

ACCC authorization for product stewardship schemes



**Product
Stewardship
Centre of
Excellence**

Webinar, 3 Sept 2021

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Product Stewardship Centre of Excellence



@stewardshipAU

Today's speakers



Robert Janissen
*Australian Competition & Consumer
Commission*



Karen Gomez
Paintback



Product Stewardship and the Competition Exemptions framework

Robert Janissen
A/g Assistant Director

3 September 2021

[accc.gov.au](https://www.accc.gov.au)

What we will cover

- What are Competition Exemptions and 'Authorisation'
- When Authorisation might be required
- What the ACCC need to see to grant Authorisation – the Authorisation test
- An example: the Battery Stewardship scheme
- Steps in the Authorisation process

Operating premise

- The object of the *Competition and Consumer Act* is:

“to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.”
- Parties can apply for exemption from competition provisions in the Act if they think their conduct is in the public interest
- The Competition Exemptions branch assesses such applications

Exemptions in the public interest

- Three ways for businesses obtain exemption:
 - Class Exemption (only for small business collective bargaining)
 - Notification (can permit certain arrangements, such as exclusive dealing, but not cartel conduct or anti-competitive agreements)
 - **Authorisation**
- All are public processes
- Net public benefit test is at the core of all three

Authorisation

- Can be sought for a full range of conduct in Part IV of the Act (the competition provisions)
- Public and transparent process – The Act requires a public register ([here](#))
- Net public benefit test
 - An exemption from competition law may be in the public interest by addressing market failures and producing more efficient outcomes.
- Onus is on applicant to satisfy ACCC of net public benefit

What can Authorisation permit

- cartel conduct
- contracts, arrangements or understandings containing anti-competitive provisions
- exclusive dealing
- secondary boycotts
- misuse of market power
- concerted practices
- resale price maintenance
- dual listed company arrangements
- mergers and acquisitions

What can Authorisation permit

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- ☐ **exclusive dealing**
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- ☐ **concerted practices**
- ☐ **resale price maintenance**
- ☐ **dual listed company arrangements**
- ☐ **mergers and acquisitions**

Applying for Authorisation

To apply for Authorisation you must provide:

- (a) a public version of your application for publication on the public register.
- (b) a signed declaration that the information in your application is accurate, and
- (c) \$7,500 lodgement fee (unless a fee waiver is granted)

The Application for authorisation must:

- explain what the proposed conduct is, and the rationale for doing it
- describe the relevant market(s) that are likely to be impacted
- list who is likely to participate in the conduct and who will be affected by it (e.g. competing businesses, suppliers, customers)
- explain what public benefits and detriments are likely to result from the conduct
- explain how long authorisation will be required for

A full list of the factors to be addressed is available [here](#).

Public benefit and detriment

- Not defined in the Act. The Australian Competition Tribunal has said that public benefit includes:

... anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.

- Similarly, the Tribunal has said that public detriment includes:

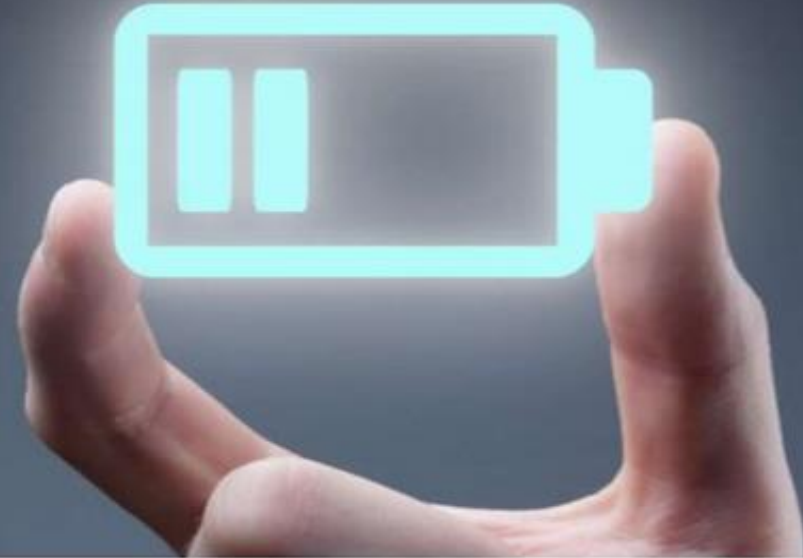
... any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.

What *is* a public benefit?

- Environmental benefits
- Improved information and/or transparency for consumers
- Improved input into contracts among a group
- Transaction and other operating cost savings
- Increased competition
- Lower prices
- Ensuring supply of essential goods and services

Battery Stewardship Council

Creating a national
stewardship scheme
for batteries



PROPOSED STEWARDSHIP SCHEME FOR BATTERIES

Elements of the Scheme:

1. Members of the scheme can only deal with other members.
2. Levy imposed on all batteries imported to Australia with rebates paid to battery recyclers.
3. Consumers encouraged to store batteries until collected for recycling.

Battery Stewardship Scheme

Benefits	Detriments
Environmental benefits	Storing button batteries poses a safety risk
Increased public awareness of battery disposal and re-use	Members of the scheme can't do business with non-members
supporting increased innovation, research and development.	Small increase in battery prices, administrative burden for participating businesses.



Battery Stewardship Scheme

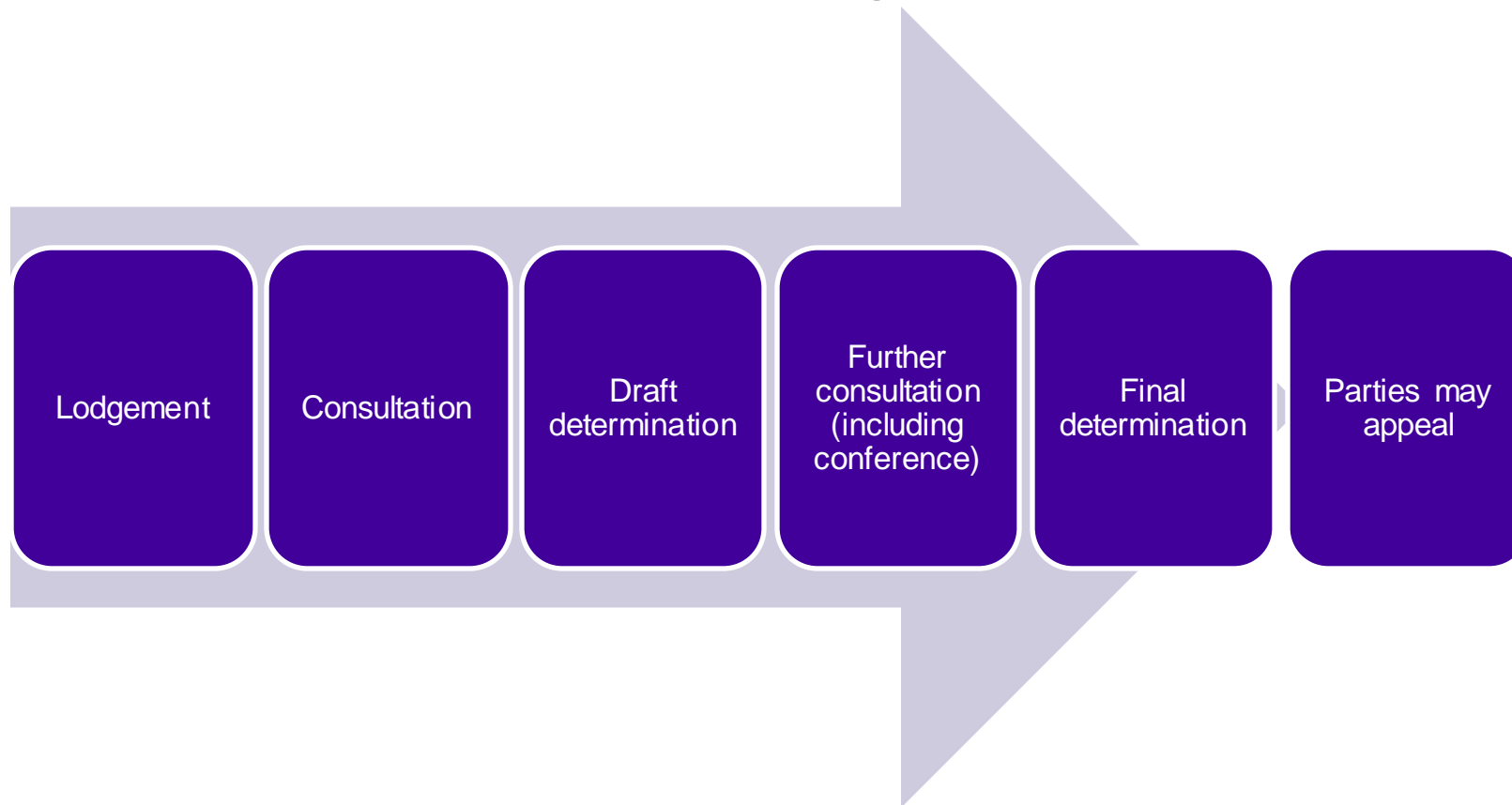
Solution:
Impose a condition requiring the
applicant to develop a Button
Battery Safety Strategy with input
from the ACCC

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Authorisation process

- 6 month process from lodgement:



Want to know more?

- Authorisation webpage: [Link](#)
- Comprehensive guidelines for authorisation: [Link](#)
- Authorisation form (criteria to be addressed in an application): [Link](#)
- Public Register – Authorisations: [Link](#)
- Contact us:
 - Email: exemptions@accc.gov.au
 - Phone: 02 6243 1368

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Paintback

PAINTBACK:

**Turning Used Paint's
Colourful Past into a
Brighter Future.**



Paintback

Established in 2016, we are an industry-led initiative that diverts unwanted paint and packaging from ending up in landfill and repurposing to higher value uses.

- Paintback is driven by the major Australian paint companies that supply around 90% of all the architectural and decorative paint sold. Our founding members are Dulux, Haymes, PPG, Resene and Wattyl.
- Paintback is an independent for-purpose organisation, which is funded through a 15 cents per litre levy on eligible products.





The Circular Economy

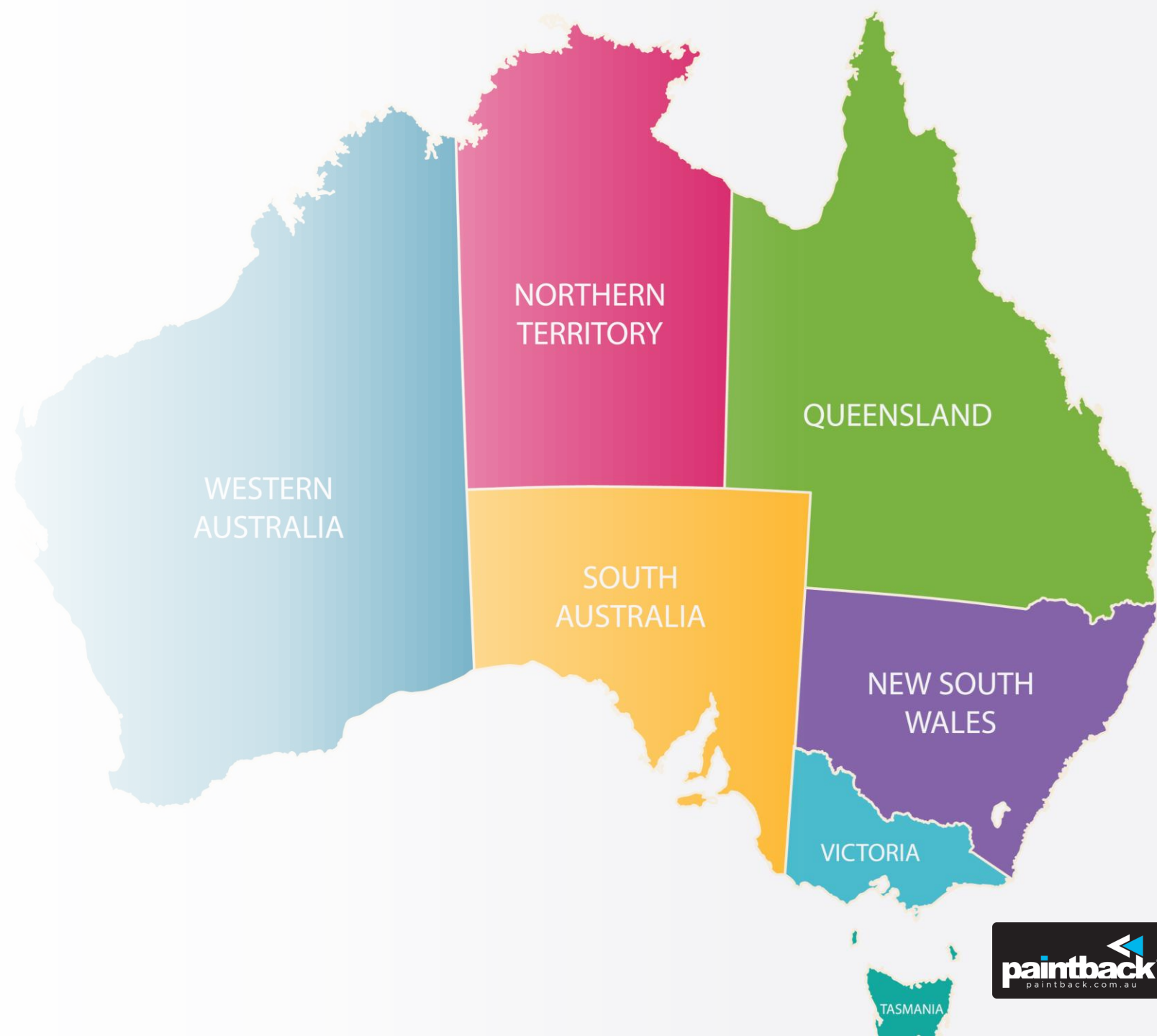
From a Colourful Past to a Brighter Future

- Australia's biggest paint brands set aside their competitive urge to collaborate on product responsibility.
- Committed to a model of collaboration to achieve shared outcomes:
 - Removal of regulatory barriers to a harmonised national model
 - Shared delivery means scale and viable economics.
 - Investment improves stewardship outcomes
 - Ability to address supply chain challenges & develop markets for higher resource recovery uses.



Before Paintback

- Different collection models in each state.
- No national scale
- Trade painters could not use collection schemes.
- Collections funded by taxpayers.



How did we get started?

- APMF initiates discussions with its members
- 2013 Paint waste is listed under the Product Stewardship Act 2011.
- Sustainability Victoria supports industry working group that designs the scheme.
- 2015 ACCC application is authorised.
- 2016 Scheme launches & used paint is removed from priority list.
- Collaboration across Governments and the supply chain.



Australian Government
Department of the Environment and Energy



Sustainability
Victoria



Queensland
Government



Australia's first family of paint.





A clear purpose and problem definition

- When industry runs its own scheme, it can foster innovation to improve performance and bring its experience to drive impact.
- Our objects include managing the scheme and undertaking research to create a **net environmental benefit**.



R&D Improving Stewardship Outcomes

- Our R&D team is currently focused on:
 - The conversion of unwanted water-based paint into new products,
 - Recycling of unwanted plastic packaging
 - Technical advice on current treatment pathways
- R&D Advisory Committee
 - Provide expertise in technical and commercialisation of our research programs.
- Investment to deliver environmental outcomes, consistent with our stewardship values.



Impact

- ~170 collection sites nationally, servicing ~90% of the population
- 30,000 T of used paint and packaging collected since Paintback began.
- 20% of Australians know of Paintback (prompted), 11% of Australia have used Paintback.
- People see Paintback as responsible and positive for the environment.
- ACCC authorised for another 10 years



Magnolia gives Emily Wilson a brush
Picture: Dan C...

SPLASH OF GREEN



Checklist

- Clear problem definition
- What is the purpose, the “why” of your stewardship?
- Stakeholders
 - Who is in the scheme? Who isn't?
 - What is the interaction with the supply-chain?
- What needs funding? What is the best way to fund it? What are the options?
- Any markets affected? How?
- What is the net public benefit?
- Are there any anti-competitive issues?

Be Prepared

- Once design is settled, get legal advice to determine if there is anti-competitive behaviour that requires authorisation.
- Start early, good applications take time to prepare.
 - Prepare internally or through advisors?
 - Who is application on behalf of?
- Build the case to demonstrate public benefit and anti-competitive costs
- ACCC process for consultation, determination and timelines are mapped out early in application by the ACCC.
- Be prepared for the public consultation process
- Spend some time looking through the *ACCC Authorisations Register*
 - Diverse range of applications
 - Ideas on design from many different sectors, in addition to product stewardship
 - Get a sense of how the process can roll out



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Taking Australia's unwanted paint and packaging's colourful past to a brighter future of responsible disposal and innovative reuse.





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Questions & Answers