



313/351 Brunswick Street, Fortitude  
Valley Brisbane Qld 4006

Suite 18.01A, Level 18, 1 Bligh St,  
Sydney NSW 2000

Phone 1300 375 440

Email [admin@acor.org.au](mailto:admin@acor.org.au)

[www.acor.org.au](http://www.acor.org.au)

ABN 60 574 301 921

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Container Deposit Implementation Team  
Waste and Resource Recovery Branch  
NSW EPA  
PO Box A290, Sydney South NSW 1232

[Container.deposit@epa.nsw.gov.au](mailto:Container.deposit@epa.nsw.gov.au)

To whom it may concern,

The Australian Council of Recycling (ACOR) welcomes the opportunity to comment on the draft Bill and CDS Regulatory Framework Discussion Paper.

ACOR is the peak national industry association representing the resource recovery industry with 35 large companies and some local governments with public assets in resource recovery as well as companies with substantial expertise in container deposit scheme (CDS) systems. We represent a diverse group of members, including local councils, recyclers, material recovery facility (MRF) operators and reverse vending machine (RVM) manufacturers, with different interests in the design and implementation of the CDS. This submission reflects a broad consultation with ACOR members.

## 1. Scheme structure

- a. The Scheme Coordinator should not be allowed to also be a Network Operator as there would not be a level playing field given that the Scheme Coordinator would have complete information on the whole network and each Network Operator. More specifically, if the Scheme Coordinator could also be a Network Operator, the concept of transparent audits fails.
- b. A high number of network operators may lead to excess capacity, increasing the likelihood of Network Operator failure and result in higher costs. Therefore, government may consider limiting the number of network operators to reduce competitive tensions and satisfy the scheme's objectives.
- c. Network operators should have an auditable system in place to accurately record the numbers of containers collected from collection points and those containers moved from collection points to recycling. The scheme coordinator should have an overarching system in place to verify the Network Operator's systems are accurate. The scheme should not dictate how the verification process should be undertaken, i.e. require bar code reading, but allow each Collection Point and Network Operator

to determine the most appropriate way to achieve the reporting outcomes.

- d. The commodity value risk may sit with the Scheme Coordinator as the suppliers would have received the benefit of a lower commodity price in purchasing the containers and hence offset by the higher payment to the Scheme Coordinator and then to the Network Operator. In addition, it is more likely that the Network Operator will develop recycling infrastructure for the recovered containers. Additional cost in the administration of the scheme may be incurred by moving the material from the Network Operator to the Scheme Coordinator. Finally, the Network Operator is best placed to ensure the quality of the recovered containers. The solution could be for the payment from the Scheme Coordinator to the Network Operator to be adjusted each quarter based on a commodity price index aligned with the value of the containers.
- e. The Collection Point and Network Operator will need to make significant capital investments which will be amortised over their useful life (i.e. +20 years). Their contracts with the Scheme Coordinator need to survive the NSW Government deciding to change Scheme Coordinator.
- f. Further consideration needs to be given to how Network Operators (which must have state-wide coverage) with coverage arrangements with other Network Operators and collection points will operate. If one of the Network Operators gets its pricing wrong for a section of the network and falls over then none of the other Network Operators would be able to pick up that coverage without a high network operation fee. Then all of the Network Operators would not have state-wide coverage. The concept does seem to be very fragile and based on the assumption that Network Operators will know their costs day one without knowing what volume of containers they will receive.
- g. ACCC advice should be sought on the power of LGA's in the renegotiation process, as collection companies are their client with market power firmly in favour of LGA's. In addition, potential ACCC issues arising from multiple network operators using one site need to be considered.
- h. The State's higher order planning powers maybe needed or another planning solution adopted to enable the CDS infrastructure to be installed in a very short timeframe.

## **2. Obligation on collection point operators:**

- a. There should be a delay in the provisions allowing collection point operators to refuse to pay the refund amount on containers that do not have the refund mark beyond a transition period required by the beverage and retail industries to clear existing stock, notionally 2-3 months. In reality the scheme will take time to settle in throughout the supply chain and a longer period of time than 3 months may be required in practical terms.
- b. The cost and execution of MRF audits should be borne by government to ensure independence and transparency.
- c. The need for MRF Operator needs to extract commercial recyclables from MRF and seek redemption via a collection point is unclear.
- d. The fact that MRF does not want to pay for an audit, whether old containers are acceptable for 3 months, refund marking, etc. are small

transitional type issues compared to this, should not be cluttering up a simple message that the proposed structure is fatally flawed.

- e. The finance community will take a very cautious view of the powers of the Minister to override existing contracts between local councils and MRF Operators. MRFs have historically taken the full risk on commodity values. As CDS now makes the containers more valuable, forcing MRF's to hand on the value is commercially unjust and does not recognise the loss making operations of MRF's. Most MRF contracts provide for the title in the containers to pass to the MRF Operator and it is the MRF Operator that is required to undertake to "kill" the container and to ensure that it is recycled. ACOR's view is that there is already a natural tension between the local council advising residents to seek to recover the refund on all of their containers at Collection Points and not place them in the kerbside system (at the loss of the MRF Operators) or for the two parties to co-operate and share the upside after the loss to the MRF Operator has been accounted for i.e. less gate fee on less tonnes, less product revenue due to containers been taken directly to Collection Points.

### **3. Providing sufficient definitions in the scheme**

- a. A definition of recycling needs to be included, in the bill, regulations or industry standards. ACOR can assist as we are the custodians of other industry standards. More specifically, offshoring 'recycling' to low environmental performance countries should be expressly prohibited and should occur within the schemes jurisdiction, in line with Basel Convention provisions.
- b. The definition of "material recovery facility operator" in the draft Bill does not currently appear to recognise that some MRF operators do not have a direct agreement with a local council, for example if the council has a "collect and process" contract and MRF operations are subcontracted by the collection contractors. Only the MRF operator is able to provide evidence that containers have been recycled and is not available for further deposit redemption. Further, access to the CDS refund is required to offset the loss of revenue that is expected for MRF operators who will have reduced tonnage of high value commodities once the CDS is introduced. The definition of "material recovery facility operator" should be amended to make it clear the MRF Operator is the person who provides processing services for reuse or recycling of material, whether or not they have a direct contract with a local council.

**4. Other matters covered by the regulatory framework:**

- a. The appropriate levels for a coverage/access and performance targets should relate directly to the minimum litter reduction targets and implied diversion targets in the governments public commitments to the community.
- b. Cross border arbitrage could be reduced if all neighbouring jurisdictions introduced similar offences, subject to free trade between the states. Operationally this could include a program of random or intelligence driven truck audits. Such arbitrage should be identifiable as an imbalance in the scheme funding and particular collection points.
- c. As there are whole of supply chain contracts to be renegotiated, 18 months may be insufficient. At least 24 months should be allowed due to the scale and cost of the task, or even longer as the full effect of the CDS will take several years to flow through as the CDS infrastructure is installed, education schemes take effect and council amalgamations are completed.
- d. Coverage targets: should be state-wide day one, build-up over first 12 months and linked heavily to planning approvals. Recovery targets cannot be less than it is now and we suggest using first year to set floor and then target improvements to best practice at +80%. The recovery target cannot be reduced or there will be a repeat of the NTCRS stockpiles.
- e. Fee paid by Scheme Coordinator to Network Operator, once set should not be reduced unless due to commodity price movements. The fee should be set by government due to the potential monopoly powers of the Scheme Co-ordinator to simply extract super normal profits at will. Government may need some flexibility in the early years as the system evolves.
- f. Refund marking requires consultation with the recycling industry and not just the beverage companies on its design.
- g. A fit and proper person test should be considered for collection point operators.

Yours sincerely,



Grant Musgrove

Chief Executive Officer