



**PROPOSED AMENDMENTS TO  
NSW CONTAINER DEPOSIT SCHEME LEGISLATION**

12/10/16

These amendments have been provided to the NSW government, ALP AND Greens. The legislation has had its second reading reading speech in the Lower House from the Minister and will be debated in coming weeks (see [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au) for calendar of siting days)

**1. Protecting the financial viability of the Coordinator:**

The single Coordinator separate from the Network Operators is strongly endorsed. There is a perception, however, that the Coordinator bears all the financial risk in remaining solvent when it is the bottlers' funds that cover scheme costs; and the bottler is the original polluter by introducing disposable containers. The potential for dispute and litigation should be minimised. This is achieved by the legislation allowing for advance invoicing and 'pay now, dispute later' clauses in the supplier contract – a similar system operates in SA with a 'true-up' process every six months for actual outlays. Thus the Coordinator always has funds to cover refunds and handling fees.

*1.1 Clause 38 should be amended to include a provision that 'supply agreements will contain arrangements to ensure the Coordinator has sufficient funds to be able to pay refunds and handling fees for at least 3 calendar months'.*

Consequently, applications would be assessed on the Coordinator and Supplier applicant's proposal to address the cash flow and liability risks identified above and the regulations could be drafted to include a requirement how this issue can be considered. It would also be advisable that the EPA draft template terms to assist; and it may wish to check each contract.

**2. Ensuring convenience:**

It is essential that consumers away from home and at home, who wish to access the refund, can do so conveniently particularly in the metro areas. It is also an important component of meeting performance targets. This should inevitably involve normal shopping locations (shopping centres, supermarkets, petrol stations). Notably of the 15 jurisdictions that have adopted a CDS in the last 20 years - 12 have retail obligations with a scheme redemption rate of 85%; 3 are depot based with a

redemption rate of 68%. While 'back to retail' models may be considered excessively mandatory, there are other ways to induce retailer engagement.

Boomerang Alliance **does not** advocate for a full back to retail model, but that does not imply that retailers should not have to meet a reasonable obligation that forms an underpinning to ensure convenient redemption i.e. that if after, say, 6 months there is no redemption point within 500metres of a major supermarket (over 800metres of floor space). The Bill should have a power to enact a regulation that comes into force:

*2.1 Requiring retailers of a certain size to be linked to a convenient collection point and identify and link to adjacent space (eg car park or public mall space or shopping centre) or install an RVM within their premises.*

*2.2 Additionally the Minister should have the power to require establishment of additional collection points in any appropriate location – 'the Minister may require by regulation the establishment of collection points to ensure the convenience of the scheme for consumers.'*

*2.3 The legislation should contain a clause similar to the NT law where sellers of beverages are required to have signs showing there is a refund and the location of the nearest collection point.*

After all, this is where the consumer comes into most frequent contact with the CDS. There should be a similar obligation on other parts of the supply (bottler) and collection chain.

In addition the Coordinator should be explicitly required to include a rental fee in the Handling Fee, for retail or shopping mall space for siting a collection point.

Barcodes allow efficient handling and data recording and should over time become a dominant feature. It is noted that the Minister intends that every label should have a barcode.

*2.4 In order to ensure metro consumers can avail themselves of efficient and convenient technology, clause 25 should require that a Coordinator has the capacity to handle barcode information (noting it will not necessarily be used in every instance).*

*It is also essential that collection points (where there is appropriate technology) can provide a data file of transactions and recorded barcodes to receive a refund and handling fee.*

### **3. Ensuring data confidentiality:**

The Draft Bill does not contain any provisions with respect to maintaining confidentiality of information that is of a sensitive commercial nature for suppliers. However, the Discussion Paper states that the Scheme Coordinator agreement will require the Scheme Coordinator to have a process for handling confidential supplier information without giving advantage to or disadvantaging any particular supplier or suppliers. The legislation should explicitly provide confidence to all bottlers in the scheme.

*3.1 Division 2 should be amended to oblige the Scheme Coordinator to develop arrangements to ensure the confidentiality of information provided by suppliers.*

Some appropriate consequent measures that could deal with this issue would include:

- an invitation for applications for the Scheme Coordinator could require applicants to provide information about how they would propose to ensure the confidentiality of information provided by suppliers and this information could be taken into account when the successful Scheme Coordinator is selected;
- an invitation for applications for the Scheme Coordinator could include criteria for selection that could require the Scheme Coordinator to be independent from and separate to any of the suppliers;
- an invitation for applications for the Scheme Coordinator could include criteria for selection that could require the Scheme Coordinator to manage an independent and legally separate data clearing house that would manage the receipt and collation of data from suppliers and then provide only 'sanitised' data to the Scheme Coordinator;
- the Scheme Coordinator agreement could contain strict confidentiality requirements that carry heavy penalties if breached; or
- the Scheme Coordinator agreement could require that the supplier arrangements also contain strict confidentiality requirements.

### **4. Reporting frequency:**

The legislation currently proposes annual reporting against targets. This is too infrequent to monitor any problems and seasonal container flows. It is recommended there be quarterly reporting (as in the NT), especially in the early stages of the scheme. Such reports may not need to report against targets, as this is the role of the annual report. The EPA should produce an approved template for reporting.

*4.1 Clause 35 of the legislation should be amended to require quarterly interim reports on sales and container recovery published on the Coordinator and EPA's websites.*

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