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Dear Mr Kesby

Preliminary Submission on Amendments to the NTCRS

ACOR has been holding discussions with members of the recycling industry regarding the operation of the NTCRS ("the scheme"). Out of those consultations, we wish to make this preliminary submission on the Discussion Paper.

Please note that this should not be regarded as the final submission of the recycling industry on the proposed amendments. The timeline since the release of the Discussion Paper in mid-April and the closing of submissions is too short for recyclers to gather and give full consideration to the changes proposed and other changes that also should be made now rather than later.

1. Inadequate consultation with recycling industry

We note that although two workshops on the proposed amendments where held last week, a number of recyclers did not get notice of the workshops and some did not even receive notice of the Discussion Paper.

It is in the public interest that there is a viable, sustainable recycling industry. It is therefore incumbent on Government to ensure its policies and regulations contribute to this outcome rather than jeopardise it.

It is regrettable that the Government continues to show abject neglect of the recycling industry in the formation and implementation of this Scheme. The industry has previously raised concerns about the impact of the Scheme on recycling businesses but these concerns remain unaddressed. The Government appears to have given priority to the approval of Co-regulatory Arrangements (CRA's) and the interests of the administrators rather than the required serious interest in the proper recycling of the products concerned.

None of the original CRA's has taken responsibility for keeping recyclers informed of regulatory or policy changes. The Government should be working more closely with ACOR to ensure adequate and timely information is distributed.

2. Inconsistent and flawed administration

The Government has boasted each announcement of a new co-regulatory arrangement without any adequate attention to how the CRA administrators are conducting their operations in relation to recycling. The impacts on recycling operations are distorting markets, denying recycling businesses access to relevant information, prejudicing investment in recycling capacity and failing to guarantee proper recycling of products to protect environmental and human health.

There are some glaring inadequacies emerging within the operation of the scheme:

a) inconsistent approaches to contracting with recyclers,
b) a total lack of transparency in relation to requirements various administrators are imposing on recyclers,
c) no evidence that recyclers are able to participate fairly on a competitive 'level playing field',
d) massive inconsistencies in the auditing requirements administrators are expecting of recycling operations, and
e) no consistency of interpretation of the E-Waste Standard AS 5377:2013.

3. Outcomes of the Scheme – policy failure

The Discussion Paper speaks optimistically about the potential outcomes of the Scheme. It is submitted that under the current arrangements, those design targets of access, recycling rates and planned measures to address the digital changeover of end of life TV's are most unlikely to be met in this first reporting year, if ever.

Section 1.2 the Discussion Paper outlines the objectives of a recycling rate of 80% by 2021-22 and then notes that "at least 90% of the materials from recycling are able to be used in new products" from July 2014. It is quite remarkable that this statement can be made without any real engagement with the recyclers to determine how those targets can be met in reality. The experience of recyclers is that the scheme, as currently configured, only permits low-cost recycling solutions, undermining the objective of recycling materials into new products such as plastics.

Already thousands of end of life CRT TVs are going to landfill and in the absence of improved co-ordination arrangements or pooling of quantities and capital, these CRT TV's will continue to be discarded without any proper recycling whatsoever in many parts of Australia. ACOR is advised of one administrator already disposing of TV's in this way which is clearly outside the intent and spirit of the Scheme.

The assertion that "the television and computer industries are delivering on the Scheme's outcomes" is frankly not substantiated by the current operation of the Scheme, except for the fact that four separate competing CRA agencies have now been established. The descriptions of "world leading environmental performance" and "ground-breaking nature" of the Scheme are misleading and deceptive as to the current operation of the Scheme currently operating in a manner in which recyclers have little confidence.

4. Ensuring the Scheme's product codes and conversion factors reflect the covered Products

The recycling industry supports any measure that will improve the integrity of the Scheme. The appropriate alignment of product codes and conversion factors is part of this process.

The Government engaged an independent consultant to survey stakeholders in relation to these matters. There is no information in the Discussion Paper on who was consulted nor the specific results of the survey, none of which appears to be published, to explain how the proposed amendments will improve the system.

The recycling industry is still assessing the proposed amendments and its implications, if any, for recycling operations, and reserves the right to make further submissions if anomalies are identified.

5. Pro-rata allocation of part year arrangement members

ACOR notes the proposed pro-rata splitting of the liable party's share of recycling targets for any change in co-regulatory arrangement part way through a financial year. This change appears to be uncontroversial from a recycler's point of view.

6. Timeframe for delivery of reasonable access

The regulation requiring a CRA to deliver reasonable access by 31 December 2013 was based on the assumption that at the time, only two or three CRA's would exist. This has now increased to four, the latest having been approved only recently.

It therefore makes sense, if new CRA's are progressively to be approved, to amend the regulation to specify a period from the date of approval rather than a fixed date.

However, it is noted that in a relatively small market for covered product compared to international schemes, the occurrence of four CRA's is likely to stretch the limit of viability of all of them.

When the product stewardship scheme was first conceived, it was intended that there would be a single industry-auspiced CRA for all TVs and computers. In terms of economies of scale and consistency of implementation, this would have been a preferable outcome. Instead, there are now four highly different CRAs, all seeking to undercut each other's 'market share' while at the same time driving up the costs incurred by recyclers in scheme administration. It has become a most unwieldy operation overall.

Some recyclers have been signed on by two or more CRA's and are experiencing significantly divergent demands from CRA's in terms of pricing, information, auditing and reporting.

Further, certain CRA's are refusing to audit some recyclers whom the same CRA had shortlisted as "preferred suppliers" as early as Feb 2012. As a result, the CRA's are effectively refusing recognition of product under the scheme recycled by the (unaudited) unapproved recycler. This places liable parties who have agreed to use the unapproved recyclers at a disadvantage and forcing them to move away from recyclers who they previously contracted, on the basis of their being 'preferred' for

the CRA. CRA's appear to be exerting an inappropriate restrictive trade practice in this regard.

7. Creating one product class

It is not clear why the approved CRA's currently require more computer products than TV's to be collected in the first years of the scheme (57%). It is however clear that the digital changeover will drive significant demand for the collection and recycling of TV's in the first five years.

It therefore makes sense to collect both categories of products in the proportions that product stewardship and public needs requires rather than in some fixed proportions. CRA's could also 'top up' their collection of one category with collections of another if they risk falling short of the original targets for either. In the first instance, this will mean potentially more collection of TVs.

It is already clear that the collection of TVs is not meeting the community's needs and many TV's are still going to landfill despite the existence of the scheme. It is also clear that there is no proper oversight of the management of the recycling operations being applied to products collected by each CRA to ensure compliance with the Australian Standard, let alone ensuring environmental impacts of inappropriate disposal are met.

Further, it is clear that unless there is a dramatic pick up from now until the end of the year, some CRA's may still not reach their required target, while others will potentially face stockpiles of products which they are not prepared or cannot afford to recycle to an appropriate standard.

8. Compliance with reasonable standards

Mention has already been made of the diverse procedures and standards being applied by CRA's in their administration of the scheme. This has resulted in no adequate oversight of who, how and where products are being recycled and no systemic assurance that the recycling is occurring in accordance with proper standards, under the AS 5377 or otherwise.

ACOR members therefore believe that there is a serious flaw in the operation of the scheme that needs to be addressed. This requires a two-step reform:

a) The accreditation of recyclers by a body independent of the competing CRA's; and
b) A consistent independent third party auditing process for all recyclers, funded by the CRA's.

The CRA's in are in competition for market share. They are driven to sign on recyclers at the lowest cost and have a fundamental conflict of interest in 'auditing' those same recyclers. Some CRA's are only interested in running a low cost logistics business without any real commitment to proper standards of recycling or markets for the recovered materials.

As previously pointed out, there are dramatic differences in the nature and extent of the so-called 'audits' that the various CRA's are requiring of recyclers. Where a recycler has signed with more than one CRA, this has turned into a nightmare of

bureaucratic paperwork, conflicting interpretations of requirements from one CRA to another, inconsistent standards and a general state of confusion that imposes unnecessary costs on the system.

It is submitted that these issues should not be left to some future phase of changes. They are urgent and should be acted upon immediately. The Phase 2 changes referred to in the Discussion Paper do not properly address them and in any event are unlikely to be acted upon until after the Federal Election due in September. By the time the new Parliament settles in, it will be well into next calendar year before further reforms are able to be implemented. This is unacceptable.

On behalf of all recyclers, ACOR therefore submits that the Government should receive further advice from ACOR following our consultation with members of the recycling community affected by the scheme, to enable some further reforms to be incorporated in the Phase 1 amendments.

ACOR stands ready to meet with the Government to advise on the details of these changes and to discuss how they can be implemented expeditiously.

Yours sincerely

Grant Musgrove
CEO