WASTE MANAGEMENT & RESOURCE RECOVERY ASSOCIATION AUSTRALIA

Deputy Chair Mr Mick Keogh
Chair, Competition Exemptions Committee
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601
Email: exemptions@accc.gov.au

1 April 2025

Dear Mr Keogh

Re: Submission on Authorisation Application AA1000694
Battery Stewardship Council (B-cycle 2.0)

Thank you for the opportunity to provide feedback on the Authorisation Application AA1000694. The Waste Management and Resource Recovery Association of Australia (WMRR) is the national peak body representing Australia's $17 billion waste and resource recovery (WARR) industry. With more than 2,300 members from over 410 entities nationwide, we represent the breadth and depth of the sector, including representation from business organisations, the three (3) tiers of government, universities, and Non-Government Organisations (NGOs), including research bodies, several of whom are currently involved as collectors, transporters and recyclers of the subject Authorisation.

On 18 March 2025, the Australian Competition and Consumer Commission (the ACCC) received an application for authorisation from Battery Stewardship Council (the BSC) (revocation and substitution). BSC is seeking authorisation under the *Competition and Consumer Act* 2010 (Cth). If the ACCC approves, authorisation would provide BSC with legal protection from competition laws to continue to operate the Battery Stewardship Scheme (the Scheme). WMRR understand that the BSC is seeking to change the current Scheme to introduce an annual review process of the levy and rebate based on an eco-modulated formula. We also note that the BSC has requested an urgent interim authorisation to allow them to implement the proposed changes to the Scheme prior to the ACCC's final determination in relation to the substantive application for authorisation. WMRR understands that the current authorisation was issued in 2020 and is due to expire on 3 September 2025.

The Scheme at present is a voluntary industry-led product stewardship scheme that we understand has 31%[1] industry participation. This means that there is a significant challenge with '*free- riders*' who avoid paying the levy, undermining the market position of those that participate, by underpricing their products. In 2024, the Scheme only collected 14.7%[2] of eligible batteries placed on market, meaning there was leakage from the scheme with a significant amount arguably being placed in traditional WARR collection systems, creating significant risk to our industry.

Fires because of batteries are at crisis level for the WARR industry in Australia. Every day in our trucks and facilities we are seeing increased incidence of fires due to batteries and battery powered products. One (1) industry analysis completed in 2024 estimated that there were as many as 12,000 fires in the WARR industry due to incorrect disposal of these products. According to Fire and Rescue NSW, these batteries are the fastest growing fire risk in NSW, with 324 incidents since 2024, including 33 injuries and 1,125 evacuations. This is up from 171 incidents in 2022 with NSW Fire and Rescue data also indicating a 43% increase in WARR fires between 2022-24.

[1] BSC ACCC 18 March 2025, Application Page 9
[2] BSC 2023-24 Annual Report

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The risk and ongoing occurrence of battery fires to our staff and facilities resulted in significant advocacy by the WARR industry of State and Federal Environment Ministers. Industry collectively has been calling on Ministers to address what we consider to be a significant cause of these fires, that is, the lack of appropriate collection infrastructure for battery powered products including, for example, consumer electronics and e-micromobility devices. Our industry sees all too frequently battery powered products discarded through traditional collection pathways, given the low coverage of the current Scheme. This is supported by B-cycle's own recent data that states that 71% of the population stated convenience as a barrier to using the scheme and 53% were placing batteries in their household bins in 2024.

As such, in 2024 there was an agreement reached at the Environment Ministers' Meetings (EMM) for the need for urgent reforms to product stewardship arrangements for all batteries to address the escalating risks of fires and create a safe, circular economy for batteries. In December 2024, NSW committed to delivering legislation for mandatory product stewardship, and as you may be aware The Product Lifecycle Responsibility Bill was tabled in the NSW Parliament on Tuesday 18 March 2025 and passed on Friday 28 March 2025 with overwhelming support from all parties and members.

The NSW Act proposes to establish a mandatory product stewardship framework for brand owners of certain products and will give the ability to establish a product stewardship scheme for a particular product and provides the legislative framework to ensure that there is regulatory oversight of a product stewardship organisation when dealing with products that can cause harm. The framework established under the Act allows the Minister to prescribe, by regulation, requirements across the entire life cycle of a product, including the development, design, creation, production, assembly, supply, use or re-use, collection, recovery, recycling or disposal of the regulated product. WMRR understands that this legislation is intended in the first instance to be used to provide a framework for the regulation of product stewardship for e-micromobility batteries. The second step of this process will be to draft regulations to make product stewardships mandatory for problematic products, including certain classes of battery where there is an existing Commonwealth stewardship accreditation.

WMRR recognises that at this time, the Act will only be applicable in NSW, however EMM also discussed progression of aligned state-led reforms for mandatory product stewardship, following adoption of the NSW Act. A number of states have already expressed their intention to follow the mandatory approach. As such, the scope of what is covered in the voluntary B-cycle scheme is very important for the future work that is to be done by NSW and other states, now that we have the ability to have a mandatory stewardship scheme for batteries and battery powered products. The ability to no longer rely on a voluntary approach and move to a mandated approach as proposed by Environment Ministers, will assist in eliminating free riders and require all producers to participate, finally providing a real opportunity to fund an integrated system and create a circular system for these products.

WMRR understands that through the drafting of the NSW Act it has become readily apparent that there are Constitutional challenges (section 109) with the interplay of the Scheme's Federal Accreditation and the State Act, and it is WMRR's strong view that this challenge should not exacerbated by amending the current scope under the existing Authorisation until such time as B-cycle works with NSW (and other states) to join the mandatory framework. WMRR notes that at 4.5 and 7.4.2 of the B-cycle authorisation application, it is noted that there *may be some regulatory changes*, however we would argue that now that these changes are largely known, B-cycle should halt its authorisation request of ACCC to work with NSW and move within the mandatory framework, noting that this may also impact the actual authorisation request itself.

B-cycle by its own admission has been calling for regulatory reform to strengthen the Scheme, and whilst we would all have preferred the Federal government had taken the lead and developed one national scheme, that was not the agreed pathway. However, through state-based adoption we may still achieve this, noting that there is in fact precedence to this with the state-based approaches to container deposit schemes nationally. It is vital

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therefore that there are no further changes to the existing Scheme whilst States work through this process. Note also that we wrote recently to the Federal Minister for Environment on this point (see Annexure A).

As such, WMRR cannot support B-cycle 2.0, given B-cycle by its own admission has found it challenging to gain sufficient capital investment in the scheme given the collection volumes, and as the WARR industry we have significant concerns about the ability of the scheme to increase further to manage more complex and hazardous products. We also have concerns that any fee increase - whilst the scheme remains voluntary in nature - will simply lead to lower industry participation and a greater number of free riders. WMRR strongly believes a mandatory scheme with strong regulatory checks and balances and capital investment in all aspects including safety is required, and for this reason we object to any further authorisations that increase this scheme as a voluntary one. We appreciate that the timing of the NSW Act was uncertain, however now that we have an Act that provides a mandatory pathway, we would urge B-cycle to work closely and quickly with NSW (and any other state that adopt this approach) to come within the mandatory framework given that the existing Authorisation remains on foot until September 2025.

In the event that ACCC does not consider the existence of the NSW Act and concern about impact of fee increases to impact free-riders sufficient grounds to not grant interim authorisation to B-cycle, WMRR would also take this opportunity to highlight a number of concerns we have with the request for Authorisation that we consider have not been addressed, despite a number of interactions with B-cycle expressing these concerns, including:

1. There is no demonstrable pathway from the current 15% recovery rate to increased levels of recovery that are clearly necessary to address the ongoing risk that these pose to the safety of the WARR Industry both its facilities and staff. No plan has been provided as to how for example, 60%, 80% recovery rates will be achieved and when, to provide industry with confidence that the scheme will meet these targets, nor any link with the proposed fees to increased coverage and returns. For example, whilst 71% state convenience is the barrier, B-cycle's emphasis appears to continue to be on community awareness and education (at 10.6.6); and

2. The WARR industry has serious concerns about the ability to develop sufficient and appropriate collection points with the requisite regulatory, safety and capital requirements needed to provide the standard of collection points required for larger more complex products that contain hazardous and problematic materials that pose significant fire risk with the funding proposed. To date the capital and infrastructure cost (everything from sites, fire upgrades, waste tracking systems, etc) have not been well understood by B-cycle and WMRR would submit are not appropriately covered in B-cycle 2.0 with reference only to capital grants. The true cost of providing the scheme should be factored into the fees (including rebates and recovery) and evidence that this has occurred is insufficient.

WMRR recognises that this is a critical and fast-moving space, and as such we would urge ACCC not to provide any interim authorisation until such time as the interaction of the NSW Act with the Scheme are determined to ensure that we have a mandatory scheme for battery and battery powered products. Please contact the undersigned if you wish to further discuss WMRR's submission.

Yours sincerely

Gayle Sloan
Chief Executive Officer
Waste Management and Resource Recovery Association of Australia

Annexure A

The Hon Tanya Plibersek, MP
Minister for the Environment and Water
PO Box 6022 House of Representatives
Parliament House
Canberra ACT 2600

Email: Minister.Plibersek@dcceew.gov.au

27 March 2025

Dear Minister

RE: Support for Mandatory Product Stewardship for Batteries and Battery-Embedded Products

As the peak industry associations representing the entire waste and resource recovery sector in NSW, we write to you seeking your urgent support for the NSW Government's leadership in progressing regulation of batteries and battery-powered products.

As you may be aware, the *Product Lifecycle Responsibility Bill* 2025 was introduced to the NSW Parliament on Tuesday, 18 March 2025. This Bill establishes a legislative framework for a mandatory product stewardship scheme for specified products, with initial application focused on batteries. It provides the NSW Government with the necessary regulatory tools to oversee stewardship organisations and enforce requirements across a product's entire lifecycle – from design and production through to recovery and disposal.

The introduction of this Bill follows the 2024 Environment Ministers Meeting (EMM) resolution that recognised the urgent need for reform in product stewardship arrangements for batteries. This is in response to the escalating risk of battery-related fires, which have reached crisis levels across Australia. In 2024 alone, our sector recorded over 12,000 fire incidents, placing workers and facilities at serious risk and imposing significant costs on businesses and the broader community.

Currently, Australia only has a voluntary national stewardship scheme, B-cycle—an Australian Government Accredited Product Stewardship Scheme—which covers a limited range of batteries, excluding lead acid and embedded batteries. According to B-cycle's own recent application to the ACCC dated 18 March 2025, only 15% of covered batteries placed on the market are being recovered. This limited reach, combined with the voluntary nature of the scheme, has resulted in free riders, underfunding, and low participation rates – all of which hinder the development of a safe and effective circular battery economy.

With the passage of the NSW Bill, there is now an opportunity to shift away from this ineffective voluntary model towards a mandatory, regulated system that can require participation, enable investment, and deliver improved environmental and safety outcomes. We note that B-cycle has recently submitted an application to the ACCC seeking approval for an expanded 'B-cycle 2.0'. This would likely also entail a change to the scheme's accreditation by the Australian Government. We write to advise that we **do not support** any expansion of the current voluntary scheme unless B-cycle agrees to adopt the requirements outlined in the NSW Product Lifecycle Responsibility Bill. If B-cycle wishes to increase its scope, this must come with appropriate regulatory conditions, including alignment with the mandatory framework proposed by NSW.

As part of this, we also ask that the Australian Government delays any decision on B-cycle 2.0 until the NSW Government has finalised its supporting regulations under the new legislation, and B-cycle has become part of this scheme. This will ensure that any expansion of the scheme is assessed against the regulatory standards expected under the new mandatory framework, and avoid the risk of pre-empting or limiting state-level reform.

Given the importance of transitioning from voluntary to mandatory stewardship, and the interplay between Commonwealth and state legislation, we also request that no changes be made to the current B-cycle Accreditation scope during this transitional period. Any expansion at the federal level could restrict state governments from regulating those same products under their own legislation, potentially frustrating the intent and direction agreed at the EMM.

The time for voluntary measures has passed. A mandatory stewardship scheme backed by legislation and regulatory authority is the only way to effectively manage the growing risks and deliver the outcomes our industry, our communities, and our environment require.

We welcome the opportunity to discuss this matter further and remain committed to working with government to create a safe, effective, and sustainable circular battery economy.

Yours sincerely

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