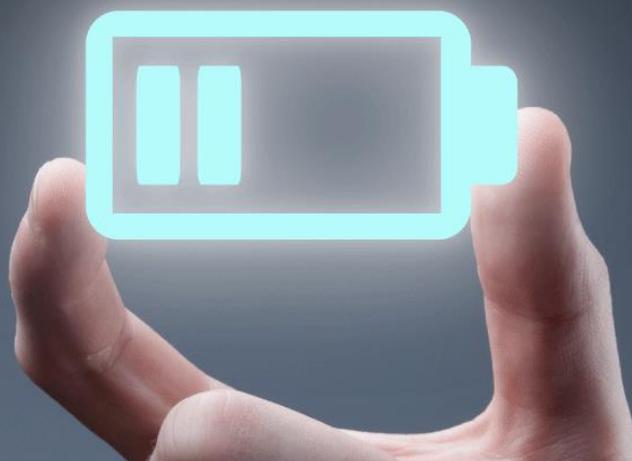


Briefing Note #4 BSC Scheme Design Elements in Focus: ACCC Authorisation



TOPIC

1. Elements in Focus	1
2. BSC Scheme Design Element in Focus: Authorisation	2
3. So, how does it work?	2
4. Typical application process	3
5. Building on experience of other authorised schemes	3
6. Did you miss previous briefing notes?	5

Elements in Focus



Over the next few weeks, we plan to release a series of briefing notes to explore different aspects of the proposed scheme design. This briefing note will focus on demystifying the ACCC authorisation process. Up next in Briefing Note #5, we will explore the proposed funding model.

BSC Scheme Design Element in Focus: Authorisation



Authorisation by the Australian Competition and Consumer Commission (ACCC) is a fundamental element of the proposed scheme design, however misconceptions abound for those new to the process. It provides an elegant tool for industry to fund the scheme and to control free riders.

One feature of the authorisation model which is important for industry to be aware of, is that the scheme itself remains voluntary in the sense that its operations are essentially self-regulated.

It is only those activities considered anti-competitive that are 'regulated' by the ACCC.

Authorisation enables industry to access light regulation to level the playing field.

Authorisation provides an exemption from anti-competitive behaviour rules and thus allows competitors to set a fee or levy and to use market levers to control free riders.

So, how does it work?



The ACCC will use the details of the scheme design to determine if its primary test is met, i.e. that the likely public benefit from the conduct outweighs the likely public detriment.

That test can be applied to a range of different activities including:

1. Collective bargaining – for example where two or more competitors come together to negotiate terms and conditions with a customer or supplier
2. Some (but not all) codes of conduct – for example where provisions of a code impose standards of behaviour on signatories that may restrict competition, require training from specific providers and/or impose sanctions for code breaches
3. Industry levies – for example an agreement among industry participants to impose a levy on the sale of a particular product, the proceeds of which may then be used to fund research and development or a product stewardship arrangement for the proper disposal of environmentally harmful products
4. Certain joint ventures or alliances – for example a supply agreement where one competitor agrees to stop producing a particular product and instead purchase it from the other party to the agreement.

The proposed battery stewardship scheme design could potentially encompass all of the above.

Typical application process



While the time frames vary, the typical application process for authorisation is as follows:

Pre-lodgement discussion with the ACCC	Completed
Lodgement of application and supportive submission.	ACCC assesses the validity of the application.
Public Consultation commences	Within one week of lodgment
Decision on interim if requested (Can be made at any stage during the process e.g. at the draft or final determination)	Usually within 28 days
Closing date for submissions from interested parties. Public submissions and summary of key points raised in confidential submissions provided to applicant for response	
Draft determination issued by the ACCC	Usually within 3-4 months from lodgement
Option to request a conference to discuss the draft determination	Request deadline 2 weeks draft determination is issued
Public consultation on the draft determination	
Conference held if requested	Within 30 days of nominated conference date
Submissions following draft determination and conference	Within 2-4 weeks of conference
Final determination issued by the ACCC	Usually Within 5-6 months from lodgement

Source: ACCC "[Guidelines for Authorisation of Conduct \(non-merger\)](#)"

Building on experience of other authorised schemes



This approach is unique to Australia and has been found to be a very effective tool for enabling stewardship programs. The design of the Battery Stewardship Scheme has been informed by the learnings from these schemes, allowing for a very solid and well-developed foundation for success.

While there are a number of good examples of successful schemes, the three examples provided below illustrate, however the different approaches that may be used. The ACCC website includes descriptions and application details for a range of [other authorised schemes](#).

Tyre Stewardship

The [Tyre Stewardship](#) Scheme is a voluntary, industry led program with the primary aim of increasing the recycling rate of end-of-life tyres, including reducing the amount of end of life tyres damaging the environment via landfill, illegal dumping or undesirable export while increasing the recycling rate of end of life tyres.

The scheme was established to change the commercial behaviour of all companies in the supply chain (importers, retailers, collectors, recyclers etc) through an accreditation system that requires all parties to only deal with other accredited parties.

The Tyre Stewardship Scheme was authorised by the ACCC in 2013 for an initial 5-year period. The Authorisation permits the collection of a levy of 25cent per EPU which may be passed on to consumers. In addition, the Authorisation permits companies to only enter into agreements with other entities that are accredited and protects them from legal challenge.

Authorisation resulted in the establishment of the Tyre Stewardship Australia as a not-for-profit company to administer the Tyre Stewardship Scheme.

Initial parties to the scheme included the Australian Tyre Industry Council, Federal Chamber of Automotive Industries, Australian Motor Industry Federation and the Australian Tyre Recyclers Association. It has evolved into a company-based membership arrangement. These organisations came together to develop the Guidelines and support the establishment of Tyre Stewardship Australia.

Paintback

[Paintback](#) is an industry led scheme with the core goal to provide a nationally co-ordinated approach to the collection and disposal of A&D paints in Australia. The ACCC granted authorisation to the Australian Paint Manufacturers' Federation, Paint Stewardship Limited (PSL) and certain paint manufacturers to support a National Paint Stewardship Scheme.

PSL contracts with state, territory and local governments and waste service providers for the collection and safe disposal of waste A&D paint. The Scheme design and the ACCC application was informed by:

1. Economic Modelling "APMF (2014) Key Assumptions Used for Economic Modelling for a Future Waste Paint Product Stewardship Scheme".
2. A Stocks and Flows report Nolan (2014) Study into stocks and flows, market analysis and processing capacity of waste paint.

The Scheme's is implemented by a corporate entity, PSL, which charges a levy on all sales of A&D paint by scheme members to any consumer, whether trade or retail, and remitting the levy to PSL. The scheme was rolled out in three stages:

Stage 1: To capital cities, through a combination of existing permanent sites and mobile collection services.

Stage 2: Extend the collections to key regional cities and rural locations.

Stage 3: Extend the collections with the aim of 85 % of Australia's population within either 20 km of a metro collection site or 40 km of a regional site.

drumMUSTER

[drumMUSTER](#)® is an ACCC authorised voluntary Stewardship program established to facilitate collection and recycling of used containers for crop production and on-farm animal health chemicals.

Containers with the drumMUSTER logo have a 4-cent/lit levy included in the cost of the chemical at purchase, which covers the collection of these. The levy is passed on to end-users on the purchase of eligible containers.

Eligible non-returnable, metal and plastic containers are cleaned of residue by farmers and delivered to one of more than 780 collection sites across Australia.

Collection operations of the program (as administered by Agsafe), rely on the support of local government and other collection agencies.

Remote area collections are facilitated by coordinating with station properties to aggregate stockpiles at neighbouring farms and arranging for collections via a dedicated truck run. drumMUSTER also works with aerial sprayers and provides on-farm collections where drum volumes are high.

Source: Chaplin, L. "Summary of Product Stewardship Case Studies"
(Australian Battery Recycling Initiative on behalf of the Industry Working Group)

If you have questions about the ACCC Authorisation process, please contact us!

Did you miss previous briefing notes?

You can download past briefing notes and other battery stewardship documents by clicking [here](#).

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