



**Australian Government**

**Department of the Environment, Water, Heritage and the Arts**

Our reference: COORD 093

Professor Mike Woods  
Presiding Commissioner  
Regulatory Burdens – Manufacturing and  
Distributive Trades  
Productivity Commission  
GPO Box 1428  
CANBERRA CITY ACT 2601

**Response to the *Annual Review of Regulatory Burdens on Business:  
Manufacturing and Distributive Trades* by the Department of the Environment,  
Water, Heritage and the Arts**

Dear Professor Woods

The Department of the Environment, Water, Heritage and the Arts welcomes the opportunity to respond to the Productivity Commission's draft research report, *Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trades*, released on 27 June 2008. The Department's response brings together comments and suggestions from across the organisation, and represents the accumulated input of a wide cross-section of environmental expertise.

To maintain relevance and ease of use, the Department has restricted its comments and suggestions to the substantive material presented in the Draft Report. Wherever possible, individual responses speak directly to particular passages in the Draft Report – the aim is to improve on, or add to, an already substantial collection of data and insights.

The Department hopes that our contribution will assist in making this year's report a document of high quality. We look forward to working with the Commission on subsequent reviews in future years.

Yours sincerely,

Malcolm Thompson  
First Assistant Secretary  
Policy Coordination Division

July 2008



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**Department of the Environment, Water, Heritage and the Arts**

Responses are set out in the following manner:

- The Report Section is identified in *Italic* font.
- The relevant text is identified in **bold** font.
- The Departmental response is identified in normal font.

## ***Chapter 5. Chemicals and veterinary medicines [p99]***

### *Section 5.4 Concerns about the APVMA [p102]*

#### **DRAFT RESPONSE 5.1**

**There should be explicit recognition of the generation of net community benefits as a goal of the Australian Pesticide and Veterinary Medicines Authority's assessment of veterinary chemicals. [p104]**

The Department of the Environment, Water, Heritage and the Arts (the Department) supports this recommendation.

## ***Chapter 6. Environmental regulation [p117]***

### *Section 6.1 Water Efficiency Labelling and Standards (WELS) Scheme [p118]*

#### **DRAFT RESPONSE 6.1**

**The Department of the Environment, Water, Heritage and the Arts should introduce tight legislative or administrative time limits into the process for registering products under the Water Efficiency Labelling and Standards Scheme. [p120]**

Correct and complete registration applications are currently finalised in 3 to 4 weeks. Delays occur when applicants do not supply correct information, do not complete all required fields in the application, or do not pay the fee promptly.

The Department will implement a new WELS online registration system in September 2008 that will prevent many of the application errors that are the key factor in delays and facilitate timely processing of applications. The new registration system and departmental practices will be reviewed after six months to determine whether there is a need to formalise administrative time limits. A capacity for applicants to pay registration fees over the phone by credit card has been instituted and this has improved efficiency for applicants although this still involves a two step process. A credit card payment procedure that would allow payment as part of the online

registration process (i.e. as for airline bookings and payments) is currently not being pursued.

**DRAFT RESPONSE 6.2**

**There should be an independent evaluation in 2009 of the effectiveness of the current compliance and enforcement program of the Department of the Environment, Water, Heritage and the Arts in achieving the objectives of the Water Efficiency Labelling and Standards Scheme. [p122]**

The WELS Scheme became mandatory for all WELS products at the end of December 2007. To date compliance activities have been focused on education and awareness and targeted at both suppliers and consumers. Procedures, letters and infringement notices have been developed and stronger action to fine offenders is now possible. A compliance database to track complaints through to resolution has been developed and is currently being trialled. The upgraded procedures will be in place by mid August 2008.

A check testing program to independently test WELS labelled products against manufacturer's or supplier's claims is expected to be in operation by the end of 2008. Consultation with stakeholders will occur on the design, scope and scale of the program prior to implementation.

The Department is prepared to conduct an independent review of the effectiveness of its compliance and enforcement program in 2010. The 2009 timing proposed in the Productivity Commission's recommendation would not provide a sufficient window for the upgraded compliance procedures, noted above, to take effect and to have a measurable impact.

**DRAFT RESPONSE 6.3**

**The Department of the Environment, Water, Heritage and the Arts should identify areas of overlap between the WaterMark Certification Scheme and the Water Efficiency Labelling and Standards Scheme. Where there is overlap, the WaterMark Certification Scheme should become part of the Water Efficiency Labelling and Standards Scheme. [p126]**

The WELS Scheme already recognises WaterMark Certification as evidence of product compliance with the requirements for WELS registration. Applicants can supply WaterMark Certificates in place of test reports against particular requirements. However, it is not yet within the scope of the WELS Act to require WaterMark Certification as a prerequisite for WELS registration. The House of Representatives Standing Committee on Environment and Heritage inquiry into regulation of plumbing product quality also raised this matter.

The issue that this recommendation seeks to resolve arises because it is possible to legally buy some plumbing products (including some WELS registered products) but under state legislation, not legal to install them. This becomes an issue for consumers who buy a product on the basis of its WEL's endorsement only to find they cannot install it as it is not also WaterMarked.

The Department is undertaking research to determine the scale and scope of this problem as to date only anecdotal evidence is available. It should also be noted that requiring WaterMark certification as a prerequisite for WELS registration would not solve this problem for every plumbing product (i.e. taps for over-bath which require WaterMark but are not WELS regulated).

Nevertheless, the Department is investigating options for addressing the Committee's recommendation in relation to WaterMark. One option is legislative change that would bring within the scope of the Act, requirements for third party product certification, such as WaterMark. The WaterMark is a certification trademark owned by Standards Australia. It is not considered appropriate for the Department to take over the administration or ownership of the WaterMark scheme.

### *Section 6.2 Climate change policies and programs [p127]*

The Department has no comment at this time on this section.

### *Section 6.3 Energy labelling and minimum energy performance standards [p135]*

#### **Delays in the finalisation of regulatory impacts statements (RISs) [p137]**

All government agencies are committed to improving the certainty of our regulatory assessment processes addressing the concerns expressed by industry to the Productivity Commission. This commitment is expected to lower the risk to business of undue delay which causes difficulties to industry in taking binding investment and related business decisions.

The Department proposes that the Productivity Commission recommends:

*The Office of Best Practice Regulation and the Department of the Environment, Water, Heritage and the Arts should seek to improve the clarity surrounding nationally consistent regulation-making by agreeing reasonable timelines under which all parties must complete these assessments*

#### **Slow development of standards by Standards Australia [p138]**

The Department submits that explicitly recognising the need for all parties to provide adequate staff and related resources to important energy efficiency dialogues within Standards Australia's committee system will lead to the production of more robust and accurate testing and performance standards.

The Department proposes that the Productivity Commission recommends that:

*Standards Australia and the Department of the Environment, Water, Heritage and the Arts, together with industry, should seek to share the costs of adequately resourcing these tasks into the future*

**DRAFT RESPONSE 6.4**

**Through its representation on the Equipment Energy Efficiency Committee, the Department of the Environment, Water, Heritage and the Arts should seek independent benchmarking of the compliance and enforcement activities of state and territory agencies in relation to requirements for energy labelling and minimum energy performance standards. [p142]**

The Department agrees with the recommendation to seek agreement from state and territory agencies to independently benchmark their enforcement activities.

*Section 6.4 National Pollutant Inventory (NPI) [p142]*

**The Environment Protection and Heritage Council should review the reporting thresholds for all NPI substances by 2009 (response 3.8). [p143]**

As per the NPI NEPM, the NPI will be comprehensively reviewed, as determined by the Council, at least every five years and will consider the need to amend the Measure to add or delete substances and change thresholds from the reporting list. The next review is scheduled for 2012.

**The Environment Protection and Heritage Council should review whether facility-based data collected under the NPI could be aggregated to geographic regions before being made available to the public without unduly reducing the value of the information or the incentive for businesses to reduce their emissions (response 3.9). [p143]**

The NPI Implementation Working Group (IWG) has evaluated this approach and has agreed that public disclosure be maintained at the facility level - disclosure remains at individual facility level as agreed by NPI IWG.

**Progress has been made by the Department to improve public awareness of the NPI, through the development of a communication and awareness plan, and to improve the quality of data reported to the NPI. The Department should, after a reasonable period of time, evaluate the effectiveness of these actions (response 4.10). [p144]**

As part of the implementation of the NPI NEPM Variation of June 2007, a detailed communication and awareness plan has been developed and will be progressively rolled out over the next two years. The education and awareness plan will deliver a broad based education program to address the NPI's most pressing priorities, including sustainable development for Industry, focussing on highlighting cleaner production techniques and environmental initiatives.

The key elements include improving the public website with updated search functions and fact sheets, current case-studies of industries making improvements to their production processes and more clearly highlights how data should be used and analysed. A children's website is also being developed and will be rolled out to school children in the 2008-09 financial year and a conference to celebrate 10 years of

NPI data and discuss recent changes and plans for the future was held in May 2008 for all NPI stakeholders.

Working with the EPA in Queensland, the Department of Environment, Water, Heritage and the Arts has developed a promotional DVD, which includes an opening address by Minister Garrett, which will be used to educate NPI reporters on the changes that have come about with the variation to the NPI. This DVD will be available on the NPI website as well as distributed to key stakeholders.

A full evaluation of the success of the Communication and Awareness Plan will be undertaken in 2009/2010, as part of the development of the 2<sup>nd</sup> National Conference for the NPI.

**The adequacy of funding for the administration of the NPI by the Department should be reviewed. There should not be any further expansion of the NPI until this has been done (response 4.11). [p144]**

The Department notes this recommendation.

### *6.5 National Packaging Covenant [p144]*

#### **Introduction [p144]**

Suggest change to description of the National Packaging Covenant provided in the report to improve accuracy. The NPC is *supported* by a NEPM rather than *enforced* by it, enforcement relates only to free riders above the threshold, and the NPC's product stewardship is primarily about packaging rather than products.

#### **The burden of reporting requirements [p145]**

Reporting and data collection by signatories are requirements under the second incarnation of the National Packaging Covenant (NPC), which commenced in 2005. Before then, signatories were not required to provide packaging data.

It is recognised that improvements to the current data collection requirements may be required to reduce the reporting burden on signatories and to improve the quality of data collected.

The NPC has commissioned a number of independent analyses which explore efficient and effective data collection requirements, such as the *National Packaging Covenant Gap Analysis (MS2 200)* and will be examining the efficiency and effectiveness of reporting requirements through the NPC's Mid Term Review in 2008.

#### **Poor compliance and enforcement [p146]**

Responsibility for assessing compliance with the Covenant rests with the National Packaging Covenant Council and Secretariat, while enforcement of the NEPM is the responsibility of the states and territory governments. Without more information on

where the perceived breakdown is (e.g. are signatories not complying and the NPCC not identifying non-compliance or are the states not enforcing the NEPM where they are referred to a state by the Covenant Council?) it is difficult to assess this finding. However, the NPC's compliance procedures were updated in November 2007 to improve enforcement. The Covenant Council are also looking at updating their auditing processes. The Mid Term Review of the National Packaging Covenant will look into the effectiveness and workability of monitoring and enforcement policies and procedures, including through stakeholder consultation.

### **Inappropriateness of targets [p147]**

Targets for the Covenant were set by EPHC Ministers. Examination of the targets, and the Covenant's ability to meet them, will be a core issue for examination by the Mid Term Review.

It is recognised that not all products can be packaged in easily recyclable materials, and that often considerable quantities of packaging are necessary for preventing damage in transit, or to increase shelf life of perishable goods. The Covenant does not restrict use of any specific packaging materials, other than with its 'no new packaging to landfill' policy. While the Covenant has acted to encourage use of less materials in packaging, its goal does not seek to reduce the effectiveness of packaging. It is up to brand owners to optimise their packaging choice to balance cost, integrity of their product, and sustainability outcomes.

#### **DRAFT RESPONSE 6.5**

**A review of the National Packaging Covenant based on sound scientific and economic evidence should be conducted in 2010 to coincide with the expiration of the current covenant. It should include analysis of optimal reporting requirements, enforcement procedures and targets. Furthermore, it should include an evaluation of the National Packaging Covenant against alternatives for reducing environmental damage and conserving resources. [p147]**

While it is good practice to evaluate an initiative at end of life, EPHC Ministers are likely to have taken a decision on next steps with regard to the Covenant based on work prior to 2010. The Covenant is currently undergoing its Mid Term Review, which will report in late 2008. This will be considered by Environment Ministers at EPHC in November. Ministers will also consider reports on other relevant activities, that will report between now and April 2009, such as the EPHC working group undertaking an assessment of potential options for national measures, including container deposit legislation, to address resource efficiency, environmental impacts and litter from packaging wastes such as beverage containers (first report November 2008, final April 2009). Depending on the outcome of the Review and other activities, while Ministers may ask for further work to be undertaken, a view is likely to have been formed on what happens after 2010 well before 2010.

Should EPHC decide to explore Covenant Mark III, consistent with COAG guidelines, a regulatory impact statement (RIS) would be undertaken (please refer to the Best Practice Regulation Handbook, August 2007), based on sound scientific and

economic evidence, which is required to consider alternatives that address the “problem” identified by the RIS assessment process.

#### *6.6 Ozone protection: pre-charged equipment [p148]*

##### DRAFT RESPONSE 6.6

**The Department of the Environment, Water, Heritage and the Arts should conduct an assessment of the benefits and costs of changing the Ozone Protection and Synthetic Greenhouse Management Act 1989 to allow low volume importers to report annually rather than quarterly. If there is a net benefit to be gained from amending the legislation, importers of volumes of HCFCs and HFCs below an agreed threshold should be allowed to report annually rather than quarterly. [p149]**

The Department supports the recommendation and has been aware of the difficulties this presents and are working to promote a simplified process.

#### *6.7 Container Deposit Legislation [p149]*

Currently, South Australia is the only state which has a legislated container deposit scheme in place. In addition, various states are considering introducing container deposit schemes.

At the Environment Protection and Heritage Council (EPHC) meeting of 17 April 2008, Federal, state and territory environment ministers agreed to establish a Beverage Container Working Group (BCWG) to examine options for national reduction in packaging wastes, particularly beverage containers. Container deposits are one of the options to be examined. The BCWG is establishing a stakeholder reference group consisting of all levels of government, industry, community groups and environmental NGOs which will input into the analysis.

The BCWG will report to the EPHC on its findings on the viability of a National container deposit scheme and alternatives in 2009. These findings will include examination of the costs of the varying options.

The only Container Deposit legislation being nationally considered is the proposed scheme covered by Senator Fielding’s Bill, and which is currently being examined by a Senate Inquiry.