

AUSTRALIAN BEVERAGES COUNCIL

Submission to the  
NSW Independent and Pricing Regulatory Tribunal (IPART)  
on the  
NSW Container Deposit Scheme (CDS)

Monitoring the impacts on  
container beverage prices and competition

November 2018



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## About the Australian Beverages Council

The Australian Beverage Council Ltd (ABCL) is the pre-eminent representative body of the non-alcoholic beverage industry. We represent 95% of the industry's production volume and our member companies include every major manufacturer in Australia and many small and medium sized companies. A list of our Members can be found [here](#).

Collectively, our Members contribute in excess of \$7 billion to the Australian economy and our Members employ over 46,000 people across the nation. In NSW alone, \$2.6 billion is contributed to the State's economy and 17,000 local men and women are employed as a result of the activities of our Members.

We play an integral role in educating people to make informed choices by encouraging nutritional balance and moderation. We advocate on issues such as portion sizes, nutritional labelling, responsible marketing and advertising, and canteen guidelines.

The ABCL acts as a facilitates openness between industry players to facilitate research, knowledge and informed advice. We listen to consumers and encourage our Members to adapt their products accordingly to make positive changes to society. We stand by our commitment to promote greater choice, smaller portions and more products with low or no kilojoules. We firmly believe that both our industry and our Members are corporate citizens who act responsibly for the benefit of their customers and our community.

## Container Deposit Scheme (CDS) Objectives

As the industry representative of the non-alcoholic beverage industry in Australia, the ABCL fully supports the NSW Government's target to reduce litter in the state by 40% by 2020. The ABCL recognises the role of the industry and its Member companies in helping to achieve this goal by reducing beverage container litter.

Moreover, the beverage industry supports greater recycling of single-use containers and increasing the collection and reuse of refillable containers.

The ABCL and its Members have a long history of working collaboratively with a broad range of government and other stakeholders to reduce litter and increase recycling by implementing cost-effective and efficient initiatives and programs designed to benefit consumers.

## Background

It is important to note that, while it is often quoted that the Scheme commenced operation on 1 December 2017, CDS in NSW more accurately commenced operation on 1 November 2017 when 'beverage manufacturers', or so-called 'first suppliers', were first invoiced by Exchange for Change (E4C), (the NSW Government's appointed Scheme Co-ordinator). Invoices were issued to beverage manufacturers in advance, for both container deposits and the relevant handling fees for eligible beverage containers, which 'first suppliers', intended to supply to the NSW market from December 2017.

As such, the first day of November 2017 was the true commencement date of the NSW CDS while the first day of December 2017 signalled the public commencement of the Scheme, and the date from which retailers commenced charging consumers CDS fees. This was also the first-time consumers were able to return eligible containers for refund.

The NSW Premier, the Honourable Gladys Berejiklian MP, asked IPART to monitor and report on the impacts of the CDS over the first year of its operation, specifically in relation to *Monitoring the impacts on container beverage prices and competition*. In March 2018, IPART disseminated an "Issues Paper" for discussion among relevant stakeholders. The ABCL provided a formal submission in response to this important document.

In April 2018, IPART released its first "Progress Report" in response to *Monitoring the impacts on container beverage prices and competition*. In September 2018, IPART released a "Draft Report", *Monitoring the impacts on container beverage prices and competition*, subsequent to the implementation of the NSW Container Deposit Scheme.

The ABCL now provides this submission in response to IPART's "Draft Report".

## ABCL's Position and Issues for Consideration

In making this submission to IPART, the ABCL would like to make the following points. For the sake of convenience, we will respond to the issues in the order in which they appear in the Draft Report, and any inference should not be made as to the importance of the issue based on the below order.

### IPART's role and recommendations

We understand and acknowledge that IPART has been tasked to:

- ⇒ *monitor and report on the effect of the CDS on prices of container beverages;*
- and*
- ⇒ *To recommend any actions required by government to address any adverse effects.*

We note the NSW Government's concern is to manage the risk that suppliers may seek to raise the price of beverages above the costs of the scheme.

At all times, IPART has made it clear that IPART does not believe that its role is to comment or undertake any particular analysis of the design of the NSW CDS.

While this might be politically expedient, the ABCL does not believe that IPART, in analysing beverage pricing, should be permitted to choose to review matters which are convenient to it, while determining not to review other aspects relevant to the price of the Scheme and the impacts of these on consumer pricing.

It should be noted that the ABCL is not the only organisation which shares this perspective with IPART itself noting that, since releasing its February 2018 *Issues paper*, and its April 2018 *Progress Report*, that:

*"We received around 30 comments, although most of these related to operational elements of the scheme that are outside the scope of this review."*<sup>1</sup>

It is not only beverage manufacturers and retailers which influence the cost of beverage prices. Since the introduction of the CDS in NSW, taking into consideration the Scheme's design, the NSW Environmental Protection Authority (EPA), the Scheme Coordinator and the Scheme's Network Operator all form part of the price structure of the Scheme and, by extension, impact consumer pricing.

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<sup>1</sup> Independent Pricing and Regulatory Tribunal Draft Report - NSW Container Deposit Scheme - Monitoring the impacts on container beverage prices and competition, September 2018, Page 7

## The NSW Environmental Protection Authority's role and its "Compliance Fee"

The EPA, as the architect of the Scheme, and the organisation charged with its implementation and operation, both from a management and a cost driver perspective, must also have its role fully reviewed. IPART has recognised this and has reviewed the EPA's charges and fees to the Scheme and its participants, but such analysis and review must be extended.<sup>2</sup>

For IPART to appropriately report to the NSW Government, it is necessary for IPART to consider the design of the Scheme and compare it to other domestic and international models. IPART's analysis should assess whether the role (and cost) of the EPA and its involvement, has supported an effective scheme design and whether its involvement on an ongoing basis is warranted and necessary.

The ABCL notes that the NSW Scheme Co-Ordinator, E4C, has some eighteen (18) full-time employees. It should be further noted that in QLD, the QLD equivalent of E4C, Container Exchange [CoEx] also has some eighteen (18) full time employees.

The ABCL finds it concerning that the EPA has established a CDS Team of some twenty (20) persons, including one Executive Director, two Directors and four Managers to oversee the NSW CDS which outnumbered the total staff of the Scheme Administrator not only in NSW but also in QLD.

The ABCL questions the significant resources and staffing levels of the EPA for this activity when E4C has been charged with undertaking the auditing and compliance of beverage manufacturers, MRFs and Collection Points.

In comparable jurisdictions, the ACT Government has one dedicated staff member and the QLD Government has two dedicated staff members. It is notable that in these jurisdictions, these officers also undertake other functions and have responsibilities apart from CDS.

*We propose that to realise potential cost savings and economies of scale, all functions, other than statutory decision making and prosecutions, should be removed from the EPA, and transferred to E4C. The costs associated with these activities would be absorbed by E4C, as they are in the QLD Scheme and the ACT Scheme.*

*The EPA's CDS team should be dramatically reduced or even disbanded.*

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<sup>2</sup> See Draft Public Report, NSW Container Deposit Scheme, EPA's fees for monitoring, compliance and approving containers, The Centre For International Economics, 24 September 2018

## On-going price and competition monitoring

The ABCL notes that IPART

*“...found that the CDS has not had any undue effects on the prices of container beverages. The price increases attributable to the scheme are consistent with a workably competitive market, and we found no specific evidence of material impacts on competition or unintended market impacts on consumers.”<sup>3</sup>*

and

*“We found no specific evidence to suggest the scheme has resulted in a material reduction in competition...”<sup>4</sup>*

and

*“We consider that the changes in prices following the introduction of the CDS are consistent with workably competitive markets. We found no material, systemic effects on the prices of container beverages, but did identify some monthly volatility in prices which we consider is transitional. In addition, we found no specific evidence of a material reduction in competition...”<sup>5</sup>*

The ABCL concurs with IPART's assessment that there is:

*“No need for ongoing price monitoring. We recommend that ongoing annual monitoring of the impacts of the CDS on container beverage prices and competition does not take place beyond the initial one-year monitoring period.”<sup>6</sup>*

***The ABCL agrees that no ongoing price monitoring of container beverage prices and competition should continue beyond the initial one-year monitoring period.***

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<sup>3</sup> op cit Page 1

<sup>4</sup> op cit Page 3

<sup>5</sup> ibid Page 5

<sup>6</sup> ibid



## Invoicing and moving to an “Arrears Model”

The ABCL fully agree with and supports IPART's comment that:

*“We consider that Exchange for Change's scheme payments methodology creates undesirable price volatility for consumers, and reduces the transparency of the CDS' costs.”<sup>7</sup>*

However, the ABCL does not support attributing this this element of the Scheme's design to E4C, rather than the EPA.

The ABCL notes IPART's concerns and comments involving the Scheme's 7-day payment terms on Exchange for Change's invoices to suppliers.

The ABCL notes IPART's comments that they:

*“...consider these terms impose cash flow pressures on beverage businesses, particularly small and medium size businesses, and are out of step with normal business practices.”<sup>8</sup>*

*The ABCL supports IPART's recommendation to increase these payment terms from 7 days to 30 days.*

*The ABCL concurs with IPART's recommendation that to reduce the volatility in Scheme costs, the NSW Environment Protection Authority and Exchange for Change implement an arrears invoicing model arrangement for first supplier contributions to the CDS, with payment terms of 30 days as soon as possible.*

However, in developing and transitioning from the current invoicing model to an arrears model the ABCL believes that, the NSW Scheme should use all endeavours to align and harmonise with the QLD arrears model (which we believe will be replicated in Western Australia and other jurisdictions) so as:

- ✓ to move to a model which has been accepted and embraced by the beverage industry;
- ✓ to create a potential for a national approach to CDS in the future;
- ✓ to reduce the financial burden to beverage manufacturers; and

to reduce confusion within the beverage industry.

*The ABCL believes that IPART's recommendation of moving the invoicing under the NSW CDS to an in arrears model, should be adopted forthwith. In doing so, all endeavours should be used to replicate and align with the QLD CRS in arrears invoicing model. The ABCL offers its support and expertise in facilitating this important change.*

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<sup>7</sup> op cit Page 2

<sup>8</sup> op cit Page 4

## Container Registration and the related Fees

The ABCL notes IPART's finding that:

*"...the container beverage approval fee of \$80 per product has a disproportionate impact on small businesses and boutique beverage suppliers, and creates a potential barrier to entry and may restrict the ability of existing participants to compete in the long term."<sup>9</sup>*

and

*"the 5-year term for which product registrations are valid creates an additional cost and administrative burden for first suppliers and the EPA, which is not outweighed by the benefit of an up-to-date list of registered containers."<sup>10</sup>*

and IPART's recommendation that:

*"To ensure that the competitiveness of market participants is not affected, we are recommending the container approval fee be reduced to \$13.70 per container....and that there be no expiry date on container registrations."<sup>11</sup>*

The ABCL notes that for Schemes in other jurisdictions, for example the recently introduced Schemes in the ACT and QLD, **no charge** is imposed by Government on manufacturers for the registration of beverage containers.

Furthermore, with the aim of avoiding any unnecessary bureaucratic and financial burden to industry, both QLD and the ACT, have agreed to recognise the registration of containers which have a current and valid registration in any other Australian jurisdiction operating a similar container refund scheme.

In QLD, the Producer Responsibility Organisation [PRO] (the equivalent of E4C in NSW), is charged with the responsibility of maintaining a container registration database and must do so at no charge to manufacturers. The ABCL fully supports this model.

In QLD, CoEx, the PRO has utilised the existing and readily available GS1 retail product barcode database for this purpose, which is readily available at no cost. This is in addition to recognising all other State registrations. This has significantly reduced, and almost eradicated, both the cost and administrative burden placed on manufacturers.

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<sup>9</sup> op cit Page 63

<sup>10</sup> ibid

<sup>11</sup> ibid

*The ABCL recommends that*

- i. the responsibility for registering and maintaining a container registration database be transferred to E4C;*
- ii. no charge be imposed on manufacturers for registering containers under the NSW Scheme and any associated costs be absorbed by E4C as a part of their normal operating costs and recovered through Scheme charges to manufacturers;*
- iii. All container registrations to be enduring with no renewal requirement; and*
- iv. The EPA refund all container registration fees collected to date, to manufacturers within a reasonable period.*

## Contact

To discuss this submission or any recommendation contained therein, please contact Mr Alby Taylor, General Manager, Australian Beverages Council, on [REDACTED] or email [alby@ausbev.org](mailto:alby@ausbev.org).