



Governance of product stewardship schemes: Guidelines and templates



**Product
Stewardship
Centre of
Excellence**

**PRACTICE
NOTES**

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SUMMARY

Product stewardship schemes involve reducing the environmental and human health impacts of products across their entire life cycle, providing a pathway to establishing a circular economy that designs out waste and pollution, keeps products and materials circulating in the economy and regenerates and restores natural capital.

While there is no 'one size fits all' when it comes to product stewardship schemes, this note provides guidance, key terms and templates for documents commonly used in establishing a product stewardship scheme.

INTRODUCTION

Product stewardship schemes involve reducing the environmental and human health impacts of products across their entire life cycle, providing a pathway to establishing a circular economy that designs out waste and pollution, keeps products and materials circulating in the economy and regenerates and restores natural capital.

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Types of product stewardship schemes

Product stewardship schemes can be:

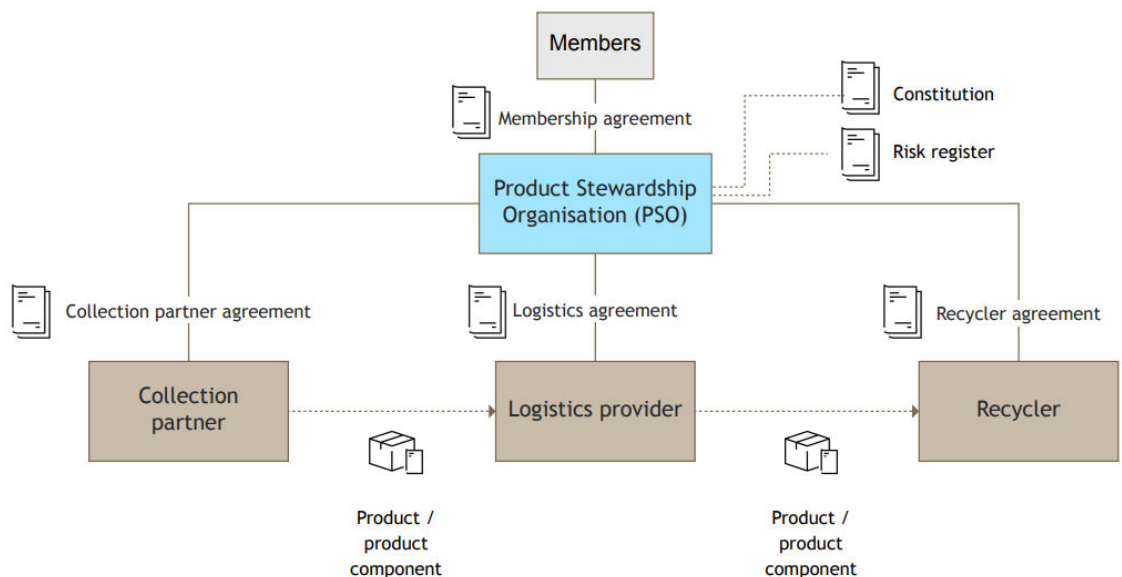
- industry-led voluntary schemes (e.g. MobileMuster);
- co-regulatory schemes between industry and government (e.g. the National Television and Computer Recycling Scheme or the NEPM for Used Packaging); and
- mandatory schemes under law (e.g. the Product Stewardship for Oil Scheme).¹

The documents required in connection with a scheme, and content of those documents, will vary according to the type of scheme.

This note focuses on industry-led voluntary schemes with a focus on collecting and recycling products at the end of their useful life, but also includes some commentary relevant to other schemes.

Overview of how a product stewardship scheme may work.

The diagram below provides an example of how a product stewardship scheme may work, and some of the key documents that may be required to establish the scheme.



¹ For a list of the current mandatory, co-regulatory and accredited schemes, see the Department of Climate Change, Energy, the Environment and Water's [website on product stewardship schemes](#).

Key documents

The table below provides a summary of the key documents referred to in the diagram on the previous page.

Document	Description	see further
Constitution	A core document of the PSO which governs its internal management.	Guidance in Annexure A
Membership agreement	An agreement between the PSO and an individual member of the product stewardship scheme setting out the services to be provided by the PSO to the member (eg managing the collection, transport and recycling of the relevant product / product component).	Sample key terms in Annexure B
Collection partner agreement	An agreement between the PSO and a collection partner setting out the obligations of the PSO and collection partner in relation to collection points and reporting.	Sample key terms in Annexure C
Logistics agreement	An agreement between the PSO and a logistics provider under which the logistics provider agrees to provide logistics (eg transport) and reporting services to the PSO.	Sample key terms in Annexure D
Recycler agreement	An agreement between the PSO and a recycler for recycling services in relation to the relevant product.	Sample key terms in Annexure E
Risk register	A register of the risks relevant to the PSO, including controls to mitigate the risks.	Sample template in Annexure F



ANNEXURE A: Constitutions - guidance

What is a constitution?

A core document governing the internal management of the PSO. It typically includes provisions regarding rights of members of the PSO to vote and participate in members meetings, how members' and directors' meetings will be run and the appointment, powers and remuneration of directors.

Incorporated associations may call this governing document its rules or articles of association.

Which constitution is right for me?

The form of constitution appropriate for a PSO will vary according to the type of structure chosen for the PSO, whether it is a charity registered with the Australian Charities and Not-for-profits Commission (ACNC), whether it is a deductible gift recipient, and its internal management arrangements.

Various types of entities can be used for a PSO. Common examples are companies limited by guarantee and incorporated associations. Further information on governance options for product stewardship schemes can be found in the Product Stewardship Centre of Excellence's [webinar](#).

PSOs that are charities registered with the ACNC and/or deductible gift recipients are required to include certain provisions in their constitutions.

Where can I find guidance on drafting a constitution?

The corporate regulator, the Australian Securities and Investments Commission (ASIC), provides guidance on constitutions for companies incorporated under the Corporations Act (e.g. companies limited by guarantee) on its [website](#).

The ACNC provides a [constitution template](#) for small companies limited by guarantee and an accompanying guide which explains how to use the template.

Justice Connect's Not-for-profit Law provides [guidance](#) on constitutions and rules as well as a free online tool to help incorporated associations in Victoria or New South Wales create their own rules or constitutions.

ANNEXURE B: Membership agreement – sample key terms

The below table provides an example of key terms that may be included in a membership agreement between a PSO and an individual member of the product stewardship scheme.

#	Term	Description
1	Term	<p>Sets out the term of the agreement. For a co-regulatory scheme, this may be driven by the Minister's rules for the co-regulatory scheme (which may provide, for example, for membership for a financial year).</p> <p>The term may also provide for successive extension periods, for example of successive 12-month periods, unless notice is given that a party does not wish to extend.</p>
2	Membership	<p>In a co-regulatory scheme, 'liable parties' (e.g. importers/manufacturers of relevant products above a prescribed threshold) are required to be members of the scheme. This is intended to ensure all parties benefiting from the scheme contribute to it.²</p> <p>There is therefore typically a provision that provides that the member becomes a member of the scheme.</p>
3	Member obligations	<p>Sets out the member's obligations with respect to the scheme. In addition to paying for the services the PSO will provide to the member (see below), for a co-regulatory scheme the member obligations may include:</p> <ul style="list-style-type: none"> • advising of changes to details/membership status; • providing access to the scheme website to consumers, for example via a link on the member's website or in electronic/written communications; • providing information necessary to allow the PSO to comply with applicable audit requirements; and • any other member obligations necessary to enable the PSO to comply with its requirements under the co-regulatory scheme.
4	Services	<p>Sets out the services the PSO will provide to the member. This may include services relating to collection, transport and recycling of products/product components, and reporting and audits.</p> <p>Where relevant, the services should be described consistently with those in the logistics and recycler agreements.</p>
5	Additional services	<p>Sets out any additional services the PSO will provide to the member, on the member's request.</p>
6	Service standards	<p>Sets out the standards the PSO must meet in providing the services. This may include standards relating to:</p> <ul style="list-style-type: none"> • due care, diligence and skill; • conformance with industry standards reasonably expected of persons providing services of the type described in the agreement; • compliance with applicable laws; and • specific performance standards for relevant objectives / KPIs

² See page 72 of the revised explanatory memorandum to the Recycling and Waste Reduction Bill 2020.



		<p>under the agreement.</p> <p>The agreement may also set out standards the PSO must meet in operating the scheme, for example regarding the use of such skill and expertise as is reasonably to be expected from a PSO (or in the case of a co-regulatory scheme, from an operator of a co-regulatory scheme in accordance with applicable law).</p> <p>Again, if the PSO will be relying on logistics providers or recyclers to provide the relevant services, the service standards should be consistent with those in the logistics and recycler agreements.</p>
7	Fees and payment terms	<p>Sets out the fees the member will pay the PSO for the services and any additional services.</p> <p>Also sets out the payment terms and any arrangements for dealing with disputed invoices and interest.</p>
8	Reporting	<p>Sets out reporting requirements of the PSO, which may include types and volumes of product/product components collected under the agreement, performance against any specific performance standards set for relevant objectives/KPIs under the agreement and, particularly in relation to co-regulatory schemes, may also require the PSO to provide members with copies of annual reports.</p>
9	Notification	<p>Sets out any notification rights. For example, agreements relating to co-regulatory schemes may require the PSO to notify the member if the PSO becomes aware of any events or circumstances that may lead to cancellation of the scheme.</p>
10	Termination	<p>Sets out the termination rights of each party, and what happens on termination.</p> <p>In particular, an agreement in relation to a co-regulatory scheme typically terminates if the co-regulatory scheme is cancelled or the member is no longer required to join the co-regulatory arrangement in accordance with applicable law.</p>
11	Dispute resolution	<p>Sets out how the parties will resolve disputes that arise under the agreement.</p> <p>Typically this involves escalation to successively more senior officers of the parties, and then to a form of alternative dispute resolution (eg to an independent expert to determine the dispute).</p>
12	Assignment, novation and subcontracting	<p>Generally the parties must not assign or novate the agreement without consent of the other party.</p> <p>The PSO generally must not subcontract without consent of the member. There may also be additional requirements on the PSO subcontracting, for example to ensure any subcontractor has relevant certifications and/or agrees to use recycling facilities covered by relevant certifications.</p>
13	General	<p>Typically the agreement also includes general provisions including relating to:</p> <ul style="list-style-type: none"> • force majeure (that is, events beyond the reasonable control of the parties); • GST and other taxes/duties; • warranties, insurance, indemnities and limitations on liability; • confidentiality;



		<ul style="list-style-type: none">• amendment;• notices; and• governing law.
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ANNEXURE C: Collection partner agreement – sample key terms

The below table provides an example of key terms that may be included in a collection partner agreement between a PSO and a collection partner of the product stewardship scheme.

#	Term	Description
1	Term	Sets out the term of the agreement, which may be fixed or ongoing.
2	Services	<p>Sets out the services the PSO will provide to the collection partner. This may include services relating to:</p> <ul style="list-style-type: none"> • supply of collection containers; • supply of promotional materials for display at the collection site; • collection of products/product components; and • recording and reporting of details regarding collections.
3	Service standards / fees and payment terms	Whether there are service standards and fees will depend on the particular scheme. In some industry-led voluntary schemes, PSOs provide services to collection partners for free and there are no or minimal service standards.
4	Ownership	<p>Sets out who legally owns the products/product components, collection containers, promotional materials and intellectual property relating to the product stewardship scheme. For example:</p> <ul style="list-style-type: none"> • the PSO may become the legal owner once the products/product components are put in the collection container; and • the intellectual property, collection containers and promotional materials may remain the property of the PSO (with a licence granted to the collection partner to use them solely in connection with the product stewardship scheme and subject to any directions from the PSO).
5	Collection partner obligations	<p>Sets out the collection partner's obligations with respect to the product stewardship scheme. These may include, for example:</p> <ul style="list-style-type: none"> • not collecting products/product components other than for the PSO and product stewardship scheme; • ensuring collection containers are sealed, secure, reasonably accessible by the public, and as far as possible that only relevant products/product components are put in the container; • handling collection containers carefully and notifying the PSO of any damage or unauthorised access; • ensuring collection containers are cleared regularly and products/product components are properly packaged for collection; • displaying promotional material in accordance with instructions from the PSO; and • compliance with workplace health and safety requirements, and requirements relating to privacy of personal information.
6	Termination	Sets out the termination rights of each party, and what happens on



		termination (eg return of the collection containers, promotional materials and intellectual property).
7	General	Where there are many collection partners, this agreement may be in the form of terms and conditions that are agreed to through an online registration process. The terms and conditions may be in a shorter form compared to the agreements below and include more limited general provisions, for example relating only to assignment and novation and governing law.

ANNEXURE D: Logistics agreement – sample key terms

The below table provides an example of key terms that may be included in a logistics agreement between a PSO and a logistics provider of the product stewardship scheme.

#	Term	Description
1	Term	<p>Sets out the term of the agreement (eg 2 years).</p> <p>As above, the agreement may also provide for extension periods, for example of 12 months each, at the option of the PSO.</p>
2	Services	<p>Sets out the services the logistics provider will provide to the PSO. This may include services relating to:</p> <ul style="list-style-type: none"> • call centre services for the product stewardship scheme; • collection channel development; • managing logistics for the product stewardship scheme, including managing a panel of subcontractors to deliver collection containers and promotional materials to collection partners and to collect products/product components from collection partners and deliver them to recyclers; and • reporting to the PSO on the performance of the subcontractors and to the recycler on the details of collections. <p>The logistics provider may also be required to validate and reconcile recycler's invoices.</p>
3	Service standards	<p>Sets out the standards the logistics provider must meet in providing the services. This may include standards relating to timing, content and format of reporting.</p>
4	Fees and payment terms	<p>Sets out the fees the PSO will pay the logistics provider for the services, and the payment terms.</p>
5	Ownership	<p>Sets out who legally owns the products/product components and intellectual property relating to the product stewardship scheme.</p> <p>For example, the agreement may provide that the PSO owns the products/product components until delivered to the recycler, and the intellectual property (e.g. logos) of the scheme remains with the PSO (and licensed parties). The logistics provider may own intellectual property developed by the logistics provider in relation to the scheme.</p>
6	Logistics provider obligations	<p>Sets out the logistics provider's obligations with respect to the product stewardship scheme. These may include ensuring they, and using reasonable endeavours to ensure their representatives and subcontractors:</p> <ul style="list-style-type: none"> • do not interfere with the business of collection partners; • comply with safety, security and general site rules; • comply with applicable laws and standards, for example environmental, occupational health and safety, export, and dangerous goods and hazardous waste laws; • do not use or deal with products/product components except in accordance with the agreement; • use the scheme logo only in accordance with directions from the

		<p>PSO; and</p> <ul style="list-style-type: none"> comply with all relevant laws. <p>The agreement may also include detailed environmental and safety obligations.</p>
7	PSO obligations	<p>Sets out the PSO's obligations with respect to the product stewardship scheme. These may include, for example, facilitating cooperation by collection partners and recyclers, and conducting promotions to encourage participation in the scheme.</p>
8	Reporting and audit	<p>Sets out the reporting requirements of the logistics provider and audit rights of the PSO.</p> <p>For example, the logistics provider may be required to report to the PSO on collection container deliveries, product/product component collections, performance against recycling outcomes, reconciliations with recycler information and call centre reporting.</p> <p>The PSO may have rights to require an audit or other verification of the logistics provider's reporting.</p> <p>Each party may also be required to nominate an officer to meet regularly to discuss performance under the agreement.</p>
9	Termination	<p>Sets out the termination rights of each party, and what happens on termination.</p> <p>There may be a process for notifying and rectifying material breaches of the agreement that must be followed before the agreement can be terminated for material breach.</p>
10	Dispute resolution	<p>Sets out how the parties will resolve disputes that arise under the agreement.</p> <p>As above, this typically involves escalation to more senior officers of the parties, and then to a form of alternative dispute resolution (eg mediation).</p>
11	Assignment, novation and subcontracting	<p>As noted above, the logistics provider may be able to subcontract with the consent of the PSO. In that case, the agreement may require the logistics provider to use reasonable endeavours to ensure subcontractors are bound by written subcontracting agreements on terms no less onerous than the terms of the agreement between the logistics provider and the PSO.</p> <p>In some cases the logistics provider may be prohibited from assigning or novating without consent of the PSO, but the PSO may be able to assign without consent of the logistics provider.</p>
12	General	<p>The agreement may also include general provisions including relating to:</p> <ul style="list-style-type: none"> force majeure; GST and other taxes; warranties, insurance, indemnities and limitations on liability; and confidentiality; change of control; amendment; notices; and governing law.

ANNEXURE E: Recycler agreement – sample key terms

The below table provides an example of key terms that may be included in a recycler agreement between a PSO and a recycler of the product stewardship scheme.

#	Term	Description
1	Term	<p>Sets out the term of the agreement (eg 2 years).</p> <p>As above, may also provide for successive extension periods, for example of 12 months each, at the option of the PSO.</p>
2	Services	<p>Sets out the services the recycler will provide to the PSO. This may include services relating to:</p> <ul style="list-style-type: none"> • receipt and sorting of products/product components; • storage, and transport to the relevant subcontractor for reprocessing; • collection channel development; • disposing of waste delivered to it by subcontractors of the logistics provider.
3	Service standards	<p>Sets out the standards the recycler must meet in providing the services. This may include standards relating to timing, content and format of reporting and percentages of components processed or despatched within the specified time.</p>
4	Fees, payment terms and rebates	<p>Sets out the fees the PSO will pay the recycler for the services, the rebates the recycler will pay the PSO, and the payment terms.</p>
5	Ownership	<p>Sets out who legally owns the products/product components and intellectual property relating to the product stewardship scheme.</p> <p>For example, the agreement may provide that:</p> <ul style="list-style-type: none"> • ownership in the products/product components passes to the recycler when received; • the intellectual property (eg logos) of the scheme remain with the PSO; and • any intellectual property created by the recycler in providing the services (other than in relation to business processes of the recycler) vests on creation in the PSO.
6	Recycler obligations	<p>Sets out the recycler's obligations with respect to the product stewardship scheme. These may include:</p> <ul style="list-style-type: none"> • ensuring subcontractors do not use or deal with products/product components except in accordance with the agreement; • limits on how long products/product components can be stored; • not burying or otherwise inappropriately disposing of products/product components; • using the scheme logo only in accordance with directions from the PSO; and • complying with applicable laws, for example environmental, occupational health and safety, export, and dangerous goods and



		<p>hazardous waste laws.</p> <p>The agreement may also include detailed environmental and safety obligations.</p>
7	PSO obligations	<p>Sets out the PSO's obligations with respect to the product stewardship scheme. These may include, for example, facilitating cooperation by collection partners, logistics providers and conducting promotions to encourage participation in the scheme.</p>
8	Reporting and audit	<p>Sets out any reporting requirements of the recycler, which may include for example regular reporting on deliveries received, components held in stock and recycled, waste, and reconciliation of information.</p> <p>The PSO may have rights to require an audit or other verification of the recycler's reporting.</p> <p>Each party may also be required to nominate an officer to meet regularly to discuss performance under the agreement.</p>
9	Termination	<p>Sets out the termination rights of each party, and what happens on termination.</p> <p>There may be a process for notifying and rectifying material breaches of the agreement that must be followed before the agreement can be terminated for material breach.</p>
10	Dispute resolution	<p>Sets out how the parties will resolve disputes that arise under the agreement.</p> <p>As above, this typically involves escalation to more senior officers of the parties, and then to a form of alternative dispute resolution (eg mediation).</p>
11	Assignment, novation and subcontracting	<p>As noted above, the recycler may be able to subcontract with the PSO's consent. In that case, the agreement may require the recycler to use reasonable endeavours to ensure subcontractors are bound by written subcontracting agreements on terms no less onerous than the terms of the agreement between the recycler and the PSO.</p> <p>In some cases the recycler may be prohibited from assigning without consent of the PSO, but the PSO may be able to assign without consent of the recycler.</p>
12	General	<p>Typically the agreement also includes general provisions including relating to:</p> <ul style="list-style-type: none"> • force majeure (that is, events beyond the reasonable control of the parties); • GST and other taxes; • warranties, insurance, indemnities and limitations on liability; • confidentiality; • change of control; • amendment; • notices; and • governing law.

ANNEXURE F: Risk register – sample template

A risk register records an organisation’s identified risks and the consequences and the likelihood of a risk occurring. It is an important component of risk management that helps organisations identify and take precautionary steps to reduce and/or minimise its risks.

Below is a sample template of what a risk register may look like.

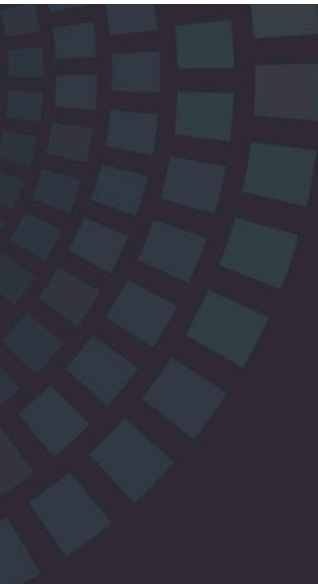
#	Category	Sub category	Risk description	Time horizon	Risk consequence (brief elaboration of the impact)	Inherent risk			Existing/mitigating controls		Residual risk			Risk owner
						Likelihood	Impact	L x I	Reduce likelihood	Reduce impact	Likelihood	Impact	L x I	
1														
2														
3														
4														



NEXT STEPS AND THANK YOU!

A very big thanks to the team at King Wood Mallesons, one of the Centre's Specialist Advisers who kindly prepared this practice note.

Should you have any questions in regard to this practice note please direct your enquiries to info@stewardshipexcellence.com.au Atten: Rose Read, Director



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