Products	**Types**	**Status**
Product Stewardship for Oil Program (PSO)	**Legislative** (Australian Government) Product Stewardship (Oil) Act 2000 Mandatory scheme.	The PSO program was introduced by the Australian Government in 2001 to provide incentives to increase used oil recycling. The Program is a levy/benefit scheme that aims to encourage the environmentally sustainable management and re-refining of used oil and its re-use.
Refrigerant Gases Ozone depleting substances and synthetic greenhouse gases	**Legislative** (Australian Government) Mandatory scheme.	*Ozone and Synthetic Greenhouse Gas Management Act 1989* establishes product stewardship arrangements for specified gases , including requirement that importers manage their product at end of life as a condition of their licence, and end-use controls on the purchase, sale, handling and disposal of these gases.
FluoroCycle: Mercury Containing Lamps – Commercial Sector	**Industry led,** with Australian Government funding and support for 3 years	FluoroCycle was launched in July 2010. As at March 2011 there are 49 signatories to the scheme, including a number of high profile companies such as Westpac FluoroCycle is being administered by the Lighting Council Australia with oversight provided by a government Administrative Committee including the Australian, SA and NSW governments
National Packaging Covenant	**Government and industry partnership,** underpinned by **NEPM regulation** – a co-regulatory arrangement	In July 2010 EPHC agreed to the revitalized Australian Packaging Covenant – and to review within 5 years, including whether it should be included under the product stewardship legislation. The Covenant is underpinned by the Used Packaging Materials National Environment Protection Measure (NEPM) which provides for regulation to protect against 'free-riders'.
Mobile phones	**Voluntary Industry led**	Mobile phones (Mobile Muster since 1999)
Chemicals and chemical containers	**Voluntary Industry led**	Agvet chemicals (ChemClear since 2003) Containers (DrumMUSTER since 1999)
Newspapers	**Voluntary Industry led**	Newspapers (Publishers National Environment Bureau Sustainability Plan since 1990).
Batteries	**Voluntary Industry led**	There is an active domestic recycling market for used lead acid batteries.
Timber Recovery	**Voluntary Industry led**	The National Timber Product Stewardship Group aims to double the recovery of untreated post-consumer timber and wood products to one million tonnes per year by 2017. The Group advises timber producers and consumers on re-use and recycling, and waste companies to identify treated timber products.
PVC	**Voluntary Industry led**	Vinyl Council of Australia' product stewardship program and Vinyl-2-life Action Plan have been addressing environment and health issues associated with the lifecycle of PVC and PVC products since 2003.
Butt Free	**Voluntary Industry led**	The Butt Littering Trust promotes projects to reduce cigarette butt littering.

Table 2: National Schemes under development in Australia		
Products	**Types**	**Status**
Computers and Televisions	**Legislative** Proposed co-regulatory arrangement under the Product Stewardship legislation.	▪ In 2009 EPHC agreed that televisions and computers would be the first products to be co-regulated under the national product stewardship legislation ▪ The scheme is scheduled to be implemented in 2011.
End of Life Tyres	**Voluntary Industry led** Expected to be considered for accreditation under the Product Stewardship legislation.	▪ In 2009 EPHC agreed, to work with the tyre industry on schemes to develop the market and gain more value from the 52 million tyre EPU's (equivalent passenger units) that reach end of life in Australia each year. ▪ A draft scheme has been prepared ▪ The Australian Tyre Industry Council has given in principle agreement to fund the draft scheme and negotiations are currently underway with other key stakeholders regarding their support. ▪ Scheme expected to commence in March 2012.
Packaging and litter	**To be confirmed -** Future approach dependent on the outcomes of the regulatory impact assessment process	▪ Consultation Regulation Impact Statement (CRIS) on options to address packaging resource recovery and litter, including container deposit legislation, commenced July 2010 ▪ CRIS to be released for public comment in late 2011
Paint	**Voluntary industry led**	▪ The Australian Paint Manufacturers Federation (APMF) is to conduct a wholesale paint levy 12 month pilot in Victoria. This national scheme pilot is to improve collection, treatment and disposal of post consumer paint. Pilot is to start in July 2011 after ACCC final authorisation.