



Submission Coversheet for Consultation Paper for Product Stewardship Legislation

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WINEMAKERS' FEDERATION OF AUSTRALIA

**Response to the Department of Sustainability,
Environment, Water, Population and Communities**

**National Waste Policy: Less Waste, More Resources
Product Stewardship Legislation Consultation Paper**

December 2010

Stephen Strachan
Chief Executive
Winemakers' Federation of Australia

The Winemakers' Federation of Australia (WFA), the peak representative body for the nation's winemakers, welcomes the opportunity to respond to the Consultation paper – Product Stewardship Legislation Consultation Paper, November 2010.

The following response addresses the discussion in the consultation paper with issues relevant to the Australian wine sector.

We highlight that some of the evidence presented in the consultation paper must be discounted by the reader as studies are cited in the paper for which no references are provided. In particular the reference to consumers being willing to pay between \$18 and \$30 to recycle computers and televisions (page 14) and that Australians are concerned about “green wash” (page 14). WFA strongly supports an evidence-based approach to policy development and uncited generalisations should be discounted from a decision making framework by Government.

WFA believes Product Stewardship legislation should recognise and incorporate current schemes such as the Australian Packaging Covenant (APC). The APC is underpinned by National Environment Protection Measures (NEPM) legislation that varies from State to State. Where such a scheme exists, efforts towards nationalising the underpinning existing State-based legislation are welcomed for the consistency and certainty they will provide to manufacturers.

Australian Packaging Covenant

The APC (previously the National Packaging Covenant) is a whole-of-life strategy to minimise waste and improve resource recovery and has the following specific goals:

- **Design:** packaging optimised to achieve resource efficiency and reduced environmental impact without compromising product quality and safety.
- **Recycling:** the efficient collecting and recycling of packaging
- **Product Stewardship:** a demonstrated commitment to product stewardship by organisations in the supply chain and other signatories.

Outcomes of the Product Stewardship goal are: for signatories in the supply chain to work with others to improve packaging design and recovery; and an overall reduction in litter.

B2B

The APC covers packaging of retail consumer products, including any distribution packaging used to deliver that product to the end-consumer. It does not cover business-to-business (B2B) packaging.

WFA would not support a scheme that covered B2B packaging as packaging design is often a stipulated requirement of the business customer. For example, the two major Australian retailers were the first to require wine companies to provide wine in six-packs for occupational health and safety reasons. To prevent the need for two separate SKUs, the companies now provide most of the domestic market with six-packs. Additionally the two major retailers, again for occupational health and safety reasons, will not allow companies to use pallet tack which glues boxes together and increases stability. This results in the greater use of shrink wrap around cartons.

Threshold

Companies with an annual turnover of sales in Australia greater than \$5 million are required either to be a signatory to the APC or to conform to the NEPM legislation in each State in which they do business.

Of Australia's 2420 wine companies around 2200 are small (crush less than 1000 tonnes) and the cost of compliance would be significant. The threshold at which a scheme would apply to a company needs to be considered carefully and industry consultation undertaken.

Number of producers by tonnes crushed

< 1000 tonnes	– 2196
1000 – 5000 tonnes	-97
5000 – 10000 tonnes	– 21
> 10,000 tonnes	- 25

Current regulations

In South Australia a mandatory container deposit scheme (CDL) requires the consumer to physically take bottles to a recycling depot to gain the refund. Wine bottles are exempt as they contribute very little to the waste stream.

Currently brand owners are exempt from the NEPM (and therefore the APC) if they have a program in place that produces “equivalent outcomes” to those sought through the APC. The NEPM aims to not place obligations on brand owners of products that do not “significantly” contribute to the waste stream.

These two exemption principles – for wine bottles due to low waste-stream contribution and “equivalent outcomes” – should flow into any national stewardship scheme.

Under the proposed legislation very few products would come under a mandatory product stewardship scheme. There are currently only two nationally – used oil and used refrigerants that are ozone depleting. These products are mandated not just because they contribute to the waste stream but because they cause significant harm to the environment.

Under the proposed national legislation it behoves the Government to examine State-based mandatory legislation for its applicability to the new legislation.

Current initiatives

The Australian wine sector and its suppliers have a strong commitment to recycling and waste management. Currently OI-Asia Pacific, a major supplier of wine bottles, includes 35-40% of recycled glass in its production, with the goal of increasing this proportion continually. This glass is provided through local recycling depots, council recycling programs and local community organisations such as Scouts and charities. Any product stewardship scheme should ensure community initiatives are incorporated so that while recycling becomes more efficient, communities do not lose the spirit of helping local organisations. Lightweighting of glass bottles is an ongoing process with continual dialogue between bottle manufacturers and wine companies. These advances and proactive outcomes are occurring free of Government intervention or legislative pressures. Legislative or regulative mechanisms to force environmental outcomes should only be a “last resort”, especially for industries already putting initiatives such as these in place.

Although the threshold for inclusion in the Australian Packaging Covenant is \$5 million of Australian sales, many wine companies who operate below this level are signatories voluntarily because they have a commitment to product stewardship and waste management. They have aspirational reasons for complying. These should not be underestimated and any regulations should encourage this behaviour and emphasise the positives rather than imposing purely punitive measures.

Industry responsibility – point of liability

The consultation paper states that the point of liability will depend on the nature of a product stewardship scheme sought for the product or material. It is expected that the point of liability will rest with the manufacturer or brand owners of the packaging. In the case of cartons or glass the responsibility will then rest with the manufacturer or the brand owner (the wine company). When including a product in the legislation the point of liability will be a crucial factor and should be a major point of consultation and discussion.

The ability for certain primary producers, suppliers, manufacturers, and retailers to “pass on” the costs of their liability is limited by market power, economies of scale, and level of competition.

Cost of compliance

Manufacturers or brand owners have two choices in regard to the additional cost of compliance; either pass it onto the customer or absorb it. Currently the wine sector is in oversupply, the value of export sales is declining and exchange rates have reduced competitiveness. An example of the difficulties in remaining economically sustainable is the sharp increases in taxes in the UK, which have not been passed onto the consumer. The UK retailers have passed the increased cost back to the producer, who has had to reduce prices in accordance with the tax increases.

Most challenging is the retail market power in Australia of Coles and Woolworths, which now control an estimated 70% of wine sales.

ABS figures demonstrate the difficulty of increasing wine prices. The wine price index² shows that the price of wine only increased by 9% between December 2001 and June 2010 compared with 27% for the CPI and 48% for beer.

Any additional cost burden on brand owners decreases their economic sustainability. We know from applying price elasticities¹ that an increase in price will result in loss of sales volume overall and an accompanying reduction in employment in regional areas where the wine industry is a significant contributor.

Compliance will be an added impost on business and the cost of the regulatory framework should be borne by government.

Polluter-pays principle

The polluter-pays principle, as with any user-pays principle, holds that the party responsible for the product that causes environmental damage should be responsible for paying for that damage.

Product stewardship schemes that hold a brand owner or manufacturer responsible are in effect stating that they are the polluter.

Even in cases where there are recycling options for the end-user of a product it can still be a significant contributor to the waste stream if end-users do not recycle.

Responsibility should not rest solely with the manufacturer or brand owner, but should encompass local governments and retailers and incorporate education campaigns. Ultimately the responsibility for the proper disposal of a product lies with the end-user. The brand owner or manufacturer cannot be held solely accountable for the costs of recycling or of educating the consumer.

Including products in the legislation

The Office of Best Practice ensures that the impact of regulatory proposals and alternative options are explored and that regulation is well-designed so that the objectives of regulations are met and do not impose unnecessary costs on business or the community more broadly³.

When considering products for inclusion in the legislation the *Commonwealth Government Best Practice Regulation*³ guidelines should be observed. These provide criteria to be considered in regulation impact statements such as market or regulatory failure, level of hazard and social goals. In contrast, the consultation paper (at point 1.9) provides a list of criteria by which a product will be judged for inclusion and only two of these may need to be met. Products could in fact be included merely because they are in a national market and because management of the product would offer business opportunities that would make a contribution to the economy. Such a product should not be included in the legislation as it may not be causing a waste problem. Only products that significantly contribute to the waste stream or pose a hazard to people or the environment should be considered for inclusion. This should be mandatory.

WFA submits that Product Stewardship legislation should be tested against its own Best Practice Regulation.

Powers of the Regulator and Scheme Administrators

As the Regulator will have the task of approving any product stewardship arrangement, an appeals process and a dispute resolution process should be included. The Regulator will require significant documentation from proponents of a scheme and will undertake a number of activities to ensure the scheme is suitable, including seeking advice from external specialists. The cost of applying for approval will be significant and therefore the cost of the investigation of the approval process should be borne by the Government.

The rationale for a decision and the decision-making process itself should be transparent to assist those seeking approval.

Conclusion

The Australian wine sector currently supports the concept of product stewardship in principal but with strong reservations about the need to legislate a scheme, the process of determining the point of liability, and the criteria for including a product in the legislation.

Many wine companies and their suppliers are already signatories to the APC and have an ethical and social responsibility commitment to sustainable packaging. The legislation should acknowledge and encourage this rather than relying solely on punitive measures to ensure compliance.

The threshold at which a company is responsible for joining a stewardship scheme should be a matter of consultation with the relevant industry. Business to business packaging should not be included, and certainly not with the brand owner being responsible as particular packaging may be a requirement of the business customer.

COAG has agreed to a national waste policy, so existing State mandatory schemes should be assessed using the criteria for mandatory schemes in the new legislation. The automatic assumption that the South Australian Container Deposit Scheme is a worthwhile model to highlight is inherently flawed when comparisons to alternate models are made, as Ministerial Council research has demonstrated.

The criteria for inclusion outlined in the consultation paper needs to be much tighter and meet the guidelines for legislation outlined by the Office of Best Practice. It is equally important to ensure common sense prevails and that products that do not contribute to the waste stream in any way and do not pose any potential for environmental damage are excluded from potential capture in any legislation. Only products that pose a hazard to people or the environment or are significant contributors to the waste stream should be considered for inclusion in the legislation.

Product stewardship should be a shared responsibility throughout the supply chain, including education of the end-consumer. Using the polluter-pays principle to assign all the responsibility to the manufacturer or the brand owner is open to debate on issues such as alternative production materials, cost of production, efficiency of production and responsibility of consumers to also protect their environment.

The cost of compliance will be high not just in implementing and maintaining a scheme within a company, but in applying and gaining approval. The cost of assessing schemes for approval should lie with the Government. There will need to be an appeals and dispute resolution process in the legislation, particularly if there are penalties associated with non-compliance.

REFERENCES

1. Fogarty, J. The demand for beer, wine and spirits: insights from a meta analysis approach, AAWE Working Paper No. 31, Economics, 2008
2. Australian Bureau of Statistics Catalogue No. 6401.0 Consumer Price Index
3. Best Practice Regulation Handbook, Commonwealth of Australia, June 2010