



# **EXTENDED PRODUCER RESPONSIBILITY**

## **POLICY STATEMENT**

**Department of Environment**

**29 June 2005**

## A new approach to waste reduction

The Government is committed to a more sustainable future for Western Australia and to a new approach towards waste.

We are shifting well away from the traditional notion of waste management and its focus on the best means of waste disposal at the end of the lifecycle of products. A new policy framework of waste avoidance, resource efficiency and materials recovery is being developed, focusing instead on preventing the creation of waste in the first place, and the recovery and recycling of 'waste' materials as useful and valuable resources.

This change in focus reflects a new vision to dramatically reduce the impacts of wastes on our environment through developing efficient closed-loop systems where resources are continually recycled and waste is systematically avoided. This new approach emphasises the need for continued efforts to prevent the generation of waste through improved products and packaging that can be recycled more easily and do not produce wastes during their manufacture.

An important part of this new vision for waste in Western Australia is the recognition that producers and suppliers of products have a vital responsibility for the wastes created during their products' lifecycles, including consideration of what happens to the product after its useful life has ended.

It is necessary that producers and suppliers accept this responsibility for their products so that there is a direct incentive for the design and manufacture of better products that can be recycled more easily, and for products that do not present significant waste management problems at the end of their useful life.

This is called **Extended Producer Responsibility**, or EPR.

EPR offers a framework for a partnership approach between Government, business, and the community to work towards a zero waste society.

This policy statement builds upon the *Statement of Strategic Direction for Waste Management in Western Australia: Vision and Priorities*<sup>1</sup>, which introduces EPR as an important means of achieving the Government's strategic waste management objectives, and takes into account submissions received on the recent *Extended Producer Responsibility Discussion Paper*.<sup>2</sup>

The policy statement outlines the Government's commitment to EPR and how it will apply in our State of Western Australia.

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<sup>1</sup> Waste Management Board (2004). *Strategic Direction for Waste Management in Western Australia: Vision and Priorities*. (WA Department of Environment, Perth, WA.) 20 pp.

<sup>2</sup> Department of Environment (2004). *Extended Producer Responsibility Discussion Paper*. (WA Department of Environment, Perth, WA.) 14 pp.

The *Western Australian State Sustainability Strategy*<sup>3</sup> commits government to develop policies and legislation to encourage or require producers of hazardous and problematic wastes to share the responsibility for managing and reducing these wastes until they are phased out by 2020. The Western Australian Labor Party also made a 2005 election commitment to continue to develop, in consultation with the community, industry and local government, a comprehensive Waste Bill including extended producer responsibility.

These commitments will be given effect through this policy statement and the new waste legislation for Western Australia.

## **The relationship between Extended Producer Responsibility and Product Stewardship**

There are significantly different definitions of these two terms in use in Europe, North America and within Australia, so it is important to explain how the terms are used here, and from where these definitions have been derived.

Extended *producer* responsibility (EPR) is one part of product stewardship.

**Product Stewardship** is an approach that recognises that manufacturers, importers, governments and consumers have a shared responsibility for the environmental impacts of a product through its full life cycle, including end-of-life management, and seeks to reduce adverse impacts and internalize unavoidable costs within the product price, through action at the point(s) in the supply chain where this can be most effectively and efficiently achieved (EPHC, 2004)<sup>4</sup>.

Product stewardship is sometimes referred to as extended *product* responsibility.

Product stewardship schemes establish a means for relevant parties in the product chain to share responsibility for the products they produce, handle, purchase, use and discard (EPHC, 2004)<sup>5</sup>.

Hence, product stewardship is the shared responsibility that all stakeholders have to manage the waste generated during a product's lifecycle. These stakeholders include designers, manufacturers (makers, producers), suppliers, consumers, collectors, processors, transporters, disposers and 'default holders'<sup>6</sup>.

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<sup>3</sup> Government of Western Australia (2003). *Hope for the future: The Western Australian State Sustainability Strategy*. (WA Department of the Premier and Cabinet, Perth, WA.) 304 pp.

<sup>4</sup> EPHC (2004). *Industry Discussion Paper on Co-regulatory Frameworks for Product Stewardship*. Pages 2 and 18. (Environment Protection and Heritage Council, NEPC Service Corporation. Adelaide, SA.) 18 pp.

<sup>5</sup> EPHC (2004). *Ibid.* Pages 2 and 18.

<sup>6</sup> Waste Management Board (2004). *Strategic Direction for Waste Management in Western Australia: Focus Area Matrix 2004-2005*. (WA Department of Environment, Perth, WA.) 4 pp.

Product stewardship can be implemented in various ways, with different levels of industry and government involvement. In increasing order of government involvement, the models for product stewardship include<sup>7</sup>:

- non-intervention (business as usual)
- voluntary industry initiatives
- voluntary industry-government agreements
- co-regulatory approaches (some form of government regulatory action in support of specific, industry-developed, product stewardship schemes – discussed in the EPHC, 2004, paper); and,
- fully regulatory schemes.

**Extended Producer Responsibility (EPR)** is a means to encourage producers to examine the lifecycle of their products and to identify initiatives that will reduce resource use, reduce wastes at all points in a product's whole lifecycle, reduce the environmental impacts of products and enhance post-consumer resource recovery. Hence, EPR places the responsibility primarily (but not exclusively) on the producers of the products of concern.

The Organisation for Economic Cooperation and Development (OECD)<sup>8</sup> has defined EPR as:

*“...an environmental policy approach in which a producer's responsibility physical and/or financial, for a product is extended to the post-consumer stage of a product's life cycle.*

*There are two related features of EPR policy:*

- 1. the shifting of responsibility (physically and/or economically; fully or partially) upstream to the producer and away from municipalities; and*
- 2. to provide incentives to producers to incorporate environmental considerations in the design of their products.”*

EPR policies and schemes have been successfully implemented for many years in overseas jurisdictions, particularly in European countries, which have been proactive in seeking to reduce waste. New South Wales was the first State in Australia to introduce a formal EPR policy and accompanying legislation<sup>9</sup>

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<sup>7</sup> EPHC (2004). *Industry Discussion Paper on Co-regulatory Frameworks for Product Stewardship*. Page 4. (Environment Protection and Heritage Council, NEPC Service Corporation. Adelaide, SA.) 18 pp.

<sup>8</sup> Organisation for Economic Co-operation and Development (2001). *Extended Producer Responsibility: A Guidance Manual for Governments*. Pages 9 and 18. (OECD Publications, Paris, France.) 161 pp.

<sup>9</sup> *NSW Waste Avoidance and Resource Recovery Act 2001*. This Act was assented to on 17 July 2001 and can be found on the website: <http://www.epa.nsw.gov.au>

although South Australia has successfully operated container deposit legislation (CDL) for almost 30 years. While CDL was introduced in South Australia primarily to reduce the amount of roadside litter, it is in effect an EPR scheme.

Consistent with the definition used in the New South Wales legislation, Western Australia will adopt the following definition of an *EPR scheme*:

*An **extended producer responsibility scheme** is a scheme for giving effect to an environmental policy in which the producer's responsibility for a product (including physical or financial responsibility) is extended to the post-consumer stage of the product's life cycle.*

In this definition, the **producer** of a product includes a supplier of the product in Western Australia, or a person having a proprietary interest in the name under which the product is supplied in WA.

It is important to recognise that EPR is but one of a suite of product stewardship policies Government can apply to reduce the overall amount of waste generated, and improve resource efficiency and recovery. Other tools include controls imposed through licensing under legislation such as the *WA Environmental Protection Act 1987*.

There are clear and significant advantages to developing a national EPR framework to provide a strategic approach to the use of EPR policy instruments in Australia. Hence, the WA Government strongly supports a national approach to EPR, and will liaise with the other Australian State, Commonwealth and Territory jurisdictions to establish a consistent approach to EPR across all Australian jurisdictions. It is intended this would be through the same national process being used to develop a NEPM for co-regulatory product stewardship.

## **Why is Extended Producer Responsibility needed in Western Australia?**

The continually increasing generation of products and their associated wastes causes significant environmental degradation, with associated costs to society, which is not sustainable. EPR can help promote waste prevention and reduction, increased use of recycled materials in production, and increased resource efficiency<sup>10</sup>.

One important approach toward achieving those objectives is through consideration of the life cycle impacts of products at the design and production stages, especially by those companies which manufacture the products.

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<sup>10</sup> Organisation for Economic Co-operation and Development (2001). *Extended Producer Responsibility: A Guidance Manual for Governments*. Pages 10. (OECD Publications, Paris, France.) 161 pp.

The State Government also considers that it is no longer acceptable that the responsibility for post-consumer wastes is largely left to local government authorities to manage. The current approach distorts the true costs to consumers and society associated with the sale of each product, and presents an unfunded liability for ongoing management of the waste at the end of a product's useful life.

EPR does not seek to put liabilities onto the producer for inappropriate use or disposal. Also, EPR will only apply to wastes where there is a clearly identifiable producer with a reasonable capacity to take action, or through a well-organised industry sector with a capacity to influence the whole supply chain.

While producers have a significant challenge of balancing environmental considerations with improving profitability and shareholder value, the Government recognises and supports the important role producers have in taking responsibility for post-consumer wastes.

Examples of how this may occur include:

- avoid generation of the wastes through the design process and during manufacture;
- reducing packaging and increasing resource efficiency, including the use of recycled content and recovered materials in product design;
- improving information to customers, such as advice on appropriate disposal in order to minimise environmental impacts and optimise resource recovery;
- reducing the toxicity of materials used in production; and
- developing mechanisms to maximise recovery and re-use of materials at the end of a product's life.

EPR schemes may take the form of market-based instruments which correct market distortions by reducing the extent to which production costs are externalised. At present, the costs of waste management are almost entirely borne by local government and the wider community which have limited abilities to reduce these costs. EPR schemes transfer these costs to producers which have a greater ability to reduce the costs of waste management by designing better, more resource efficient products.

In this way, EPR schemes act to significantly reduce the overall cost of waste management in accordance with the well-established principle of *polluter pays*.

EPR schemes also have considerable overall sustainability benefits, including:

- reduced pollution and a more reasonable allocation of the costs of pollution;

- reduced disposal to landfills and waste treatment, and their accompanying environmental impacts;
- establishment of viable local resource recovery industries where distance is a barrier to participation in interstate or overseas resource markets.
- more integrated environmental management by promoting consideration of a product's life cycle and promoting a closed-loop resource economy.

## Operation of EPR schemes in Western Australia

One of the most important steps in designing an effective EPR scheme is the establishment of clear policy goals and program objectives.<sup>11</sup>

As described above, EPR schemes are best implemented as a partnership approach between Government, industry and community, with State Government playing a strategic facilitating role. The Government's preferred approach is for EPR schemes to be based on voluntary partnerships.

There are many different policy instruments that can be used to facilitate EPR schemes in different circumstances and situations.

The Waste Management Board will work in partnership with the community and individual industries to identify priority wastes and choose measures appropriate to that particular business, taking into account available technology, the structure of the industry, the type of waste and its environmental effects, and the state of the resource recovery market.

Rather than prescribing what each industry should do, Government will call on industry sectors to identify what action they can take to reduce the amount and toxicity of the waste in their products, with special attention on the products which generate the identified priority wastes. This will allow industry to take the option of self-initiated, flexible and cost-effective approaches, unfettered by government regulation.

Recently (December 2004), the Environmental Protection and Heritage Council (EPHC) released an *"Industry Discussion Paper on Co-regulatory Frameworks for Product Stewardship"*<sup>12</sup>. The thrust of this EPHC paper is national implementation of shared product stewardship schemes, probably through a

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<sup>11</sup> Organisation for Economic Co-operation and Development (2001). *Extended Producer Responsibility: A Guidance Manual for Governments*. Page 28. (OECD Publications, Paris, France.) 161 pp.

<sup>12</sup> EPHC (2004). *Industry Discussion Paper on Co-regulatory Frameworks for Product Stewardship*. Pages 2 and 18. (Environment Protection and Heritage Council, NEPC Service Corporation. Adelaide, SA.) 18 pp.

National Environment Protection Measure (NEPM). As explained above, EPR is part of product stewardship, and Western Australia is working to ensure that WA legislation is consistent and complementary to what is happening nationally.

EPR schemes, and product stewardship schemes, can incorporate instruments which may be voluntary or mandatory. The main instruments may be broadly grouped as:

- *regulatory,*
- *economic, and/or*
- *informational.*

As with many environmental policies, a single approach may not apply to all products, product groups, waste streams or countries. Effective policy design will depend on national circumstances, conditions, markets and priorities.<sup>13</sup> The type of product, its durability, composition, market, distribution, and secondary markets are all factors that can influence the choice of an instrument for a particular product, product group or waste stream.<sup>14</sup>

Note that there may be overlap of some instruments between groups (for example, economic instruments may also have some informational/ educational content as well).

A summary of the types of instruments used to implement EPR and product stewardship schemes is given below. This list has been derived from various sources, most notably being the website of the NSW Department of Environment and Conservation.<sup>15</sup>

### **Regulatory Instruments**

- **compliance measures**, such as penalties for non-compliance with EPR schemes.
- **gazettal of priority wastes with waste reduction targets and goals**, with penalties for not achieving the targets or goals.
- **mandatory extended producer responsibility schemes.**

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<sup>13</sup> Organisation for Economic Co-operation and Development (2001). *Extended Producer Responsibility: A Guidance Manual for Governments*. Page 27. (OECD Publications, Paris, France.) 161 pp.

<sup>14</sup> Organisation for Economic Co-operation and Development (2001). *Extended Producer Responsibility: A Guidance Manual for Governments*. Page 30. (OECD Publications, Paris, France.) 161 pp.

<sup>15</sup> NSW Department of Environment and Conservation (2004). "Frequently asked questions about EPR: question and answer #4." NSW DEC website at: <http://www.epa.nsw.gov.au/waste/epr/faq>.

- **product or substance bans** (e.g. ban of organochlorine pesticides) and/or restrictions or prohibitions on the disposal of certain waste residues to landfill or to waste treatment facilities.
- **residue bans** and/or restrictions or prohibitions on the disposal of certain waste residues to landfill or to waste treatment facilities.

## Economic Instruments

- **advance recovery/disposal fees**, where a fee (generally paid at the point of sale) is levied on certain products to fund their collection, recycling, if possible, or appropriate disposal.
- **container deposit provisions** (in Australia, probably only applicable for single trip, non-refillable containers).
- **deposit/refund schemes**, where a payment is made when the product is purchased, which is fully or partially refunded when the product is returned to an appropriate dealer or specialised treatment facility.
- **extended product ownership**, where the producer retains ownership of the product and leases it to consumers for use under certain conditions.
- **green procurement**, where purchasing authorities aim to promote sustainable resource use, resource recovery and recycling through “green” purchasing policies.
- **incentives and rewards**, such as store discounts or other benefits, to encourage consumers to return goods to stores; subsidies to recyclers for effective reuse; grants to develop resource-efficient alternatives; or incentives to replace toxic materials.
- **levies or taxes on particular materials**, such as taxes on virgin materials to discourage their use where recycled or recovered products would not be competitive on cost, or to provide funds to cover the cost of managing externalities, such as education, enforcement or clean-up of litter or illegal dumping or for the management of waste with problematic components.
- **levies or taxes on particular products** to provide funds to cover the cost of managing externalities, such as education, enforcement or clean-up of litter or illegal dumping or for the management of waste with problematic components.
- **levies or taxes on wastes disposed of to landfill** to provide funds to cover the cost of managing externalities, such as education, enforcement or clean-up of litter or illegal dumping or for the management of the waste’s problematic components.

- **tradeable landfill diversion certificates**, where a threshold diversion rate is set by the regulator and designated product manufacturers are required to hold certificates proportional to the volume/weight or value of their production within a set period and certificates are issued to reusers/recyclers based on net waste volumes processed that would be tradeable.
- **tradeable recycling certificates**, issued to recyclers undertaking recycling and reuse activities, where a specified proportion of certificates must be purchased by producers (manufacturers and importers) during the accounting period based on the desired recovery and recycling rate.

### Public Information Programs

- **cleaner production processes** to reduce the use of hazardous materials and adopt more sustainable production processes.
- **eco-labelling**, where labels are placed on products or packaging to provide consumers with information about a product's environmental performance.
- **education and awareness-raising** to promote community awareness about how to safely dispose of certain products/wastes or access EPR schemes.
- **environmental reporting database**, where an environmental agency or some independent environmental body publishes criteria for environmental acceptability and ratings lists for manufacturers and products.
- **industry voluntary covenants** where industry groups make a published voluntary covenant to meet specific waste reduction targets and goals.
- **performance standards**, where targets are set, such as for minimum amounts of recycled content per product.
- **product design**, such as adoption of the 'design for the environment' and 'design for disassembly' principles.
- **product hazard warnings**, where manufacturers are required to advertise environmental risks of a product on that product's packaging.
- **seal-of-approval environmental labelling**, where environmentally responsible manufacturers are allowed to have an independently-assessed environmental seal-of-approval displayed on their products.
- **take-back schemes**, where specific products or waste streams are voluntarily taken back by the producer or returned to them for material recovery and recycling.

## **Annual Priority Statements**

In order to facilitate a strategic approach to EPR, the Waste Management Board will develop and publish annual *priority statements* of priority wastes, priority products, and the industries where EPR schemes will operate. Public comment will be invited as part of the annual process of determining EPR priority statements, and the Waste Management Board will publish a report on the submissions received.

An EPR technical reference group will be established to oversee this process, reporting to the Waste Management Board.

The following considerations will be taken into account in developing annual EPR priority statements:

- the detrimental environmental and/or public health impacts resulting from the recovery and/or disposal of the product;
- the total volume of the waste requiring disposal and/or the percentage of the waste stream it comprises;
- the potential for waste avoidance, reuse or beneficial resource recovery;
- the potential to contaminate waste streams and limit opportunities for resource recovery;
- the likelihood of illegal disposal through dumping or littering;
- the level of community concern about the waste;
- the extent to which EPR is the appropriate tool for managing the waste; and,
- the capacity of the producer or industry to take action or to influence all of the supply chain.

## **Best Practice Targets and Benchmarking**

After 12 months, the technical reference group will assess progress on the published priorities, and establish targets for best practice waste reduction for each priority area. These targets will be set using a benchmarking approach in consultation with stakeholders.

If, after a further 12 months, acceptable progress towards the targets has not been achieved, the Waste Management Board may request the Minister for the Environment to consider the implementation of a mandatory EPR scheme for that particular priority waste, product or industry.

## **Mandatory EPR schemes**

The guiding principle for the application of EPR in Western Australia is that the Government would not intervene where industries are effectively reducing problem priority wastes, but would act decisively where they are not. The Government would only act to regulate for a mandatory EPR scheme if voluntary measures had failed according to specified, published criteria.

The new waste legislation for Western Australia will incorporate head powers allowing the Minister for the Environment, after consultation with the appropriate government departments, public stakeholders, and the relevant industries, to introduce regulations giving effect to EPR policy instruments.

The new WA waste legislation will include an assessment framework describing the circumstances under which mandatory EPR schemes will be introduced and which policy instruments may be used.

For example, the following considerations may be incorporated into this assessment framework:

- the volume of waste requiring ultimate disposal or the toxicity of the waste generated,
- whether there is a national scheme in place that adequately addresses particular waste issues in Western Australia;
- whether there is an effective voluntary scheme in place that is achieving the desired outcomes and is being actively implemented, monitored and reported on;
- whether economic analysis supports the implementation of a particular scheme;
- whether there are any constitutional or other impediments to Western Australia acting unilaterally in implementing the particular mandatory EPR scheme.

New EPR regulations will be subject to a Regulatory Impact Statement as well as economic impact analysis, and will be advertised to invite public comment.

Public appeal rights will be included in the legislation, similar to those already in section 100 of the *WA Environmental Protection Act 1987* and administered by the Environmental Appeals Convenor.

## Towards a national approach for EPR

While some State or provincial governments in Australia and overseas, such as New South Wales, South Australia and British Columbia, have already successfully implemented EPR schemes, many jurisdictional issues concerning the management of wastes in or from imported products, or products which move across jurisdictional boundaries, require a national EPR approach.

National governments play a key role in establishing (through either law or negotiation) the legal policy framework for EPR and in setting parameters for special agreements or voluntary programmes. National governments can contribute to the effectiveness of EPR programmes by: (i) raising awareness of programmes and requirements; (ii) eliminating policies that are inconsistent with EPR objectives; (iii) implementing supportive policies and measures; (iv) eliminating or removing barriers that are inconsistent with EPR policy; and (v) establishing mechanisms to help prevent free-riding and anti-competitive behaviour.<sup>16</sup>

The Western Australian Government has been actively contributing to the development of a national co-regulatory framework for product stewardship through the Environment Protection and Heritage Council (EPHC), and fully supports the national work towards a National Environmental Protection Measure (NEPM) for co-regulatory product stewardship.

The WA Government also recognises that there are clear and significant advantages to developing a national EPR framework to provide a strategic approach to the use of EPR policy instruments in Australia. Hence, the WA Government strongly supports a national approach to EPR, and will liaise with the other Australian State, Commonwealth and Territory jurisdictions to establish a consistent approach to EPR across all Australian jurisdictions. This would be through the same process used to develop the NEPM for co-regulatory product stewardship.

As part of this development of a national EPR framework, there would be benefits in examining the operation of current best practice EPR schemes operating in other countries, and whether such EPR schemes could apply to Australia and particularly to Western Australia. In addition, there would be clear benefits in interfacing Australian national EPR schemes with the relevant EPR schemes in those countries which supply manufactured goods to Australia.

It is intended that this EPR policy statement for Western Australia, and the EPR head powers which will be included in the new WA waste legislation, should build on the approach taken in the New South Wales *Waste Avoidance and Resource Recovery Act 2001*.<sup>17</sup>

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<sup>16</sup> Organisation for Economic Co-operation and Development (2001). *Extended Producer Responsibility: A Guidance Manual for Governments*. Page 60. (OECD Publications, Paris, France.) 161 pp.

<sup>17</sup> the NSW *Waste Avoidance and Resource Recovery Act 2001* can be found on the website of the NSW Department of Environment and Conservation at: <http://www.epa.nsw.gov.au>