

AUSTRALIAN BEVERAGES COUNCIL

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

**Progress Report
Container Deposit Scheme
Price Monitoring
Report 2 of 2019, February 2019**

April 2019



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About the Australian Beverages Council

The Australian Beverages Council [ABCL] is the leading peak body representing the non-alcoholic beverage industry, and the only dedicated industry representative of its kind in Australia.

The ABCL represents approximately 90 per cent of the industry's production volume and Member companies are some of Australia's largest drinks manufacturers. The ABCL also represents many small and medium-sized companies across the country. Collectively, the ABCL's Members contribute more than \$7 billion to the Australian economy and nationally they employ approximately 50,000 people. The industry also pays in excess of \$1.2 billion in taxation per annum along its supply chain, and for each and every direct employee in the beverages manufacturing industry, there are 4.9 jobs required elsewhere in the Australian economy to produce and retail the beverages.

The ABCL strives to advance the industry as a whole, as well as successfully representing the range of beverages produced by Members. These include carbonated soft drinks, energy drinks, sports and electrolyte drinks, frozen drinks, bottled and packaged waters, juice and fruit drinks, cordials, iced teas, ready-to-drink coffees, flavoured milk products and flavoured plant milks.

The unified voice of the ABCL offers Members a presence beyond individual representation to promote fairness in the standards, regulations, and policies concerning non-alcoholic beverages. The ABCL plays a role in educating consumers on making informed choices which encourages balance, moderation and common sense.

The ABCL advocates on issues such as portion sizes, environmental sustainability, nutritional labelling, responsible industry marketing and advertising, and canteen guidelines. The ABCL's Members listen to consumers and adapt their products accordingly by making positive changes and standing by a commitment to promote greater choice, appropriate portions and more low and no kilojoule products.

The ABCL is an important conduit between the non-alcoholic beverage industry and governments, supporting the Australian Government, State/Territory Government and Local Councils.

The ABCL introduced a dedicated juice division, *Juice Australia* (formerly Fruit Juice Australia), in 2009 and a dedicated water division, the *Australasian Bottled Water Institute* [ABWI], in 2011.

Container Deposit Scheme (CDS) Objectives

The Australian non-alcoholic beverages industry supports the ACT Container Deposit Scheme [Scheme] and the Government's goal to:

- ↓ reduce beverage container litter by providing an incentive for the Canberra community to keep, collect and return beverage 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 to
- ↑ increase business and employment opportunities.

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 beverages industry has a long history of working collaboratively with a broad range of governments and other stakeholders to reduce litter and increase recycling. The non-alcoholic beverages industry is pleased to now be working with the ACT Government and its citizens.

Background

The ACT Government launched its CDS in late June 2018.

The Scheme has now been operational for a period of about nine months.

On 4 April 2018, the ACT Government through the Honourable Meegan Fitzharris MLA, Minister for Transport and City Services, Minister for Higher Education, Training and Research, Assistant Minister for Health, and the Minister responsible for administering the *Waste Management and Resource Recovery Act*, asked the Independent Competition and Regulatory Commission [ICRC] to monitor and report on the impact of the introduction of the Container Deposit Scheme (CDS) on ACT beverage prices and, particularly, competition in the beverage industry.

In July 2018, the ICRC disseminated an “Issues Paper” for discussion among relevant stakeholders. As the ICRC would be aware, the ABCL made a formal submission in response to the Issues Paper. Subsequent to this, the ICRC released a Progress Report in relation to their price monitoring of the ACT Container Deposit Scheme in February 2019, Report 2 of 2019. In addition, the ICRC held a public forum on the 20 March 2019, to discuss the findings contained in their February 2019 Progress Report. The ABCL attended and contributed to that forum.

The ABCL now provides this formal submission to the ICRC in response to both their February 2019 Progress Report and matters raised during the Public Forum on 20 March.

We thank the ICRC for the opportunity to provide this submission in response to their Progress Report and Public Forum.

Draft Findings and Recommendations

The ABCL is pleased to note (in summary) the following draft findings and recommendations as made by the ICRC in their Progress Report. We note these include:

- (i) *The ICRC's monitoring (to date) found that price increases attributable to the CDS do not appear to be inconsistent with a 'workably competitive' market.*

The ABCL as a matter of policy, does not engage in the pricing activities of its Members to ensure compliance with all relevant competition laws. As a consequence, the ABCL and its Members never:

- × discuss or agree on production limits or strategies, prices (including rebates and discounts); marketing territories, bids or tenders;
- × discuss or agree on dealings with customers or third parties, including trading terms and conditions;
- × exchange any non-public or commercially sensitive information relating to:
 - × purchasing, production and supply chain strategy or capacity;
 - × marketing or advertising strategy; or
 - × profit, costs or revenues.

The ABCL, as the peak industry body for the non-alcoholic beverage industry, has not received any complaints from any of its Members in relation to 'competition' or market issues since the introduction of the CDS in the ACT. From this, it may be deduced that ABCL Members have not experienced any lessening of competition or any adverse competition issues arising as a consequence of price rises attributable to the ACT CDS.

- (ii) *Based on the information, data and analysis to date, the Commission has found no specific evidence that the CDS has had a material impact on competition.*

See (i) above.

- (iii) *Price increases are consistent with what would be expected given the nature and magnitude of the scheme costs, based on data received to date.*

Since the introduction of CDSs across various States and Territories in Australia, no instances of price increases, above and beyond those expected as a consequence of the introduction of the CDS, have been detected in any jurisdiction. For example, the NSW Independent Pricing and Regulatory Tribunal Report into the NSW Container Deposit Scheme – "*Monitoring the impacts on container beverage prices and competition*" – December 2018 - Page 2 at 1.1.1. The report found that there wasn't any material effect on competition as a result of the introduction of the CDS in NSW.

It is well accepted that the non-alcoholic beverage industry is a high volume, low margin industry. With a category range covering products including carbonated soft drinks, energy drinks, sports and electrolyte drinks, frozen drinks, bottled and packaged waters, juice and fruit drinks, cordials, iced teas, ready-to-drink coffees, flavoured milk products and flavoured plant milks, beverage manufacturers and

retailers are constantly competing in an aggressive market with competition not only based upon price, but also on consumer choice, preference and taste. Due to the overtly competitive nature of this market, beverage manufacturers have striven to minimise the cost impact of the implementation of CDS to limit any impact upon consumers and beverage sales. Accordingly, it comes as no surprise to the beverage industry that 'price increases are consistent with what would be expected given the nature and magnitude of the scheme costs' of the ACT CDS.

- (iv) *The Commission's draft findings suggest that the increase in beverage prices attributable to the ACT CDS are consistent with what would be expected given the nature and magnitude of the scheme costs.*

See (iii) above.

- (v) *The Commission has found that non-promotional wholesale prices for eligible beverages, over the period from July to December 2018, increased on average by 12.4 cents per container (including GST) as a result of the CDS.*

The ABCL broadly supports this finding. Moreover, we note the challenges for beverage manufacturers in making pricing decisions, including whether to part or fully absorb price increases from the introduction of CDS. As noted previously, the non-alcoholic beverage industry is a high volume, low margin industry which limits the capacity of beverage manufacturers to absorb cost increases arising from any consequence.

There are many things which influence beverage pricing and of course, not all price increases in recent times can be attributed to CDS. For example, in the 2018/18 the fresh juice category faced a significant challenge in being able to source a sufficient quantity of fruit to be able maintain supply and meet market demand due to a range of factors beyond the control of the industry. This applied significant pricing pressures on juice beverages as the cost of raw materials (in particular juicing oranges) rose sharply, often having to be sourced from overseas countries rather than domestically.

A further example is that of bottled and packaged water. For some time, large retailers have been selling private label bottled water products, often at much reduced prices as a means to entice consumers into their stores. Selling products as a 'loss leader' in this fashion created a false market for bottled water. The introduction of CDS charges in NSW, Qld and the ACT has shifted the pricing of bottled and packaged water at the lower end of the market, bridging the gap between low end and high end products.

- (vi) *While the direct costs were lower than the observed price increase in non-promotional wholesale beverages, the Commission does not consider the difference to be unreasonable due to several factors. First, beverage suppliers face indirect costs of participating in a CDS, such as compliance and reporting costs and one-off upgrades to systems.*

The Beverages Council supports the acknowledgement of the ICRC in relation to beverage manufacturers also incurring indirect costs arising from the imposition of the CDS.

In addition, in undertaking their price modelling and sales forecasting, beverage manufacturers have been forced to adopt a conservative approach to their product pricing due to the volatile nature of the CDS pricing regime. This lack of certainty has arisen due to both the month to month setting of CDS charges by the Scheme Coordinator, and the implications of retrospective invoicing and invoicing corrections which occur as a consequence of the 'true up' process.

This is further exacerbated by the fact that beverage manufacturers are unable to make regular and corresponding adjustments to their wholesale prices due to the ongoing sales agreements they have with major customers, and due to the lead times required to make price adjustments by retailers due to matters such as pre-printed catalogues, the time required to physically adjust prices and planned advertising campaigns.

We note that this has not been a factor experienced in Queensland, where scheme invoicing is undertaken based on actual figures rather than estimates, forecasts and historical corrections. Furthermore, CDS costs for manufacturers were set in Queensland at a fixed rate for the first six months of that Scheme. These costs have been recently fixed for a further period to 31 October 2019.

- (vii) *The scheme payment model has led to significant month to month volatility in scheme costs and has the potential to adversely affect competition.*

The ABCL is unable to make comment on whether there has been any adverse impacts upon competition as a consequence of the CDS in the ACT, other than to restate our position that the month-to-month volatility in scheme costs has led to manufacturers adopting a more conservative approach to product pricing as they have not known what CDS costs will be on an ongoing basis. Moreover, manufacturers have also been uncertain as to what the impact of historical corrections (the so-called 'true-ups') might mean fiscally. Any negative adjustments arising as a consequence of historical corrections are of course unrecoverable as prices have been set and products have been sold on the basis of previous estimates and forecasts.

- (viii) *The Commission has found that the ACT CDS payment model may create cash flow pressures for the industry, particularly for small first suppliers. This may have the potential to adversely affect competition in the future.*

Seven-day payment terms in today's commercial world are unusual and a rarity. This circumstance combined with a lack of certainty around both the rate of CDS charges (due to month-to-month price setting and the associated variations) and the overall quantum of the total charge, due to the estimation and 'true-up' methodology has caused significant difficulty for beverage manufacturers in forecasting and cash flow modelling for small and large suppliers alike.

The ABCL recommends an immediate transition to the Queensland CDS model where:

- All charges are calculated and imposed in arrears, based upon actual volumes;
- Payment terms are set at seven days with a plan to move to thirty days; and

- CDS charges are published six months in advance and fixed, to permit budgetary certainty and accurate price modelling.

It should be noted that in the beverage industry, standard commercial terms for payment from customers is 60 to 90 days in arrears. This means that for many manufacturers who pay in advance, that they will be 'out of pocket' for some months, which exacerbates the cash flow problem.

- (ix) *The Commission has therefore made a draft recommendation to implement an arrears payment model in place of the current advance payment model and to increase the payment terms to 14 days.*

The ABCL fully supports the ICRC's recommendation to implement an arrears payment model in place of the current advance payment model.

We would encourage the ACT Government to consider harmonising with the QLD model which we believe will also be adopted in Western Australia when its CDS commences operation in early 2020.

Whilst the ABCL agrees that payment terms should be extended, we do not believe the ICRC's recommendation for payment terms to be increased from seven to 14 days goes far enough.

The ABCL requests the ACT Government extend the payment terms for CDS from seven to 30 days.

- (x) *In conjunction with recommending a move to an arrears model, the Commission also recommends that the ACT Government consider providing the security for the overdraft facility, with the associated costs being recovered through the scheme costs.*

The ABCL fully supports this recommendation.

In the alternate, the ABCL would support the ACT Government providing an interest free loan to the Scheme for a period of up to 24 months. A small levy could then be imposed upon beverage suppliers calculated on a per container basis, for the term of the loan. This levy would be calculated and imposed to ensure the complete payment of the loan principle amount over the term of the loan, at which time the levy would be removed from container charges.

- (xi) *The Commission has considered the Australian Beverage Council Ltd's (ABCL) submission to the issues paper to publish the Scheme Compliance Fee. The Commission has made a draft recommendation that the ACT Government consider publishing a contract summary of the Network Operator Agreement and Scheme Coordinator Agreement to increase transparency of the ACT CDS, and to inform interested parties about the costs incurred by the ACT Government in administering the ACT CDS.*

The ABCL thanks the ICRC for supporting the ABCL's call for transparency in relation to CDS scheme costs. We believe that full disclosure of all costs incurred by the Scheme should be published and be a matter of public record due to their impact on the Scheme, Beverage Suppliers, Retailers and most importantly, Consumers.

- (xii) *The Commission has made a draft recommendation that the ACT Government and Exchange for Change seek to harmonise the ACT CDS with other schemes across Australia, particularly the NSW CDS, to the extent it would benefit ACT beverage suppliers and consumers.*

The ABCL believes that the design of the ACT and the NSW Schemes are fundamentally flawed. Fundamental elements of both of these schemes include:

- ✗ A Scheme Co-Ordinator which can operate on a “for profit” basis;
- ✗ A three-tier model involving a Scheme Co-Ordinator, a Network Operator and a Collection Point Operator network;
- ✗ A Network Operator operating under a monopoly arrangement;
- ✗ All invoicing being based upon forecasting with historical corrections being undertaken to ‘true-up’ or correct inaccurate estimates;
- ✗ Price setting occurring on a month to month basis, only known to beverage suppliers one month in advance.

For these reasons and more, it is non-sensical that the ACT would choose to harmonise with an acknowledged flawed model in NSW.

The ABCL is actively encouraging Governments across Australia to adopt a harmonised approach to CDS across all Australian States and Territories. Whilst we don’t believe a national CDS is likely, we see a far more likely possibility being a State based harmonised Scheme, sponsored through the Australian Council of Government (COAG). We would suggest that using the approach which has been adopted for matters such as Workplace Health and Safety, Interstate Road Rules for commercial vehicles, and Gold licences for tradesmen would potentially provide an ideal outcome.

From a harmonisation perspective, the ABCL actively supports the Queensland CDS model which overcomes the flaws and deficiencies listed above with the Qld Scheme having the following features:

- ✓ A Scheme Co-Ordinator, which under legislation must be a company limited by guarantee (under the Corporations Act Cth 2001) and a designated not-for-profit entity.

This removes any ability for the Scheme Co-ordinator to operate on a ‘for profit’ basis, removing profit-based cost implications for manufacturers, retailers and most importantly consumers.

- ✓ A Scheme with a two-tier model only having a Scheme Co-ordinator and Collection Point Operators, who contract directly with the Scheme Co-ordinator.

This removes the ability for the network to be controlled by a sole entity. More importantly, this permits a competitive market to be created to run and operate collection points. This approach ensures a competitive cost / price structure for collection points operating under competitive market forces. It also reduces

risk and allows the Scheme Co-ordinator to better manage or even terminate an operator where their performance is found to be sub-standard.

We note that for the month of January 2019 the ACT container collections through the ACT's Collection Point Network were only 18.1% of all containers supplied into the market place (32.8% for MRFs).

By comparison, container collections through NSW's Collection Point Network were 56.7% (16.8% for MRFs), and similarly Qld for the same period was 36.6% (25% for MRFs*).**

* Subject to clarification at the end of the March quarter

** Statistics sourced from Exchange for Change websites in NSW and ACT, Qld statistics provided by CoEx Qld.

By any standard, the performance of the ACT CDS at this time is disappointing. One must question what the ability is of the ACT Scheme to sanction or remove its Network Operator without any viable or practical alternative immediately available.

These figures serve in our view to highlight the need for the Scheme Co-ordinator to be positioned so as it can undertake necessary actions to improve the performance of Collection Point Operators to improve the collection rate of the Scheme overall. This of course is very difficult to achieve where the ability to impose sanctions or to diversify risk is limited due to one organisation having a monopoly arrangement across the network.

(xiii) Price and competition monitoring is not likely to be required beyond the investigation period.

The ABCL fully supports this recommendation which aligns with a similar recommendation from iPart in NSW.

(xiv) The Commission considers that the price changes resulting from the ACT CDS, based on evidence to date, are not inconsistent with workably competitive markets. In addition, the Commission has found no specific evidence of changes in supplier behaviour as a result of the ACT CDS that would restrict or reduce competition in the beverage market.

The ABCL fully supports this opinion.

Seven Key Areas the ICRC is seeking feedback on:

1. What indirect costs do first suppliers incur from participating in the ACT CDS, and how much are these costs? These indirect costs refer to costs that are in addition to those costs invoiced by the Scheme Coordinator.

Indirect costs incurred by beverage manufacturers as a consequence of the implementation of the ACT CDS include:

- modifying or establishing computer-based and manual systems to capture, collate and publish the data which manufacturers are required to submit to the Scheme Coordinator in complying with Scheme obligations;
- Undertaking revised price modelling and sales forecasting;
- Negotiating and documenting new pricing arrangements with customers;
- Registering containers;
- Making necessary changes to container labels including obtaining:
 - compliant barcodes;
 - redesigning labels and artwork;
 - printing new labels containing the regulated Refund Mark;
 - replacing or discarding non-compliant label stock;
- Preparing for and undergoing external CDS audits;
- Preparing, completing and submitting contracts, agreements and statutory declarations to both the Scheme Coordinator and Government as compelled; and
- Communicating price increases to retailers and consumers;

2. Is there any evidence that the introduction of the ACT CDS has resulted in significant changes in market shares of first suppliers?

As stated above, the ABCL, as the peak industry body for the non-alcoholic beverage industry, has not received one single complaint from any of our Members in relation to 'competition' or market issues since the introduction of CDS in the ACT. From this, we are able to deduce that our Members have not experienced any lessening of competition or any adverse competition affects arising as a consequence of price rises attributable to the ACT CDS.

3. Should an arrears payment model be adopted in the ACT regardless of whether this payment model is adopted by NSW?

Yes, most definitely. Moving to an arrears payment model will:

- ✓ allow greater certainty in price modelling and sales forecasting which will benefit manufacturers, retailers and consumers;
- ✓ improve cash flow management; and
- ✓ eliminate bureaucratic processes, in particular the so-called true-up which is in fact a historical correction for inaccurate estimating of charges by the Scheme Coordinator.

The ABCL has consistently been disappointed by a lack of willingness on the part of the NSW Government to consider a significant reform of their scheme. We continue to call on the NSW Government to align their scheme with that in operation in other States which clearly have better commercial and billing practices.

In our view, even though it might be expedient and convenient for the ACT to align their Scheme with NSW, we believe there are much better alternatives and the benefits of moving to a better model, even if that means not aligning with NSW, far outweighs any negative consequences experienced from not aligning with NSW.

4. Should the period for true up adjustments be limited to 12 months after invoice?

As the true up adjustment or correction has a compounding effect on scheme pricing (and invoicing), this matter needs to be finalised at some point to provide fiscal certainty and closure for beverage manufacturers. The ABCL supports a 12-month limitation.

More broadly, the ABCL notes that if the ACT was to change the design of their Scheme and move to an arrears payment model (based upon actual supply figures submitted historically) then this question resolves itself and the question becomes moot.

The ABCL supports the introduction of an arrears-based model which aligns with the Qld CDS so as we can commence the process of moving towards a nationally harmonised model. In this regard, the ABCL has and will continue to lobby the NSW Government to redesign their model and shift to an arrears payment methodology which harmonises with the Qld Scheme.

5. Is there any evidence that a significant increase in beverage container supplied in the ACT prior to the introduction of the ACT CDS followed by a corresponding reduction after its introduction?

The ABCL is unaware of any increase in beverage containers supplied into the ACT since the introduction of CDS.

6. Is there any evidence that the introduction of the ACT CDS has resulted in significant difference in the range of products available or the quantity of beverages consumed by consumers?

The ABCL is unaware of any evidence that the introduction of the ACT CDS has resulted in and significant difference in the range of beverage products available in the ACT.

The ABCL understands that the introduction of CDS, and the associated impact on beverage prices, has resulted in a decline in the quantity of beverages purchased and consumed by consumers. This is of course to be expected, as any price change is invariably met with a response by consumers. We are unable to provide any firm data in relation to this matter due to the commercially confidential nature of sales data but we understand that there has been a decline in sales across certain beverage categories.

7. Is there any evidence that the introduction of the ACT CDS has resulted in significant beverage container movements between NSW and ACT?

The ABCL is unaware of any evidence that the introduction of the ACT CDS has resulted in significant beverage container movements between NSW and ACT.

Contact

To discuss this submission or any recommendation contained therein, please contact:

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