

Submission on the National Television and Computer Recycling Scheme – Operational Review

February 2015

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Opening

Local Government NSW (LGNSW) is the peak body for councils in NSW. It represents all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

LGNSW is a credible, professional organisation representing NSW councils and facilitating the development of an effective community-based system of Local Government in NSW. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

LGNSW welcomes the opportunity to comment on the National Television and Computer Recycling Scheme – Operational Review. Local Government in NSW strongly support Extended Producer Responsibility. The comments in this submission are provided to assist the Australian Government in reviewing and improving the National Television and Computer Recycling Scheme (Scheme). These comments are also provided with the long-term view that lessons learnt through this scheme will be applied to other Product Stewardship schemes into the future.

Response

Waste management is a key responsibility for councils, and Local Government is a critical provider in the delivery of waste management and resource recovery services to the community. It is the only sphere of Government which has an on-ground presence in relation to waste in NSW. Consequently, the National Television and Computer Recycling Scheme significantly impacts Local Government across NSW.

In development of this response, LGNSW sought feedback from NSW councils and regional waste groups. Over 120 councils' experiences and responses have been incorporated into this submission. These experiences varied dramatically across the state.

Some councils benefited greatly from the Scheme, experiencing a continued free e-waste collection throughout the entirety of the Scheme.

Other councils who were landfilling their e-waste prior to the Scheme, started a collection under the Scheme. Then, once targets were met, some of the co-regulatory arrangements terminated contracts often with little or no notice. These councils have now reverted to landfilling, stockpiling and some are seeking alternative funding for e-waste recycling.

Finally there are councils who had been recycling e-waste for their communities for years prior to the Scheme. They opted for free e-waste recycling under the Scheme, often dropping previous paid agreements with local providers. Once the targets were met under the Scheme, contracts were terminated. Some councils have been quoted over \$1,000 per tonne by Scheme providers to continue service, many local providers have gone out of business and sadly some councils which were previously recycling have started to landfill their e-waste. This is clearly a perverse environmental outcome with no benefit to the community.

Councils in remote and regional areas have been impacted the most by the Scheme. There is a disproportionate shortfall of Scheme recycling in regional areas. In some cases councils have received no response to requests for tender, others have had stillages delivered but not collected and some had formed contracts but no service rendered at all. These communities

are greatly disadvantaged due to transportation and logistics costs. Many have no choice but to landfill their e-waste and often face widespread illegal dumping.

There are a number of systemic issues associated with these experiences. In addition to the issues outlined above, these issues include:

- Monetary issues – Councils plan their budgets and set their annual fees and charges well in advance. With the stop-start nature of the Scheme, it is not easy for councils to source funding for the remainder of the year's recycling, nor to alter their fees and charges allowing for an e-waste recycling fees. Prohibitive recycling costs outside the Scheme have resulted in many councils reverting to landfilling e-waste outside of the Scheme.
- Community education – Most councils have invested in and carried out extensive education campaigns to encourage e-waste recycling. When contracts are terminated, councils then need to rethink their messaging mid-year.
- Community expectation – Following the introduction of the Scheme, the community expect that they can recycle (not landfill) all their e-waste for free, this poses difficulty for the many councils with limited budgets.
- Reputational risk – As Local Government is on-the-ground, the community often blame Local Government for cessation of service, and many councils are concerned about the impact to their reputation.

Understandably, in the face of these issues, many councils are hesitant to engage with the Scheme in the future. Some have opted not to engage and are providing e-waste services to their community outside of the Scheme.

The Australian Government is encouraged to carefully attend to the issues raised in the submission responses.

Operational Review Recommendations

Each of the Operational Review recommendations have been carefully considered and discussed with councils from across NSW. While the responses are primarily focused on the recommendations themselves, additional related comments for consideration are also included.

Recommendation 1:

Co-regulatory arrangements strengthen awareness and increase understanding of the scheme's design through targeted communication activities.

Local Government implores the strengthening of communications about the Scheme. However it is recognised that if demand cannot be met under the Scheme, these communications may be futile. Sadly councils have spent millions on community education about e-waste recycling, soon to find Scheme targets met and then Scheme services cease.

Currently, NSW communities are largely unaware of the Scheme itself because co-regulatory arrangements are not carrying out education campaigns. Although Part 4.01(d) of the *Product Stewardship (Televisions and Computers) Regulation 2011* (the Regulation) already requires co-regulatory arrangements to communicate information to the public, the standard co-regulatory arrangement response is to display drop-off locations on their website. Community members are less aware of co-regulatory arrangements than they are of the Scheme itself, so the likelihood of the community seeking information about the Scheme from their webpages is very slim.

Accordingly, the wording of this recommendation is not supported; simply asking the co-regulatory arrangements to “strengthen awareness” is likely to result in a limited response. Regulatory amendment is required here.

More appropriately however, the Australian Government or State Governments (as independent bodies who do not have a financial interest in the Scheme) should provide this awareness raising role. This communication campaign could bolster and assist Local Government and retailers to communicate with their communities/consumers. Part of this campaign should see that television and computer consumers are advised at the point of sale that part of their purchase price will go toward the recycling of similar products and where to find information about the Scheme. Communication must also be clear that the Scheme is only funding the collection and recycling of a proportion of computers and televisions in any given year. In this way, consumers and the broader community are being helped to understand why services may change from free to payable (or vice versa) and that any additional recycling is paid for through a fee charged by council and/or through domestic waste charges.

Recommendation 2:

Stakeholders consider whether regulatory amendment is necessary to drive uptake of AS 5377 and, if so, whether this could be done without increasing the regulatory burden on industry.

Local Government recognise the benefit of regulatory driven uptake of AS5377. Benefits may include improved safety, environmental improvements, risk avoidance and industry standardisation. Standardisation may go some way in eliminating illegal activity such as batch dumping of e-waste and the export and burning of e-waste internationally. E-waste tracking via a smartphone app from collection through to recycling would further assist in this way.

Conversely however, it is recognised that while overall benefit may be achieved by uptake of this standard, this may impose considerable cost burden to smaller organisations including Local Government and Social and Disability Enterprises. Therefore LGNSW supports amendment to the Regulation requiring large E-waste recyclers comply with AS5377, while smaller organisations are afforded greater flexibility.

Recommendation 3:

Stakeholders provide feedback and the Department undertake regulatory impact analysis on the options outlined for possible adjustments to the target trajectory.

As noted in the Operational Review, demand for e-waste recycling under the Scheme has outstripped the target trajectory. Thus, the market is indicating that the targets are incorrectly set, and are not adequately responding to the market. This, along with business continuity issues faced by the e-waste recycling industry and the social and disability enterprises indicate that market failure is occurring. In this regard, rather than an arbitrarily allocated target (as per the 3 options suggested in the Operations Review), it is preferred that the Australian Government investigate a rolling target, reviewed periodically to reflect actual activity and market demand.

Given the options put forward in the Operational Review however, LGNSW prefers Option 3, with an increased target to 56% in 2015-2016. The drawn out final target of 80% to 2031-32 is not favoured however. This extended final target is likely to provide a comparative operational cost for Liable Parties, but it is unlikely to ‘maximise net benefits to the community’ - the first established criteria of the Decision Regulatory Impact Statement: Televisions and Computers 2009.

While adjusting the target trajectory can alter the overall tonnage collected under the Scheme, it does not ensure access to this tonnage is distributed fairly. Part 3.03 of the *Product Stewardship (Televisions and Computer) Regulation 2011* establishes access requirements under the Scheme, however remote and regional experiences have demonstrated that this access is not being afforded. LGNSW supports publicly reported access outcomes and careful monitoring and compliance activity by the Australian Government.

Recommendation 4:

Co-regulatory arrangements to better manage the impact of changes to recycling procurement on the recycling industry by providing additional notice of planned changes.

This recommendation calls for co-regulatory arrangements to ‘better manage the impact of changes’. Local Government is of the view that this type of communication needs to be mandated rather than just encouraged. Regulatory amendment is required.

Further, due to the downstream impacts on Local Government from co-regulatory arrangements, Local Government also requires access to this information. LGNSW proposes an Australian Government administered publically available website, to indicate tonnage and quotas for each co-regulatory arrangement, including progress against access requirements. This website would need to be updated regularly to ensure accuracy.

In order to facilitate this transparent communication channel, liable parties should not be permitted to switch between co-regulatory arrangements. This provides no certainty for industry or Local Government as targets can suddenly be met simply because a liable party has switched co-regulatory arrangement in an effort to find a better business deal. The downstream impacts of these business decisions are both unfair and unsustainable.

Recommendation 5:

The Department and co-regulatory arrangements consider options to provide additional information to the market to assist e-waste businesses in planning.

As with Recommendation 4 above, the language of this recommendation needs strengthening. Co-regulatory arrangements simply ‘considering options to provide additional information to the market’ will likely render limited outcomes. Regulatory amendment is required here.

Local Government require certainty when business planning just as the liable parties and co-regulatory arrangements do, however certainty has not been afforded to Local Government under the Scheme. Some councils have advised that their service had been terminated overnight with no notice, and were left to deal with the built-up community expectation that all e-waste will be recycled for free. The very nature of Local Government is that it carries out services for its communities year round. The on-off nature of the Scheme once targets are met means that Local Government’s business function in this space is extremely difficult to manage.

As per Recommendation 4, an Australian Government administered, regularly updated and publically available website indicating tonnage recycled against quotas and access achievements for each co-regulatory arrangement is necessary to provide adequate transparency for the Scheme.

Recommendation 6:

Stakeholders comment on the proposal to amend the Regulations to establish a settlement date for target data, after which amendments to import declarations would not be taken into account.

LGNSW strongly supports a system whereby all imports are counted towards the Scheme. It is noted that liable party adjustments are not always necessarily made in a timely fashion at present; however the potential to negate undeclared imports from the overall recycling tonnage due to this poor reporting is not supported.

If a settlement date for target data is established, it is recommended that any additional tonnage is carried forward to the following year's tonnage quota. This provides a more accurate accounting methodology.

Recommendation 7:

Stakeholders comment on the proposal to amend the Regulations to smooth recycling rates between financial years by allowing recycling undertaken in July and August to count towards recycling targets in the previous financial year.

LGNSW supports the smoothing of recycling rates between financial years to count toward recycling targets in the previous financial year. This was the case in 2012-13 when 98.8% of the target was achieved.

Since then however, and importantly since the Scheme has effectively gotten off the ground, the Scheme has been significantly over-target. The ability of co-regulatory arrangements to carryover and acquit excess recycling year to year, exerting downward pressure on recycling tonnage is concerning. The Operational Review notes that approximately 8,700 tonnes of e-waste was carried over to the 2014-15 year. This creates an additional layer of uncertainty for the sector, and does not support continuity of service.

In relation to Recommendation 6 above, it seems inequitable that imported products undeclared by the settlement date are not counted toward the scheme, while extra e-waste collected by the co-regulatory arrangement is allowed to be carried forward.

LGNSW therefore recommends a regulatory amendment to Part 3.05 to reduce the 'excess amount' permitted under the Regulation. Preference is for 0% permitted over target, however 10% is considered reasonable.

Recommendation 8:

Stakeholders comment on the proposal to amend the Regulations to require co-regulatory arrangements to report on their engagement of social and disability enterprises in the context of their annual reports.

The social and disability enterprises working with Local Government have experienced significant hardship working with the Scheme, many have gone out of business and most have been driven to lay off staff due to sector uncertainty.

While LGNSW supports the recommended additional level of co-regulatory arrangement reporting, this requirement appears trivial as there is no requirement for social and disability enterprises to be engaged in the Scheme. Engagement of these organisations is vital to contribute toward community benefit.

LGNSW would welcome further support for social and disability enterprises under the Scheme.

Recommendation 9:

The Department continues work to revise the scheme's product codes and conversion factors.

LGNSW agrees that continual revision and scrutiny of the various elements of the Scheme are required, including the product codes and conversion factors.

Please note however that LGNSW still favours a unit for unit system, as opposed to the weight conversion system currently in place. With lighter products currently in production, the amount of recycling being carried out is considerably less by number than are being imported.

Recommendation 10:

Stakeholders comment and provide information on the proposal to consider the waste arising scaling factor applicable to computer systems, and provide any data or research which supports a particular scaling factor.

The Waste Arising calculation effectively reduces the amount of import data counted toward the annual quota for recycling tonnage under the Scheme. The Operational Review explains that this is proposed 'to take into account that some imported products are subsequently exported, and that not all imported products replace existing products'. A focus in the review is on those products listed in Part 4, Item 5.1 of Schedule 1B to the Regulation, namely automatic data processors.

Currently this reduction or scaling factor is set to capture 90% of imported televisions and computers. This upfront 10% decrease in tonnage to be recycled under the Scheme is not supported by LGNSW, nor are any further decreases in tonnage. The principle of extended producer responsibility, which the Scheme is based upon, requires that the industry creating the waste becomes responsible for it. It is about industry taking responsibility for the waste they are creating, not the waste that arises years later. Industry should only be able to count items that they have recycled under the Scheme toward their targets. In no way should industry be able to use community-driven reuse to count toward their recycling tonnage. The premise that some products are subsequently exported and that not all products replace existing products seems unsound, the arrival at the 0.9 scaling factor (or less as proposed by industry) appears based on a number of undisclosed assumptions, and grossly overestimated already.

It is noted that as a result of the Operational Review recommendations, a cumulative loss of tonnage under the Scheme is achieved via the proposed settlement date, the units versus weight measurement and the scaling factor for waste arising. This loss of tonnage is not in the community interest, but appears to be of industry favour. LGNSW does not support an overall decline in the tonnages to be covered by the Scheme.

Finding A

State, territory and local government strategies to manage e-waste outside the NTCS remain an essential part of e-waste management in Australia. Some are continuing or considering actions to address shortfalls in funded recycling and fluctuations in demand for recycling at state and local levels. Partnering with co-regulatory arrangements may be a cost-effective way for state, territory and local governments to provide local recycling in addition to that funded under the NTCS.

While this finding is fitting in a theoretical sense, in reality it is easier said than done. Experience has shown that some co-regulatory arrangements are unwilling to partner with Local Government for e-waste outside the Scheme. In fact, co-regulatory arrangements have taken advantage of existing Local Government collection services and collection points at no cost to them. In regional areas particularly, many co-regulatory arrangements are reluctant to communicate with councils at all, even for e-waste within the Scheme. The concept of 'partnering' implies that both parties contribute and also benefit – to date many councils have experienced marginal benefit under the Scheme.

To compound this issue, the e-waste recycling industry outside of the Scheme is disappearing rapidly. So in many cases, providers whom Local Government worked with for years have gone out of business. When the co-regulatory arrangements terminate councils' contracts, many councils are left with no choice but to landfill the remaining tonnage. This is an unfortunate and perverse outcome of the Scheme.

Finding B

It is important that e-waste recyclers continue to monitor industry trends and undertake due diligence in relation to all investment and business decisions. Current trends indicate increasing consolidation of the e-waste recycling industry, which is likely to continue over time.

In order for industry to analyse trends and carry out due diligence, full and transparent information should be made available about the Scheme. As mentioned above, a public website displaying this information would benefit industry, as would regulatory amendment preventing liable parties from switching between co-regulatory arrangements.

Finding C

State and territory governments may have options for supporting social and disability e-waste recyclers to remain viable or to support their transition into other business areas, and ensure that these businesses are informed about applicable assistance programmes.

While it is true that State and Territory Governments can help support social and disability e-waste recyclers, the same can be said for the Australian Government.

Australian Government's commitment to NTCRS

Finding A, B and C indicate that Local, State & Territory Governments and e-waste recyclers could do more to make the Scheme function better. While this may be true to an extent, this submission highlights a number of reasons that the design of the Scheme makes this difficult.

The stakeholder which could improve the Scheme most is the Australian Government. Local Government make the following suggestions for Australian Government action:

- Fund additional e-waste recycling in initial years of the Scheme to ensure the long-term viability of the currently unstable e-waste industry. The long term viability of the Scheme depends upon this sector. This is not an unprecedented support model; the Australian Government supports a number of industries.
- Provide specialised support for the social and disability enterprises which contribute to our communities beyond just through e-waste recycling.
- As the regulator, urgent and improved monitoring and compliance is required to ensure illegal activity is not occurring and a level playing field maintained for industry. Some issues reported to or by Local Government have been the mass dumping of tonnes of e-waste into bushland, no provision of access to some regional and remote areas and retail operators

(under the Scheme) sending e-waste to council for recycling. Local Government and the community want assurance that the Scheme is being adequately scrutinised and governed.

- Provide support to State Governments in addressing the stockpiling of CRT glass, which is of environmental concern but there is limited processing capacity in the country.
- Implement an e-waste tracking system whereby e-waste can be tracked via smartphone app from collection through to recycling. Similar systems are being introduced at a state level for the tracking of problem wastes.
- Develop an Australian Government administered, regularly updated and publically available website indicating tonnage recycled against quotas and access measures for each co-regulatory arrangement.
- Alter the legislation, locking liable parties to a co-regulatory for a set period of at least 3 years to create certainty in the market.

Access issues

As stated in the 2009 Decision Regulatory Impact Statement on Televisions and Computers, a key policy objective was 'to ensure fair and equitable geographical, industry and product coverage'. With the assurance of regional access at the outset of the Scheme, regional councils were hopeful of improved e-waste recycling options. Sadly however, this has not been the case under the Scheme, with many councils finding it challenging to engage providers.

The Operational Review makes no mention of Part 3.03 of the Regulation relating to the provision of reasonable access and none of the recommendations touch on these access requirements. As the regulator, further interrogation is required by the Australian Government to ensure the requirements of this provision are being met and transparently reported upon.

Conclusion

At present Local Government in NSW is responsible for 65% of e-waste. This is a large burden for one sector to manage. With targets being met only months into the financial year, Local Government are left with terminated contracts, local providers going out of business (including social and disability enterprises), grossly inflated quotes from Scheme providers for recycling outside of the scheme, a confused community, high community expectation, reputational risk and financial difficulties adjusting to the sudden market shifts.

This submission has addressed the recommendations outlined in the Operational Review. While it is noted that the recommendations are not intended to fundamentally alter the Scheme, there are many changes to the Regulation possible and necessary to address the market failure that has occurred under the Scheme. LGNSW's position has been stated for each recommendation as well as additional comment for considerations.