

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

June 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 at <https://tinyurl.com/y9vda6yh>.

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, marketing to children and canteen guidelines. We also cultivate 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. As a consequence, 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

The Australian beverages industry supports the NSW Government's target to reduce litter in the state by 40% by 2020. We recognise the role of our industry in helping to achieve this goal by reducing beverage container litter.

Moreover, the beverages industry supports the environmental goals of increasing the recycling of single-use containers and increasing the collection and reuse of refillable containers.

The beverages industry has a long history of working collaboratively with a broad range of governments and other stakeholders to reduce litter and increase recycling.

Background

The NSW Government launched its CDS in late 2017. It is often quoted that the Scheme commenced operation on 1 December 2017, however, this date is incorrect.

The NSW CDS 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). These 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 whilst 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, has now 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, the IPART called disseminated an “Issues Paper” for discussion amongst relevant stakeholders. The ABCL provided a formal submission in response.

In April 2018, IPART released its first “Progress Report” in response to *Monitoring the impacts on container beverage prices and competition*. The ABCL is now pleased to provide our comments in relation to the thoughts and questions raised by IPART in that April 2018 Progress Report.

ABCL's Position and Issues for Consideration

In making this submission to IPART, the ABCL would like to make some preliminary points including:

For ease of reference, the ABCL will, as much as possible, follow the sequence of issues outlined by IPART in its Issues Paper.

Too early to tell

We reiterate our comments from our previous submission that as the NSW CDS has only been in operation from a collection and refund perspective for just over seven months (December 2017 to June 2018), it is the case that, for many issues, it is simply too early to undertake any meaningful assessment, or to draw any valuable conclusions. Our holistic view is that this may not be possible for perhaps as long as eighteen months from the date implementation. We note that IPART in their Executive Summary on Page 1, share our concerns where they state:

*"We emphasise that, given the market for container beverages is competitive (and therefore not subject to price regulation), the full impact of the CDS on prices and competition may not be apparent at this early stage of its operation. Therefore, our preliminary findings should be seen as indicative only."*¹

Similarly, the report later notes:

*"Since the scheme has only been in operation since December 2017, we consider it is too early to draw conclusions about its impacts on competition and other market impacts on consumers."*²

Pricing reflective of expected increases

The non-alcoholic beverage industry is an extremely competitive, 'high volume – low margin' industry. One only needs to visit their local supermarket on any regular basis to observe first hand that non-alcoholic beverages are regularly discounted across all major categories (carbonated soft drinks, bottled water and juice). In our assessment and after speaking informally with our Members, we believe our industry has used its best endeavours to keep price increases to a minimum, to cause the least possible impact on both price-sensitive consumers, particularly at a time when discretionary income growth is low, and beverage sales.

As a consequence, we entirely agree with IPART's comment that:

¹ IPART Issues Paper - NSW Container Deposit Scheme, Monitoring the impacts on container beverage prices and competition, April 2018 Page 1

² *ibid*, see also pages 4, 47, 48

“Our preliminary findings suggest that the price impacts of the CDS have been consistent with the estimated ‘direct’ costs of the scheme.”³

and

“We found that prices increases are in line or less than the estimated direct costs of the scheme.”⁴

and

“Our best estimate is that the direct costs of the CDS were around 12 to 15 cents per container including GST over this period. These costs are in line with our estimated average price increases as result of the scheme of between 2 and 14 cents per container.”⁵

and

“... our review of preliminary data suggests that while container beverage prices have increased since the CDS commenced, the average increase is equal to or below the direct costs of the scheme. This outcome is consistent with a competitive market. But even if the increase was higher than the direct costs, it would have to have been sustained over a longer period than the scheme has currently been in place to be considered as evidence of lack of competition.”

Legitimate right to increase beverage prices

We note that in their March 2018 issues paper that IPART acknowledged that beverage manufacturers “can increase the prices of eligible beverage containers to recover” CDS costs including “monthly fees to cover the costs of the Scheme, including the 10-cent refund and the scheme’s operating costs”.⁶ We make the point, that this is a legitimate commercial pricing practice available to beverage manufacturers.

As time moves on, the price of eligible beverage containers will invariably increase due to a range of factors including (for example) increased costs for wages, raw materials, and a host of other production, logistics, sales and marketing costs.

While these can be loosely monitored by changes in Consumer Price Index and Wage Cost Index, there will of course be instances where prices increase, perhaps for reasons of commerciality, are not directly traceable to any rise in input charges. More to the point, as time moves on, arguably any increase in prices will be less and less likely to be in response to CDS charges, and more just what can be deemed as ‘in the normal course of business’.

³ ibid see also Page 31

⁴ ibid page 2

⁵ ibid page 40

⁶ IPART Issues Paper - NSW Container Deposit Scheme, Monitoring the impacts on container beverage prices and competition, February 2018 Page 5

We also note the comments of IPART in Footnote 3 on Page 1 which quite appropriately notes that:

The 'direct' costs include the fees levied on first suppliers to recover the costs of operating the scheme and paying the 10-cent refund per container. We note that some suppliers may also have incurred other 'indirect' costs as a result of the scheme such as IT and reporting system upgrade, administration and reporting costs. These costs vary from business to business and so we are unable to estimate a typical additional 'indirect' costs.⁷

The important aspect here is the recognition of the hidden or indirect costs which have impacted beverage manufacturers. We would submit that many of these costs are difficult to quantify and will be absorbed more broadly in production costs as a part of cost of goods sold or 'COGS'. When normal reasonable gross profit margins are then applied to these increased COGS, prices will be impacted and potentially increase beyond the known direct costs. In this regard, we fully agree with then points attributed to the Distilled Spirits Industry Council of Australia (DSICA) and highlighted by IPART on Page 59.

Scheme effectiveness

In our initial submission in March 2018, we called upon IPART to consider the effectiveness of the NSW CDS in achieving the NSW Government's goals.

Whilst we recognise that this is not part of IPART's existing terms of reference, the beverage industry holds the view that no assessment of the NSW CDS and the impact of pricing upon consumers can be properly undertaken without making an assessment as to whether the scheme is both achieving desired results and whether it is operating efficiently and providing appropriate value for money.

We also note the comparison IPART makes in comparing the passing on of direct costs to alcoholic beverages compared to non-alcoholic beverages. We do not believe this comparison is either helpful or relevant, as these two markets are largely autonomous and unrelated.

Invoicing and payment terms

We note IPART's comments that:

"...we found that payment of the direct scheme costs monthly in advance with seven day payment terms and a flat fee per container approval place cash flow pressures on some businesses, particularly small businesses and boutique beverage suppliers."⁸

As we commented in our March 2018 submission, we fully concur with IPART's comments, however, as direct charges are invoiced on actual container numbers, we would submit that

⁷ op cit 2, Footnote 3, see also Page 59

⁸ ibid see also Page 4 and Page 48

invoicing on seven-day terms, in advance, negatively impacts, from a cash-flow perspective, small and large beverage manufacturers equally, albeit in proportion to the size of their operation. To suggest large manufacturers are not impacted adversely is non-sensical.

We note that the Queensland Government has announced that it will commit circa \$35m in seed funding to create a float of funds which will be made available to pay deposit refunds to consumers and Material Recycling Facilities when the Qld CRS commences. In NSW this float was created by the NSW Government invoicing in advance, an impost which has caused significant hardship.

We note that IPART has indicated that it has:

“...made a preliminary draft recommendation that Exchange for Change to provide all suppliers 30 days to pay these invoices.”⁹

We completely agree and submit that the NSW Government should immediately instruct Exchange for Change, the NSW Scheme Coordinator to investigate ways in which the NSW CDS can be amended to change the invoicing and payment terms from seven days in advance, to 30 or better still like Qld, 60 days in arrears.

We would submit that it would be difficult to find any normal commercial (financial) terms which require payment of invoices seven days in advance. Clearly, this element of the original scheme design was fundamentally flawed and should be corrected as a matter of urgency to provide most needed relief to the beverage industry.

EPA scheme compliance charge and container registration charges

We are very pleased to see that IPART has determined to engage a consultant to review the efficiency of the EPA’s costs, including its Scheme Administration fee and container approval fee. We fully support this as we reiterate our comments from our previous submission that we can see NO justification for either of these charges, especially as no such charges are being imposed by Transport Canberra and City Services who are implementing CDS in ACT and the Department of Environment and Science who are implementing CRS in Qld.

We look forward to IPART sharing the outcome of this independent review.

We note and congratulate the NSW Government’s decision to cap container registration charges to \$3,200 or 40 containers.

We fully concur with IPART’s comment that:

“The nature of this approval fee means that it will have the biggest impact on small businesses and have a relatively large number of eligible containers. This is often the case for craft beer manufacturers or small beverage importers that offer a large variety of products and regularly introduce new products. As a

⁹ ibid Page 4

consequence product innovation may be discouraged under the CDS, particularly for small business that produce boutique beverages. If businesses are discouraged from innovating this would impact on the competitiveness of markets, on costs and productivity.”¹⁰

We would make the point though that this anomaly does not just apply to craft beer manufacturers or small beverage importers. This equally applies to all small beverage manufacturers who may be developing new and exciting beverages or who produce, for example, a seasonal fruit or vegetable juice blend.

We maintain our position that like Qld and the ACT, there should be no charge for registering containers, especially when most of the work is undertaken by the manufacturers themselves in entering container information into the EPA’s online portal.

We would propose this function be transferred to the Scheme Coordinator, Exchange for Change, with any associated costs simple absorbed into the Scheme’s existing administrative costs, and therein apportioned across all containers.

Container volume forecasts

We concur with IPART’s comments that”

“We consider that there should be greater transparency around the container volume forecasts used by Exchange for Change and the impact of these on the costs per container. This will help ensure that both suppliers and consumers have better information on the costs of the scheme.”¹¹

Clearly, there has been much confusion and a lack of understanding by the beverage industry as to how these volume forecasts have been determined.

To increase the acceptance and understanding of the scheme by industry, we would only see greater explanation and the provision of further details to be a positive step forward.

General comments

- We note IPART’s comment on Page 56 that:

“...the Scheme Coordinator and Network Operator were appointed through a competitive tender process. This means the fees that these organisations receive have been market tested. Through this process it was also decided that a single Network Operator was preferred to a number of operators across the state.”¹²

¹⁰ ibid Page 5, see also Page 53

¹¹ ibid Page 45

¹² ibid Page 56

We do not agree with this comment or the conclusion. At this time, we will reserve our comments until such time as the Qld CRS Collection Point tender process closes and the results are known. Once this process concludes, we believe we will be far better placed to assess the accuracy of these comments.

- We note IPART's comments on Page 58 concerning '*reduced consumption by consumers, but little change in consumer expenditure*'.

Anecdotally, we agree with the first statement, but again, we believe that the introduction of CDS in NSW has led to a reduction in expenditure on non-alcoholic beverages by consumers.

In line with our earlier comments, and in fairness, whether this is a short term or on-going consequence is probably too early to tell. We will continue to monitor these matters with a view to undertaking a review perhaps upon the 12-month anniversary of the introduction of CDS in NSW.

Contact

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