

AUSTRALIAN BEVERAGES COUNCIL

Submission to the  
ACT Independent Competition and Regulatory Commission (ICRC)  
on the  
ACT Container Deposit Scheme (CDS)

Issues paper  
Container Deposit Scheme  
Price Monitoring  
Report 4 of July 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 non-alcoholic beverage industry supports the ACT Container Deposit Scheme [Scheme] and the Government's goal to:

- ↓ reduce beverage container litter by providing an incentive for Canberrans to keep, collect and return the containers for a 10-cent refund;
- ↓ reduce the environmental impact of litter on the natural environment and on wildlife;
- ↓ reduce the costs associated with litter removal for the ACT Government and the community;
- ↑ increase recycling and recovery rates;
- ↑ provide an opportunity for the community to participate in recycling activities and help schools, charities and community groups to generate income; and
- ↑ increase economic business and employment opportunities through investment and employment.

We recognise the role our industry plays in helping to achieve these goals by reducing beverage container litter. Moreover, the non-alcoholic beverages industry supports the environmental goals of increasing the recycling of single-use containers and increasing the collection and reuse of refillable containers.

The non-alcoholic beverages industry has a long history of working collaboratively with a broad range of governments and other stakeholders to efficiently reduce litter and increase recycling. We are pleased to be working with the ACT Government and your citizens on this important Scheme.

## Background

The ACT Government launched its CDS in late June 2018.

The Scheme has only been operational for a mere six weeks, and consequently, it is difficult to make a valuable assessment of the Scheme and its operation to date.

The ACT Government, through Ms Meegan Fitzharris MLA, Minister for Transport and City Services and the Minister administering the *Waste Management and Resource Recovery Act*, has now asked the Independent Competition and Regulatory Commission [ICRC] to monitor and report on the impact on ACT beverage prices and competition in the beverage industry of the introduction of the Container Deposit Scheme (CDS).

In July 2018, the ICRC disseminated an “Issues Paper” for discussion amongst relevant stakeholders. The ABCL now provides a formal submission in response to that Issues Paper.

## ABCL's Position and Issues for Consideration

In making this submission to the ICRC, the ABCL would like to make the following points:

### Too Early to Tell

As the ACT CDS has only been in operation from a collection and refund perspective for just over six weeks (29 June 2018 to mid-August 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 up to eighteen months from the date of implementation to accurately evaluate the Scheme and determine its impacts.

### Reserving Judgement

The ICRC Issues Paper largely considers assessment methodology and not matters of fact or substance. As a consequence, the ABCL will reserve judgement on many matters until such time as we see what ICRC claims to establish in undertaking its assessments and what findings and recommendations it might propose in the coming months.

While proposing criteria to form opinions is one matter, drawing conclusions from any assessment undertaken is something quite different.

The ABCL reserves the right to see how the proposed research develops and ascertain how any conclusions and deductions are made from this work, and their accuracy and legitimacy before either accepting or rejecting any conclusions which might be drawn.

### Legitimate Right to Increase Beverage Prices

We were unable to detect any reference within the ICRC Issues Paper acknowledging that beverage manufacturers have a commercial right to increase the prices of eligible beverage containers to recover CDS Scheme costs including, both the 10-cent refund and the Scheme's operating costs.

This is a legitimate commercial pricing practice available to beverage manufacturers. Quite apart from that, it must be recognised that beverage manufacturers, like all other commercial businesses, have a right to determine and set their pricing and profit margins within the confines of fair trading legislation.

## Scheme Effectiveness

We note the ICRC has not been asked to monitor indicators of the Scheme's effectiveness. We believe that it is challenging to consider some aspects of CDS, while having little consideration of others, particularly where these are matters which go to the very heart of the impact of the Scheme on both its costs and pricing.

By way of example, during industry briefings concerning the introduction of a CDS, conducted by the ACT's Transport Canberra and City Services Directorate, it advised stakeholders that the ACT Government had determined that the appropriate or necessary number of Container Collection Points for the ACT and its community was fifteen (15) collection points to be rolled out across the Territory.

We note that as at the time of writing this submission, that only nine (9) Collection Points are operational.

From our perspective, it is non-sensical to undertake an assessment process which determines the Scheme needs 15 collection points to properly service the people of the ACT, and then to commence operations with only 60% of Collection Points open for business.

Despite our repeated requests to both the Minister's Office and the Transport Canberra and City Services Directorate to defer the Scheme's commencement until a full complement of sites could be operable, and not replicate the problems which arose in NSW, when that State commenced its scheme in 2017, the ACT Scheme commenced operation from a position of weakness, from the outset.

## Late Publishing of Scheme Costs

Of course, it is also worth noting that Exchange for Change [E4C], the ACT Scheme Coordinator, only published the estimated costs for CDS levies for beverage suppliers on 11 April 2018. This was only 56 business days, or some 11 weeks prior to the commencement of the Scheme for both our industry and the retail sector. This again was contrary to our advice to the Transport Canberra and City Services Directorate, that the beverage industry required a minimum 16 weeks' notice of the Scheme costs.

By this date, all beverage suppliers had completed their financial year budgets, unsurprisingly well prior to this CDS pricing announcement. The announcement as to the cost of the 'tax' upon industry by Government was far too late, and this late announcement of key matters directly effecting the Scheme may have ramifications which are yet unknown. They will certainly impact budgeting, cash flows and financial modelling for beverage manufacturers.

Furthermore, this inadequate notice failed to allow beverage suppliers to undertake necessary price modelling which significantly hampered negotiations between beverage suppliers and their customers, beverage wholesalers and retailers in relation to price adjustments.

We are unsure as to why the Scheme commencement had to be pushed through other than to meet political deadlines.

### Compliance Costs

The ABCL would like ICRC to consider the imposition of the “Compliance Costs” to monitor compliance with the Scheme.

The ABCL calls upon the ICRC to review this matter, and we call upon the ACT Government to declare the exact amount of these Compliance Costs. We also ask how it is intended that such funds will be spent, and what will happen with any surpluses which might arise.

On the basis that the Scheme Coordinator, E4C is responsible for conducting all auditing of Beverage Suppliers to ensure their declared container numbers are accurate, we are unsure what this compliance fee is for, as we understood that it was E4C, the Scheme Coordinator who is charged with the compliance function.

The ABCL calls upon the ICRC to consider this cost and transparently report both the amount and the justification for its imposition.

The introduction of CDS in the ACT was never intended, and should not be an opportunity for the Transport Canberra and City Services Directorate, to generate revenue.

### Monopoly Network Operator

The ABCL is concerned that the ACT Government, in appointing Re.Group as a monopoly network operator and collection point operator, has eroded competition and cost efficiencies which would have been achieved if other entities had been granted a commercial opportunity to operate in the network and within the collection point space.

The ABCL calls upon the ICRC to consider whether this decision has had a fundamentally adverse impact upon costs to the Scheme and ultimately ACT ratepayers.

Additionally, we note that the ACT Government is somewhat unique in the CDS space in that, it is a hybrid of a State and Local Government. We make this assertion on the basis that the ACT Government is the owner of the Hume Material Recycling Facility or MRF.

As we understand it, the operation of this facility is contracted to the waste company Re.Group and as a part of the ACT CDS, there will be a revenue sharing arrangement in place between the Transport Canberra and City Services Directorate and Re.Group.

On this basis, we ask, how could the Directorate make commercially objective decisions in relation to CDS when they are going to have a financially beneficial interest in the Scheme. Surely this is a clear conflict of interest from an administration and

governance perspective. Perhaps this goes some way to explaining why the Scheme's implementation was so rushed?

### Role of Beverage Manufacturers in Retail Price Setting

Another major consideration is the somewhat limited role beverage suppliers have in relation to setting retail prices for beverages.

Between the time a beverage container leaves a manufacturer's facility, it has its retail price impacted by at least one, and on some occasions, by two other commercial entities.

A beverage manufacturer will invariably either sell their product to a wholesale distributor or a retailer. When sold to a wholesale distributor, the beverage product will then be on-sold to a retailer.

In both of these cases, the ultimate retail price is set by a commercial entity or entities, other than the manufacturer, the organisation who the 'tax' was imposed upon in the first instance.

As a consequence, any analysis of retail beverage pricing, using indicators such as CPI, must have regard for who is actually setting and or influencing pricing decisions. To draw a conclusion that an increase is caused by a beverage manufacturer, maybe fundamentally flawed.

To this point, some early price modelling which ABCL undertook prior to the CDS being implemented in NSW involved a pricing analysis for a 2L bottle of Carbonated Soft Drink which was retailing pre-CDS for \$2.00 and a 30 Pack of 375ml cans of Carbonated Soft Drink which was retailing pre-CDS for \$19.99.

As a part of this exercise, the ABCL assumed a CDS deposit of 10 cents per container and a handling fee of 8 cents per container. We believe this will be achieved when recovery rates increase.

In this example, the container deposit and handling fee, are effectively just treated by the beverage manufacturer as an additional part of 'cost of goods sold' or as a normal production cost.

Here the CDS levies are passed on by the manufacturer 'at cost', that is, 18 cents, in our example.

From that point, it depends upon the price modelling of the retailer (and/or wholesaler) and whether they impose:

- (1) their gross margin on top of the CDS levies; and
- (2) whether they also impose the GST upon this figure.

See for example the impact upon this below:

	Carbonated Soft Drink				
	2 Litre Bottle			30 Pack 375ml Cans	
	Today	Under CDS		Today	Under CDS
Shelf Price inc GST	\$2.00	\$2.35	Shelf Price (30 Pack) inc GST	\$19.00	\$29.80
GST	\$0.18	\$0.21	GST	\$1.73	\$2.71
Shelf Price ex GST	\$1.82	\$2.14	Shelf Price ex GST	\$17.27	\$27.09
Retailer Gross Margin (45%)	\$0.82	\$0.96	Retailer Gross Margin (45%)	\$7.77	\$12.19
Unit Cost	\$1.00	\$1.18	Unit Cost (per can)	\$0.32	\$0.50
CDS Handling Fee/Levy	\$0.00	\$0.08	CDS Handling Fee/Levy	\$0.00	\$0.08
CDS Container Refund	\$0.00	\$0.10	CDS Container Refund	\$0.00	\$0.10
Cost price	\$1.00	\$1.00	Cost price	\$0.32	\$0.32
Unit Cost	\$1.00	\$1.18	Unit Cost	\$0.32	\$0.50

The manufacturer in these examples has only increased wholesale pricing by the original 18 cent amount (10 cent refund and 8 cent handling fee) yet when the retailer gross profit margin and GST is applied, the end effect on pricing is quite significant.

Our point in relation to this example is that monitoring price movements (or increases) alone is not necessarily reflective of one single catalyst.

## Contact

To discuss this submission or any recommendation contained therein, please contact Mr Alby Taylor, General Manager, Australian Beverages Council, on 0407 406 400 or email [alby@ausbev.org](mailto:alby@ausbev.org)