



Advocating for the people of Western Sydney

SUBMISSION:

Draft Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2016

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About WSROC

Formed in 1973, the Western Sydney Regional Organisation of Councils (WSROC) represents nine local councils in Western Sydney. WSROC provides a strong voice for the residents of western Sydney to improve services and quality of life. WSROC represents Western Sydney councils covering a region of 5,500 sq. km with a highly diverse population and wide economic, social, environmental and geographical conditions.

Over the past 40 years it has developed a strong history of fearless advocacy on behalf of the needs of its councils and residents, especially in the key areas of economic and social development, job creation, transport and infrastructure, planning, health and the environment, and has proven itself a reliable partner in intergovernmental relations, strategic planning, and coordinating joint projects, procurement and services.

In 2014, WSROC and nine councils developed the *Western Sydney Regional Waste Avoidance and Resource Recovery Strategy 2014-2017*. The Regional Waste Strategy outlines future directions for resource recovery practices across western Sydney, and explores options for addressing waste management challenges faced by councils in the region. The strategy and its actions focus on increasing recycling, reducing waste to landfill, and combatting illegal dumping and littering across Western Sydney. In 2015, with the announcement of the container deposit scheme, a specific action was added to this regional strategy for WSROC to represent views of councils and to ensure delivery of resource recovery outcomes in the forthcoming container deposit scheme.

By working together, councils are committed to improving regional cooperation, identifying opportunities to improve recycling and delivering efficient waste and resource recovery services to the community. As part of this regional waste initiative, this WSROC submission seeks to ensure that the impending CDS will be developed with a triple bottom line approach to sustainability for the benefit of the communities we represent, and does not negatively impact on the ability of our councils to provide waste services to their communities.

Councils represented under this submission are Blacktown City Council, Blue Mountains City Council, Cumberland Council, Fairfield City Council, Hawkesbury City Council, Liverpool City Council, City of Parramatta, Penrith City Council and The Hills Shire Council (although not a member of WSROC).



Executive Summary

Western Sydney Region Organisation of Councils (WSROC) welcomes the opportunity to comment on the Draft *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2016*.

WSROC has participated in various consultation opportunities for the proposed Scheme, including the Local Government and Community working groups. We reviewed the draft Regulation in conjunction with the concerns of Western Sydney councils and with the communities they represent at the fore, and provide feedback via this submission.

Councils are pleased to see that previous feedback on the draft Bill was incorporated into the legislation, and is reflected in the adopted Act. We commend the NSW Government for including certain design elements highlighted in WSROC's previous submission, being: the inclusion of alternative waste treatment as a class of MRF operator for purposes of this scheme; the requirement of a MRF operator to enter into a refund sharing agreement with a council regardless of whether they have a direct contractual agreement; and the allowance of MRF operators to claim payments for non-domestic sources of waste from a council area.

However, there are elements of the draft Regulation which still concern Western Sydney councils and require further consideration and refinement.

The intention of the NSW EPA to allow refund payment agreements between councils and MRFs to be applied retrospectively to the scheme commencement date is not clear in this regulation. Clause 19(6) needs amendment to allow councils to claim retrospective payments, as the current stipulations exempt the MRF operators from sharing with councils refund claims made with respect to containers recycled in the first 12 months of the Scheme.

There is also no formal dispute resolution process in place should the negotiations between MRF operators and councils fail to reach an agreement. We maintain that some form of body (ideally NSW EPA), individual (such as the Minister), or an independent arbiter should determine how payments are to be shared, if the parties fail to come to an agreement.

Importantly, the current drafting of the Regulation makes very little provision or incentive for collection point operators to accept delivery of a container from that has been collected as litter from the environment. Due to the likelihood of collected littered containers being unsuitable for recycling, failing to contain the refund mark, and containing damage to or missing the container label, there needs to be an amendment to the clause 28(1) to direct collection points to accept legacy littered containers for an amnesty period of approximately 12 to 18 months, therefore aligning the Scheme with its original intent of reducing beverage containers in the environment.

Introduction

In September 2016, WSROC reviewed the Draft *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016* and made a submission¹ in the interests of Western Sydney councils.

We appreciate that the following submissions have been adopted in the Bill and are consistent in the draft Regulation, and ask that they would not be changed:

- The draft Regulation² has made clear that alternative waste treatment plant (AWT) operators are defined as a class of material recovery facility operators for the purposes of section 20 of the Act.
- A Materials Recovery Facility (MRF) operator must enter into a refund sharing agreement with councils regardless of whether the MRF operator has a direct agreement with the relevant council.
- The current drafting is broad enough to permit MRF operators to claim payments for non-domestic sources of waste, such as council's public waste management services.

The adopted definition of "domestic waste management services" from the *Local Government Act 1993* refers to "services comprising the periodic collection of domestic waste from individual parcels of rateable land and services that are associated with those services," thus excluding waste services provided by councils to public places, parks and gardens.

As the current drafting now allows for MRF operators to be able to claim payments from non-domestic sources of waste from councils, it should naturally follow that these refunds should be shared with the respective councils.

As per our previous submission, we continue to urge the EPA to ensure that Clause 18 of the Regulation be amended so that the required refund sharing agreement also extends to non-domestic waste management services provided by councils.

We acknowledge that the current drafting of the Regulation requires a MRF operator to enter into a refund sharing agreement with council to claim refunds for containers sourced from the council area. However, as per our previous submission, we continue to press for the need of a dispute resolution mechanism in the Regulation should a MRF operator and council not be able to reach an agreement.

In this submission, we continue to highlight the need for the above items raised previously, and present additional concerns resulting from the draft Regulation for consideration.

¹ WSROC Submission on Draft Bill and Regulatory Framework, September 2016 <<https://wsroc.com.au/media-a-resources/submissions/summary/2-submissions/249-wsroc-submission-on-draft-bill-and-regulatory-framework>>.

² Clause 7(1).

Comments on the draft Regulation

Part 1 – Preliminary

2 Commencement

The commencement dates of the Regulation should align to ensure that once the community begins to pay the increased margins on beverage containers, collection points are accessible and available to enable consumers to claim their refunds. Low barriers to participation and synchronised state wide education programs will help to promote positive community perception about the implementation of the Scheme.

Councils will naturally be relied upon by their communities to provide information on the new Scheme and should be sufficiently supported in terms of resources to do this, which also need to be considered within the Scheme commencement dates.

3 Definitions

We believe that the definition in the Regulation of *alternative waste treatment plant operator* would suitably encompass the AWT facilities servicing our councils.

7 Material recovery facility operators

We are pleased to see that AWT operators have been included under the definition of *material recovery facility operator*. We believe that this will encourage resource recovery of containers captured through this stream, to the potential of \$3.9 million³ in deposit refunds from Western Sydney alone, which can be shared with councils.

Part 2 – Administration of Scheme

Division 1 – Scheme administration agreements

As per the Division 1 Scheme administration agreements consultation note, we note that,

“It is anticipated that additional provisions will be included in the Regulation to deal with the performance targets to be included in a Scheme administration agreement.”

We request that the provision for these targets within the regulation and Scheme administration agreements be carefully considered to promote equitable access and success across the state. Thus, we support having the separate targets for regional NSW and metropolitan NSW presented at the EPA consultation forum⁴.

The proposed target of one collection point for every 20,000 people in metropolitan areas (Sydney, Wollongong, Newcastle), indicating a minimum of 278 collection points is a higher per rate than what is available in metropolitan South Australia⁵ and may be reasonable for NSW with some considerations as below:

- A per capita target does not account for tourists to the area.

³ WSROC modelling using WARR Data 2015-16 and Audit Assessment Report 2016.

⁴ 10 November 2016, Sydney

⁵ NSW EPA Social Research presented to Local Government and Community Working Group, July 2016

Western Sydney has many major tourism destinations, with over 13.4 million⁶ day and overnight tourists to Greater Western Sydney (including Campbelltown, Camden and Wollondilly). The Blue Mountains has an international visitor to population ratio of 10.3 compared to 3.4 in Sydney⁷. Such tourist centres of Western Sydney that are not densely populated such as the Blue Mountains and Hawkesbury region should be given extra consideration to capture containers as a result of tourism and shift the burden of litter management costs away from local ratepayers.

- The proposed collection point targets in metropolitan NSW are not based on distance to collection point.

Western Sydney is a geographically vast area ranging from densely populated urban centres to semi-rural areas. In the semi-rural areas, some residents would be greater than 30km from the nearest council's central business district, which would mean that residents in these areas would be required to travel even greater distances to a collection point compared to those in regional areas. Social research⁸ suggests that at the minimum case of 15km, only 22% of metro dwellers would take containers to a collection point.

- Collection point access should be accessible to all consumers that pay the associated costs of a CDS, despite the inclusion of kerbside.

Whilst we are pleased that councils are able to share in the refunds of containers collected via the kerbside system for the benefit of the community, not all consumers of beverage containers are rate payers so may not see this benefit passed on financially. All consumers should have equitable access to collection points should they choose to redeem the deposit as an individual.

- Councils should be consulted around what defines a 'priority precincts' within their area.

As stated in our previous submission, sufficient measurement and evaluation needs to be built into the proposed targets and suggested indicators include (but are not limited to): litter reduction, community engagement, community participation, and activation of community groups and charities.

Division 2 – Collection point arrangements

The EPA should ensure that collection point approvals are not a barrier to council participation as a collection point operator, should they wish to. As the draft regulations read, the EPA has the authority to decline to grant a collection point arrangement approval regardless of whether development consent has already been obtained for a the collection point.

The EPA should encourage participation by assisting councils in determining suitability of proposed collection points before they undertake the DA process and work with Department of Planning to structure collection points as a type of complying development.

⁶ Blue Mountains visitors 2016: 3.984 million, Destination NSW 2016, <<http://www.destinationnsw.com.au/wp-content/uploads/2016/09/Blue-Mountains-time-series-YE-Jun-16.pdf>>, viewed 22 December 2016. Greater Western Sydney visitors 9.5 million, <<http://www.destinationnsw.com.au/wp-content/uploads/2013/01/Western-Sydney-Visitor-Profile-YE-Jun-2016.pdf>>.

⁷ Sydney figure excludes Blue Mountains. Tourism Research Australia 2014-15, <http://tra.gov.au/Tourism_Region_Profiles/Region_profiles/index.html>.

⁸ NSW EPA Social Research presented to Local Government and Community Working Group, July 2016

Division 3 – Payment of refund amounts to material recovery facility operators

18 Entitlement to processing refunds

The adopted definition of ‘domestic waste management services’ from the *Local Government Act 1993* refers to “*services comprising the periodic collection of domestic waste from individual parcels of rateable land and services that are associated with those services*”.

By this definition, non-domestic sources of waste (for example, waste collected from public places, events, and litter clean-up activities) would not be included in the refund sharing agreement. In the current drafting, MRF operators are eligible to claim payments from non-domestic sources and consequently, the Regulation should ensure that the refund sharing agreement with councils also extends to these containers. As per WSROC’s previous submission, inclusion of non-domestic sources of waste from local government would be consistent with EPR principles and help to reduce Western Sydney councils’ litter management costs (\$14 million annually), particularly with much of this stream generated by visitors from outside the local government area.

The definition of a ‘refund sharing agreement’ under clause 18(5) in the current drafting is limited to payments in the nature of ‘processing refunds’ under section 28 of the Act, and not to ‘ordinary refunds’ under section 42 of the Act.

The EPA should be aware that therein exists a loophole where a MRF operator can avoid having to operate under a refund sharing agreement. Even an amendment to clause 18 to ensure that a MRF operator could not receive refund payments unless a refund processing agreement was in place, would still mean a MRF operator could avoid the requirement for a refund processing agreement by selling their containers to a third party, who could claim the refunds.

The provisions for a collection point operator to decline to provide a refund under certain circumstances could be refined to minimise the risk for this occurrence.

Subclause 18(4) exempts MRF operators from the requirement of a refund sharing agreement with councils for the first 12 months from implementation of the Scheme, thereby providing for a windfall gain to MRF operators for this period. In Western Sydney alone, the value of these containers for this period is approximately \$18.5 million annually. This is an adverse outcome for councils and their communities (who are paying the container deposit in addition to domestic waste management charges) and should be revised so that councils can share in these refund payments, as further detailed under Clause 19.

Regardless of whether a refund sharing agreement is in force between the MRF operator and council, it should be maintained that the MRF operator follow the required methodologies and keep all records from the date of implementation of the Scheme.

19 Claims for refund amounts

We understand that the EPA had the intention for the refund sharing agreement to be applied retrospectively dating back to the Scheme commencement day, however, this is not clear from the current drafting.

MRF operators are eligible for payments from Day One of the Scheme, therefore we request that the Regulation make it clear that the refund sharing agreement can also be backdated to Day One, and regardless of whether the time taken to reach agreement extends beyond any existing contract expiry date. Clause 19(6) may make late claims in the transition period difficult and could be amended to allow for this.

As per our previous submission, we maintain that there needs to be a formal dispute resolution process where some form of body (such as the NSW EPA), individual (such as the Minister) or an independent arbiter may determine how payments are to be shared between the MRF operator and the council, should it be difficult for these parties to come to an agreement. Alternatively, the dispute resolution clause (if any) under an existing contract with council could be triggered.

There is a role for the EPA to provide support to local government in ensuring equitable outcomes in the refund sharing agreements with MRF operators and in resolving disputes. We anticipate some details of the various needs and requirements to be put forward in submissions to the draft Regulation by the local government sector and hope that the EPA can provide ongoing support to councils leading up to and during implementation of the Scheme.

Under Clause 19(4), MRF operators are able to make claims for containers consigned by the claimant for transport to a recycling facility in a foreign country. However, there is no requirement of proof that recyclables sent to a foreign country are legitimately recycled.

The NSW EPA should consider inserting a clause at an appropriate point within the legal framework creating an offence for a MRF to seek payment of refunds when it is not otherwise entitled to do so, to ensure there are consequences for poor practice or ignorance.

20 Disposal of containers

This clause does not permit a MRF operator for making a claim for the payment of a processing refund for any containers that the operator has permitted to be disposed to landfill. However, there is no mention of whether refunds are payable for containers destined for energy recovery, which may be an increasing occurrence as energy from waste advances in NSW. There needs to be further clarification in the Regulation that considers the future impacts of this rising technology in relation to CDS and if energy recovery is considered 'reuse' or 'recycling' under the definitions applying to this Regulation.

Part 3 – Supply and collection on containers

Division 2 – Collection of containers

28 Circumstances in which refund amounts not payable

There is concern that the circumstances detailed in the Regulation, particularly 1(a)(i) and 1(b)(i), will deter collection point operators from issuing the payment of refunds on littered containers. While we recognise that the scheme has been designed to prevent the littering of new containers, we strongly support the need for amnesty measures to enable refunds to be paid on littered containers already in the environment. Many of these legacy containers may have soil or liquid contamination, faded or missing labels and barcodes, and will be missing the required refund marking for new containers.

There is no reference to any amnesty arrangements in the draft Regulation or Bill. Should no amendments be made to this clause, there will be no requirement or encouragement for collection point operators to accept and pay refunds for legacy littered containers. This will deter active community groups from further participation if they are not rewarded for clean-up efforts following the Scheme commencement, and also fail to drive new clean-up efforts by the community.

The NSW EPA should consider a subclause directing collection point operators to pay refunds on legacy littered containers for an accepted time delay period of 12 or 18 months from the Scheme commencement day.

Conclusion

WSROC appreciates that the Act and draft Regulation recognises the need to ensure that local government can claim in refund sharing of payments for containers collected via the kerbside recycling system.

The inclusion of AWT operators within the definition of a MRF operator is positive for improving resource recovery and community benefit.

Whilst the proposed targets are not mentioned in the draft Regulation, we understand that the intention is to develop separate targets for regional and metropolitan NSW. This approach is welcome, however, in the Sydney metropolitan region we caution against a simple per capita target as this would disadvantage segments of the community and would not account for the impacts of tourism to the area.

The provision of easily accessible collection points should be facilitated by streamlined approval processes, and adequate support and guidance (such as guidelines and templates) from the EPA to assist non-commercial enterprises in entering the system as a collection point operator.

As not all councils have existing contract arrangements with a MRF for receiving their recyclables, the requirement for MRF operators to reach a refund sharing agreement with councils in respect to containers collected from their area, allows for collective community benefit from deposits forgone by individuals of that community. Whether or not a council has an existing contract arrangement with a MRF operator, the councils will still need support from the EPA to ensure equitable outcomes in the refund sharing agreement, to ensure that adequate mechanisms are included in future contracts for refund sharing provisions.

The draft Regulation, however, does not require a MRF operator to have a refund sharing agreement with council in the first 12 months of the Scheme, thus conceding a significant windfall gain to the MRF operator. Once an agreement is reached, it should be applied retrospectively to the beginning of the Scheme so that councils receive a share in the refunds generated from their area.

The regulatory framework should be stringent as to ensure that MRF operators cannot bypass the required refund sharing agreement with councils. Should a council and MRF operator be unable to reach agreement, a dispute resolution mechanism involving an external third-party needs to be in place.

From a litter reduction perspective, the Regulation also needs to provide the mechanism to encourage refunds for community clean-up activities of beverage containers already in the environment.

The EPA has an important role in ensuring authenticity of the Scheme, which will impact community perception, participation rates, and overall Scheme success.