

# NARGA

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6 October 2006

Mr Phillip Weickhardt  
Presiding Commissioner  
Inquiry into Waste Management and Resource Efficiency  
Productivity Commission

By email

Dear Phillip,

## **Re: Submissions and evidence to the Inquiry by DEH**

We have now had the time to review some of the material put before the Inquiry by the Department of Environment and Heritage and wish to make the following comments pertinent to that evidence:

### **1. Public opinion as a factor in government policy**

Several references have been made in this evidence to the need to consider public opinion or address 'public concern' when framing policy in relation to waste management.

The DEH evidence is not alone in taking this approach. An emphasis on the need to consider public perception is also evident in state and local government submissions.

Our concern is that our politicians, supported by the bureaucracy, tend to use uninformed opinion, often from a small minority, as a basis for a knee-jerk policy response.

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The purpose of having in place a series of requirements that need to be followed before matters raised on this basis become a basis for regulatory action is to ensure that such regulation is based on sound science.

We refer again to the matter of plastic bag policy. In the DEH second submission we find the statement: "Through the EPHC, governments reaffirmed in June 2006 their resolve to phase out plastic bags by December 2008, reflecting strong community desires to address problems with plastic bags use."<sup>1</sup>

And in evidence given to the Inquiry by Ms Harwood: "...the three sort of main drivers for action: concern about litter, concern about impacts on wildlife, and the third is a sort of community demand for action...."<sup>2</sup>

We are not aware of any survey data that suggests there is any significant level of informed public support for a total phase out of plastic shopping bags.

As indicated in our earlier submissions, the data used as a basis for current government policy on plastic bags is not of the quality that one would expect to be used as a basis for government policy – the marine animal kill data used does not refer to plastic bags (though it has been represented as doing so by DEH) nor to Australia, and the quoted proportion of bags littered is simply an invented number.

These assertions have been widely disseminated by all tiers of government and by NGOs and provide a basis for the 'public concern' that is now being used as a basis for ongoing plastic bag policy.

If that concern were general and genuine, there would have by now been a massive reduction of plastic bag use across the board – driven, not by government mandated programs, but by the community itself.

We believe that, whilst the public may or may not express concern about one or other aspect of government policy, it is generally not an informed opinion but a mere reflection of what they have been told, or a view that they believe reflects the norm.

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<sup>1</sup> Second Submission to the Productivity Commission Inquiry into Waste Generation and Resource Efficiency (Inquiry), July 2006, Department of the Environment and Heritage, Page 9. (DEH 2006)

<sup>2</sup> Transcript, public hearings 31 July 2006, Inquiry, Page 994 (Transcript)

It is the responsibility of governments to ensure that any action that is proposed on the basis of presumed public opinion is based on sound science rather than mere perceptions. The analysis conducted by the Allen Consulting Group of the various plastic bag phase-out policy scenarios, demonstrates the high cost to the community of associated policy based on unfounded public perception.

In the case of plastic bags, there is no evidence that provides any substantive support for any of the policy drivers mentioned in the DEH submission – plastic bags in litter, plastic bags as a primary concern in marine animal kills or public concern about plastic bags.

## **2. Confusion between 'Extended Producer Responsibility' and 'Product Stewardship'**

In the DEH second submission to the Inquiry definitions for both Extended Producer Responsibility (EPR) and Product Stewardship (PS) are given<sup>3</sup>. The DEH definitions suggest that in the case of EPR schemes there is a mandatory imposition of responsibility for end of life management of products placed on the producer (we suggest that in practice this responsibility is extended to the marketer or importer as the case may be) whilst in the case of PS responsibility is allocated to the most appropriate players in the supply chain.

This means that, if government decides that the most appropriate player to carry the financial responsibility for running a product recovery scheme (or raising the tax or levy to cover this cost) is *the producer* (marketer or importer or their proxy), then two definitions overlap.

This means that a policy, scheme or NEPM based on 'Product Stewardship' can just as easily be used to achieve an 'Extended Producer Responsibility' agenda.

It should be obvious that if, through PS schemes, there was no intention to pass substantial costs on to industry, there would be no concern about 'free riders' and no need for a co-regulatory framework. The 'free rider' problem such an NEPM would seek to address is an artefact of the EPR/PS approach.

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<sup>3</sup> DEH 2006, op. cit, Page 5 and Table 1

What we are seeing at this time is a combined effort by state and federal bureaucracies to impose an EPR/PS model on end-of-life product waste management, before the costs and benefits of doing so has been assessed.

At no time during the 'Product Stewardship' debate has it been suggested that perhaps the responsibility for collecting, say, e-waste from households should rest with local government – as the most efficient way of managing this activity – assuming, of course, that it is worth doing.

At the state level, we have committees making up lists of 'wastes of concern' on the basis of relatively simplistic criteria (e.g. the volume of space taken up in landfill, or an 'inadequate' recycling performance), which then become candidates for PS schemes.

The industry sector involved is then told to develop a 'voluntary' scheme under a threat of imposition of a mandatory one. Not surprisingly we then have industry comment in support of a national approach, as an alternative to unavoidable multiple threats from the states. ("We think perhaps that the report could acknowledge more that industry is itself seeking harmonised action on many issues..."<sup>4</sup>)

Again, the plastic bag policy history can be used as an example. Having been told by EPHC ministers that they can avoid a regulatory ban by cooperating in the development of a 'voluntary' plastic bag reduction program, the supermarket sector developed a Code of Practice which was successful in reducing the number of plastic bags issued.

However, EPHC ministers have since moved the goal posts, and are now proposing a plastic bag phase out – all before the 'problem' has been properly defined. DEH then list the plastic bag code as an example of Product Stewardship!

### **3. Regulatory Impact Assessments**

We have previously expressed our concern about the lack of rigour in the preparation of Regulatory Impact Assessments (RIS).

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<sup>4</sup> Transcript, op.cit., P. 975

There was some debate about the adequacy of the RIS process during the public hearings attended by DEH representatives. The DEH second submission<sup>5</sup> suggests that an RIS will be prepared for the proposed product stewardship NEPM. This NEPM 'would consist of a generic framework that establishes guidelines and principles to be applied by governments in determining the merits of a co-regulatory approach for a particular sector. The NEPM would progressively include product stewardship agreements, schemes and schedules in free rider regulation.'<sup>6</sup>

Again we express our concern that this proposed RIS, which ostensibly will assess the benefits of a coordinated approach versus a state by state approach and / or stewardship with or without underpinning 'free rider' regulation, will still fail to assess the basic underlying issues.

These, in our view, are:

- Is the proposed scheme to be covered by PS arrangements itself worthwhile (Does it result in a net public benefit)?
- Is industry the appropriate sector to target for the raising of what are really additional taxes which will fund the respective programs?
- Given that the answers to the above two questions are 'yes', does it make sense to split the product waste stream into a multitude of streams, as is implied by the EPR/PS approach?

These questions have, to date, not been addressed at either the state or national level.

We also find the DEH response to the Commission's proposal for an assessment of the net community benefit of the National Packaging Covenant at the time of the 2008 review interesting.

It is suggested that "This may prove to be difficult. The scope of the evaluation is set out in section 9 of the covenant, and will specifically address the progress the covenant has made towards meeting overarching targets set by EPHC in 2005."<sup>7</sup>

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<sup>5</sup> DEH 2006, op.cit., P 10

<sup>6</sup> Ibid

<sup>7</sup> DEH 2006, op.cit., P 9

The covenant is now in its second term and, supposedly, has undergone the RIS process twice. It is therefore surprising that DEH does not already have an assessment of net community benefit.

We still have a number of concerns relating to the RIS process as implemented at the state and federal levels in the area of waste policy and regulation. These include:

- A failure to properly define the problem being addressed (in environmental impact terms)
- A failure to justify intervention on the basis of the significance of the problem (reducing flows of waste to landfill is not per se significant)
- A failure to explore non-regulatory intervention
- A failure to explore the full range of possible solutions (including the involvement of local government, for example)
- A failure to check the facts used as a basis for assessing environmental merit and / or to separate fact from fiction
- A failure to fully quantify costs and benefits associated with each policy option
- A tendency to go through the motions of an RIS without addressing key issues, or to prepare an RIS on the basis of the mechanism involved, rather than the underlying issues
- A tendency to use mechanisms that avoid the need to prepare an RIS (the NSW approach to declaration of products as 'wastes of concern' is an example).

Underlying these failures, there appears to be a mindset that assumes that anything that can be done to 'save' waste, should be done – the end justifies the means.

Unfortunately, proponents of the current policy approach appear to be oblivious to the costs that are being imposed on business and on the community – costs that result in little in the way of net community benefit - and which continue to accumulate year upon year.

It is hoped that this further input is helpful. Please come back to me or Gerard van Rijswijk should you need any further detail.

Yours sincerely

Ken Henrick  
**Chief Executive Officer**