

13 December 2017

IPART
Via online submission

Dear Madam/Sir

Re: Response to IPART's Draft Terms of Reference, Container Deposit Scheme Monitoring

Thank you for the opportunity to provide comments to IPART's Draft Terms of Reference to Container Deposit Scheme Monitoring.

Introduction

To fully understand the impact of the container deposit scheme on consumers any investigation needs to consider the role of Scheme Participants (Scheme Coordinator and Network Operator and Collection Point Operators) Material Recovery Facilities, Waste Contractors, and Councils in addition to Manufacturers, Suppliers and Retailers.

The availability of collection points where consumers can return containers and obtain a 10-cent deposit / refund impacts on the value of beverages under the Scheme. Consumers are paying a deposit and handling fee on the container, but if there is nowhere to return the container and collect the refund, they are more likely to continue using kerbside collection and forfeit 10 cents per container, which will be claimed by waste contractors or local councils.

The result will be that Waste Contractors and Materials Recovery Facilities (MRFs) will collect a significantly higher proportion of refunds for 10 cent deposits paid by suppliers. Further to this, in a scenario of insufficient container collection points, Waste Contractors or Local Councils are likely to be the financial beneficiary of the Scheme at the expense of Consumers, Suppliers and Beverage vendors. If consumers do not receive the benefit this will negatively impact household budgets and demand for beverages, which in turn will have a negative effect on jobs for beverage manufacturers.

In a scenario where Consumers opt for a retail refund voucher from reverse vending machines in lieu of cash, the value of unredeemed refunds would be held by either the Collection Point Operator, Network Operator or participating Retail partner. Either way, the value of refunds, plus handling fees, would be charged to Suppliers and ultimately passed through to Consumers, but the value of the deposit is realised by someone other than the Consumer because the Collection Point Operator, Network Operator or participating Retail partner will claim the funds for the deposit and handling fee once the container is returned, but will retain the 10-cent refund if the Consumer does not hand in their voucher to a participating Retail partner to collect the 10-cent refund. This issue is prevalent in some overseas systems with Retailers and the Network Operators making significant profits from the unredeemed deposits at the expense of consumers

We note that IPART's terms of reference do not extend to Scheme design. However, structural elements of the Scheme have an impact on cost, price and value to consumers. The concurrent appointment of a Scheme Coordinator and a Network Operator during the implementation phase of the Scheme may have reduced competitive tension and negotiation on administrative handling fees charged to Suppliers. The appointment of a single Network Operator in NSW has created a monopoly that may result in an increase in cost to Consumers over time if not appropriately governed. The lack of competition in the refund point market will potentially drive costs up for the Scheme. The requirement for Suppliers to fund the Scheme before the commencement of refunds, the availability of Collection Points for Consumers to return containers and obtain a refund, and the unredeemed vouchers issued by reverse vending machines are all structural elements of the Scheme that ultimately impact selling price of beverages and cost to Consumers.

We are submitting recommendations for the Terms of Reference and rationale for these and we look forward to engaging with IPART in an open and transparent way through the period of this review.

Recommendations for Terms of Reference

- 1. IPART should monitor the “performance” and “conduct” of the Scheme Coordinator, Network Operator, Collection Point Operators, Materials Recovery Facilities and Waste Contractors as their efficiency and effectiveness influences the total cost of the Scheme (deposit plus handling fee), which Suppliers can pass through to customers and retailers can pass through to consumers through the selling price of beverages.**

To fully understand the impact of the container deposit scheme on consumers any investigation needs to consider the role of Scheme Participants (Scheme Coordinator and Network Operator and Collection Point Operators) and Material Recycling Facilities / Waste Contractors in addition to Manufacturers / Suppliers and Retailers as already defined in the draft terms of reference.

IPART should have a view of the arrangements for Scheme Participants, and seek to understand why the Network Operator handling fees passed onto Suppliers are almost as high as the mandatory deposit/refund, per container redeemed.

IPART should monitor the Scheme Participants to ensure adequate audit processes are in place to minimise unnecessary cost in the scheme including cross-border movements, airport volumes and exports which are all ineligible for redemption in the scheme. This should also extend to any charges levied by the State on the system such as registration fees and compliance fees. There should be evidence that justifies all costs and charges.

IPART should monitor the MRFs/Waste Industry to ensure they are passing on any deposit value to Council and ensure they are adjusting commercial contracts with hospitality venues to reflect the increased value of the waste they are collecting and ensure they are quarantining ineligible containers obtained from interstate or from consumption in planes, boats and trains. There should also be evidence of councils recognition in the additional revenue stream being passed back to rate payers.

2. Performance and conduct of suppliers should have regard for the Supply Agreement between the Scheme Coordinator and beverage suppliers.

Under the draft terms of reference for this review, IPART is to monitor the "performance" and "conduct" of suppliers. Suppliers have a Supply Agreement with the Scheme Coordinator. IPART should have regard for the Supply Agreement, the legislative and regulatory requirements as the reference for performance and conduct of suppliers.

3. The progress report should be delivered in June 2018 to enable IPART to understand the full cost of the Scheme once the Material Recycling Facilities have claimed refunds for containers collected through kerbside from 1 December 2017 through to 30 March 2018.

Under the design of the Scheme, suppliers were invoiced from 1 November 2017 in advance of the Scheme commencing on 1 December 2017. 100 per cent of containers returned through kerbside collection will be eligible for a refund to be claimed by waste contractors and Material Recycling Facilities. These claims will not be made until April 2018, so the true cost of the Scheme from November 2017 through to March 2018 will not be known to the Scheme Coordinator until April 2018 and then suppliers will be invoiced on 1 May 2018. At this time, the Scheme Coordinator will advise suppliers whether they have under-recovered or over-recovered upfront costs and will make the final balance these payments with suppliers.

4. In undertaking the monitoring, IPART should have regard to inefficiencies and impacts on consumers that are a consequence of the design of the Scheme

Structural elements of the Scheme have an impact on cost, price and value to consumers. In the first instance, the concurrent appointment of a Scheme Coordinator and a Network Operator (instead of seven Network Operators as originally intended) reduced competitive tension and negotiation on administrative handling fees charge to suppliers, ultimately increasing the cost of beverages to consumers. The appointment of a single Network Operator in NSW has created a monopoly that may result in an increase in cost to consumers if not properly governed.

Under the NSW Government's Scheme design, Suppliers were required to fund the Scheme from 1 November 2017 in advance on the Scheme's commencement on 1 December 2017. Invoices assumed 100 per cent redemption and each Supplier was invoiced for their share of containers in the market assuming all of them would be claimed for a refund.

The 100 per cent redemption rate is not unreasonable, but it has cost implications for consumers because suppliers were required to fund the Scheme in advance and although consumers might pay the cost of the Scheme through higher beverage prices, the waste industry or councils would be the beneficiary as they will claim refunds for containers returned through existing kerbside collection. The slower than expected rollout of collections points will result in a lower redemption rate and the resultant actual costs of the Scheme should be examined.

Waste contractors and MRFs will collect 100 per cent of refunds for containers returned through kerbside collection from 1 December 2017. They are receiving refunds for deposits paid by suppliers and ultimately passed through to consumers.

The availability of collection points where consumers can return containers and obtain a 10-cent refund will impact on the value of beverages under the Scheme. Consumers are paying a deposit on the container, but if there is nowhere to return the container and collect the refund, they are more likely to continue using kerbside collection and forgo their 10-cents per container, which will be claimed by waste contractors. The design of the scheme relies upon reverse vending machines, that are expensive and proving difficult to position in convenient locations.

In areas where there are insufficient container collection points, waste contractors are the financial beneficiary of the Scheme at the expense of suppliers and consumers. This is entirely within the legislative and regulatory framework.

When consumers opt for a retail refund voucher from reverse vending machines in lieu of cash, the value of unredeemed refunds would be held by either the Collection Point Operator, Network Operator or participating Retail partner. Either way, the value of refunds plus handling fees would be charged to suppliers and ultimately passed through to consumers, but the value of the deposit is realised by someone other than the consumer. This "super profit" from the unredeemed vouchers should be closely examined as it is a wealth transfer from consumers to a corporate entity via a legislated monopoly.

Summary

The requirement for suppliers to fund the Scheme before the commencement of refunds, the availability of collection points for consumers to return containers and obtain a refund, and the unredeemed vouchers issued by reverse vending machines, the need to ensure waste contractors and councils pass profits through to rate payers, are all structural elements of the Scheme that ultimately impact selling price of beverages and cost to consumers.