

Draft Submission on Regulatory Framework for NSW Container Deposit Scheme

September 2016

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Introduction:

Local Government NSW (LGNSW) is the peak body for councils in NSW, representing NSW general-purpose councils, and associate members including special purpose councils and the NSW Aboriginal Land Council. In essence, LGNSW is the organisation for all things local government in NSW. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW welcomes the opportunity to provide a submission concerning the regulatory framework proposals for a NSW Container Deposit Scheme (CDS) as detailed in the draft Bill and associated Regulatory Framework discussion paper. LGNSW has sought feedback from a number of councils' waste staff and Regional Waste Group coordinators, and their feedback informed this submission. The comments in this submission however, remain the position of LGNSW and not those of any individual council. The submission will go to LGNSW Board for ratification and we will advise you should any changes be made.

Opening:

LGNSW supports the introduction of a NSW Container Deposit Scheme that provides an incentive refund on return of containers. LGNSW has called for many years for the introduction of an industry-funded scheme to assist with reduction in litter and improved resource recovery of beverage containers. The introduction of this scheme is arguably the largest single government decision made affecting recycling operations in NSW.

The NSW Government states its objectives for the scheme are to

- assist the beverage industry share its responsibility for managing beverage product waste,
- assist with meeting the NSW target of 40% litter reduction,
- to establish a cost effective scheme to promote the recovery, reuse and recycling of beverage containers, and
- provide a scheme that will complement, not compete, with kerbside recycling.

LGNSW supports an effective Container Deposit Scheme in NSW that:

- includes a financial incentive for the return of each container,
- is consistent with existing schemes in South Australia and the Northern Territory,
- places the responsibility for the scheme (both financial and physical) on the producer and the consumer of beverage containers,
- offers the least number of exemptions in regards to container size and product type,
- delivers reasonable access across NSW by a variety of redemption points,
- makes eligible any in-scope containers presented through kerbside systems, and
- allows for an independent, non-profit body to coordinate the scheme.

The proposed scheme includes or addresses each of these criteria. The discussion paper provided by the NSW EPA seeks feedback on various draft provisions of the scheme, including its operational structure, targets, obligations on suppliers and operators, distribution of refunds, types of payment and special provision for once-only removal of legacy litter.

The Regulatory Framework proposed for the scheme includes:

- a draft Bill (the Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016),
- associated regulations (not yet drafted, but proposed elements are in the discussion paper),
- contractual arrangements between various parties to the Scheme (the Minister, Scheme Coordinator, Network Operators and Collection Points), and
- administrative guidelines (establishing verification and audit methodologies to be used under the scheme).

The regulations, contracts and guidelines will be finalised in accordance with provisions in the legislation when passed.

Overall, LGNSW will make high level comment on the proposed scheme and matters not requiring detailed comment. Discussion then proceeds to the key features of the proposed elements and arrangements associated with the scheme, reflecting the layout of the discussion paper. This submission will make comment on each of those elements in turn, including responding to the questions posed by the EPA.

LGNSW wishes to draw the attention of the NSW EPA to the comments in sections on:

- interaction with kerbside collection services (especially counter-proposals for distribution of refund value and inclusion of MRFs without environment protection licences within the scheme),
- coverage/access and resource recovery targets,
- scheme infrastructure planning issues, and
- incentivising clean-up of legacy litter at the introduction of the scheme (under the section on *Obligations on collection point operators*).

These issues most directly impact the local government sector and are where LGNSW has concerns.

Feedback from member councils has highlighted concerns that the scheme needs to ensure:

- Consistency (simple fair rules for all parties especially refunds to consumers and ratepayers),
- Security (that existing services and contracts are not undermined, and resource recovery relationships built up by the community over decades are not discarded),
- Transparency (that scheme operators and recyclers are made to disclose all information that impacts on the operation of the scheme), and
- Long term government commitment (that omissions, errors and breakdowns in the scheme do not fall back over time upon local government to ensure the scheme works as intended).

Response

General comments on the container deposit scheme discussion paper

LGNSW welcomes the opportunity afforded to comment on a more detailed framework for a Container Deposit Scheme for NSW, and commends the NSW EPA for preparing the documentation addressing the framework in a short time period.

LGNSW notes that since the scheme does not call for a designated deposit within the regulatory framework, but rather for a refund only to be legislated, that to avoid confusion it should be more appropriately termed a “Container Refund Scheme” (CRS). However, in this submission we will continue to use the nominal title of “Container Deposit Scheme” (CDS) as per the draft Bill and discussion paper.

The proposed structure of the scheme, with a single state-wide Scheme Coordinator, sub-contracting Network Operators who put the scheme “on the ground” and manage Collection Points, refund payouts, handling fees, logistics and recycling of returned containers outlines a logic of checks and balances that potentially offers robustness in delivery. Detailed comment by LGNSW in the section on “Scheme Structure” will offer recommendations to remove the proposed requirement that each Network Operator establish state-wide collection coverage.

With broad NSW scheme coverage, and effective communication about the scheme from the operators, it is anticipated that there will be a marked decrease in litter for several reasons:

- The ability for any consumer of beverages to redeem value will contribute to “return before new purchase” behaviour.
- The opportunities for support of local community groups by “bottle-drive” or similar donations will add value back to communities from litter which has previously been a cost to ratepayers.
- The reduction of relatively bulky beverage containers in council-provided litter bins will allow them to more effectively contain other types of litter, reducing spillage out of overloaded bins contributing to litter impacts.
- The incentive for individuals to scavenge and remove containers from the environment will contribute to improved amenity of recreational areas including those parks and gardens managed by the local government sector.

A successful scheme will potentially affect recycling behaviours in every household in NSW.

LGNSW considers that there will be significant differences in the impact and role of a CDS on councils depending upon their location and constituent populations.

In more western regions of NSW, a container deposit scheme will support an organised and effective resource recovery pathway. Based on recent data returns (2012-13) by local councils, 18 of the 24 councils west of a line roughly drawn from Moree Plains Shire in the north to Lockhart Shire in the south (more than half the state by area) have not been in a position to offer a viable kerbside recycling system. Many of these councils have provided drop-off recycling services at council facilities, with local government carrying the responsibility and cost burden of resource recovery for widespread and low population communities.

LGNSW’s support for a CDS has been based on the concept of Extended Producer Responsibility (EPR) to maximise the environmental outcome achieved by those that are responsible for the creation and use of containers. The introduction of an incentive refund paid out by the beverage industry for the return of purchased containers will be of great benefit in all regions, appropriately sharing the responsibility for managing litter and recycling impacts, and offering numerous social and environmental benefits.

LGNSW understands the time limitations imposed to deliver a NSW CDS by 1 July 2017 has meant a number of supporting information documents could not be released prior to consultations closing on the Bill. The absence of a cost-benefit analysis restricts LGNSW’s ability to make fully informed comment on the appropriate amount of deposit, or on any impacts on employment or fine-tuning of the scheme to achieve inter-regional equity. LGNSW

has relied therefore on discussions with our members to inform this submission, based on their experience and expertise.

There is a case to align the introduction of any CDS in NSW with that being proposed in Queensland, provided that this does not introduce significant delay. Queensland has nominated an unspecified date in 2018 for starting their scheme. Sufficient time is requested for any necessary scheme infrastructure to pass through planning processes in NSW, and the adjustment of numerous council's recycling collection and processing contracts.

Local Government is a critical key stakeholder

Local government has been and will continue under the scheme to be a major contributor in preventing and reducing litter impacts in NSW. Local government has provided for litter bin infrastructure and collection across the state, delivered education campaigns, supported Clean Up events and in many areas provides daily cleaning of streets to minimise litter.

It will be necessary for effective delivery of the scheme that LGNSW be invited to represent its members on any CDS Advisory Committees as proposed in the Bill. This would extend to the involvement of LGNSW as a key stakeholder in all consultations and working groups to address planning issues associated with the scheme infrastructure and continuing support for an effective kerbside recycling system. Any enforcement of the mandated requirements of the Bill and Regulations must be fully funded and actioned by the NSW Government, as these activities do not form any part of local government operations.

Legal support for handling impacts on local government contracts

LGNSW notes that local government has a number of contracts in place for kerbside recycling collection and processing that will be impacted under a CDS. Around 30% of these contracts will need to be renewed prior to commencement of a CDS on 1 July 2017. Another third will need to accommodate previously unseen proposals relating to the distribution of container refunds originating from kerbside recycling delivered to Material Recycling Facilities (MRFs). LGNSW has sought to have advice issued to NSW councils from the NSW Minister of Local Government that the pending CDS constitutes 'extenuating circumstances' pursuant to Section 55(3)(i) of the *Local Government Act 1993*. This will enable existing contracts to be extended short-term until the mechanics and implications of a CDS are better known.

As part of the transition measures needed to introduce a CDS, LGNSW calls for funding for general legal and technical advice and other support to be made available to help local government navigate through renegotiation of contracts. Responsibility for the scheme rests with the beverage industry and NSW Government, and no cost burden should fall to councils to enable the scheme.

Councils have indicated that they would prefer a panel of registered legal advisors, subject to that panel having a consistent briefing from EPA.

1. Scheme structure

The Government is interested in feedback on

- *An indication of an appropriate amount for the handling fee to be paid by the Scheme Coordinator to Network Operators.*
- *Whether the handling fee should be different:*
 - *For containers collected in different geographical regions (e.g., metro, regional or remote areas),*
 - *For different container materials,*

- *For different levels of verification oversight required by the Scheme Coordinator, or for any other factor.*

The discussion paper proposes that the Scheme will be delivered through a two-part structure.

- A single Scheme Coordinator will be responsible for the financial management of the scheme, and for ensuring that the scheme meets its state-wide access and recovery targets.
- Network Operators will set up and run a state-wide network of collection points. They can build and operate these collection points themselves, or contract for other organisations to do this.

LGNSW asserts that the CDS will actually be delivered through a three-part structure, which includes the recovery and return of beverage containers via the existing kerbside collection network, with the Scheme Coordinator responsible for also responsible for verifying and paying refunds for containers continuing to be returned through Material Recycling Facilities (MRFs).

LGNSW notes that the scheme is being delivered into a market with a mature kerbside recycling system and network of MRFs continuing in operation. There is very little precedent available to understand the impacts of imposing a CDS over the top of a widespread recycling network already returning containers for recycling and operating with strong community support. LGNSW welcomes the NSW Government commitment to complement and not compete with kerbside recycling in the introduction of a CDS.

The importance of continuing the effective operation of the MRF network for recycling should not be underestimated, as their role in delivering resource recovery of all other recycling materials not covered by a CDS is critical for local and NSW governments to meet community expectations around waste and resource recovery strategy targets.

The introduction of a CDS should not drive up costs for recovery of other resources by forcing increased access charges to MRFs, or increased collection contract charges sought by operators handling reduced tonnages. Various proposals on how best to manage the transition for MRF and councils' agreements in the three part structure of the scheme are covered in greater detail in the section of this submission titled *Interaction with kerbside collection services*.

The "handling fee" (as it is termed in the discussion paper) paid by the Scheme Coordinator to Network Operators is intended to underpin their costs in providing Collection Point operations, reimbursements of refunds paid out by Collection Points and logistics to acquit redeemed containers, bale and transport for recycling, as well as data collection. It is more appropriately termed a "network fee" to distinguish this from any "handling fee" paid to Collection Points. The value set for the fee will largely be a commercial decision from the Scheme Coordinator. In the absence of the information to be found in a Cost-Benefit Analysis, LGNSW must limit comments on the "appropriate" level for this Network Fee. Given that the Network Operators will in turn be gaining revenue from selling of recycled materials of high grade (cleaned and sorted) there should be regular adjustments to the Network Fee by the Scheme Coordinator to reflect any changes to value indices for recycling material in the market.

The Scheme as envisaged in the Bill and discussion paper will require Network Operators to contract with the Minister and Scheme Coordinator and individually be obligated to deliver a state-wide network to meet coverage/access targets. This may not achieve state-wide coverage efficiently. In some areas, particularly regional areas, there exist locally tailored operations that have grown over time to cover particular parts of NSW. A greater reliance on these regionally adapted networks will avoid competing Network Operators from

superimposing new untried network operations in these areas. Such superimposition to achieve a coverage target might impact negatively on existing viable recycling operations or networks. This was the experience of a number of councils following the imposition of geographic coverage targets under the e-waste producer responsibility scheme. This is not to say that no competition in regions should be allowed, but that sensitivity to the viable operation of the scheme in regional areas should be a priority consideration in setting up a CDS.

Competition should be fostered where the market has a supply base sufficient to operate effective competition, but LGNSW notes its members' entreaty for a viable network of Collection Points to operate and continue to have presence in as many areas as possible. The opening of competing collection points in areas of low supply to satisfy geographic coverage, followed by closure of these as failed businesses creates a "stop-start" collection cycle. These "stop-start" collection cycles need to be avoided to ensure continued community support for the CDS across all regions.

Some regional areas, especially those areas where kerbside recycling has not been viable to introduce, may require special consideration as areas of "natural monopoly" where it falls to the Scheme Coordinator to find the best means to set up low margin operations cross-subsidised with scheme funds from other areas of NSW with higher throughput and lower costs.

LGNSW's position is that the responsibility for state-wide coverage resides solely with the Scheme Coordinator, and that this can be achieved by their coordination of Network Operators best able to service particular regions. A Network Operator may elect to provide very broad or even state-wide coverage, but the meeting of a coverage target should not be imposed at this level of the scheme.

For reasons outlined above and based on feedback from our members, LGNSW would agree to a network fee paid to Network Operators differentiated across regions. This different regional fee would be for the Network Operators to ensure continued viability of Collection Points in areas with low or seasonally fluctuating populations and consequent low or variable supply of eligible containers. It needs also to accommodate the anticipated higher costs of providing sites for return depots in cities.

Councils that operate MRFs in regional areas have also identified a concern over the "fractioning" of supply of recycling materials. This "fractioning" refers to what might occur under the scheme in relatively low and stable population areas where quantities of containers of different materials are removed from existing kerbside recycling operations and instead returned through newly introduced Collection Points. A Network Operator will manage the recycling and processing on behalf of these introduced Collection Points, with the result that viable quantities of particular materials may be sent to a different recycling processor. This approach may be reinforced as the cost of transport for Collection Points is covered by the scheme, a payment not available to local MRFs.

As an example, a MRF in the Eurobodalla region was successful in attracting a grant from the EPA to install a glass crusher. The glass crusher allowed for glass from kerbside collections to be processed into products such as bedding sand. With the existing supply of glass provided through kerbside contracts this remains a viable process. However, should Collection Points set up under the scheme "export" glass to other regions via subsidised transport the viability of this taxpayer-supported infrastructure may fail. The described situation points to the potential need for a different handling fee for different materials so that existing services can continue to operate under the scheme.

LGNSW believes that the EPA needs also to consider preferential support for existing infrastructure for both processing and collection points. The setup of new infrastructure in regional areas will take time and is unnecessarily expensive in the short term. Fast tracking of coverage by the scheme would be improved by utilising existing depot structures where suitable. The Scheme Coordinator should be required to identify any existing depot arrangements interested in being part of the scheme and accord them a “first rank”.

A consideration for differentiating handling fees on certain materials arises from the expected disposal costs as part of any Collection Point operation. Glass is a fragile material compared to other materials in the proposed CDS. Glass, being far heavier per volume, will also add unevenly to Collection Point disposal and transport costs. Notwithstanding these comments, any different handling fee for Collection Points based on materials must be addressed in consideration of the costs to count containers of that material separately in order to seek an audited and verified payment. The costs may outweigh benefit compared with simpler adjustments to handling fees.

One possible basis for setting differing network or handling fees for regions could be alignment with Voluntary Regional Waste Group boundaries. Voluntary Regional Waste Groups already deliver litter strategy and regional litter programs within their areas. An alignment between network or handling fees and Voluntary Regional Waste Group activities may support and coordinate effective litter programs by providing the support for infrastructure coverage enabling more effective programs delivery.

LGNSW supports a different handling fee (whether for Network Operator or Collection Point) corresponding to different regions, and recommends consideration of Voluntary Regional Waste Groups as a basis for that differentiation.

2. Obligations on suppliers

The Government is seeking feedback on:

- *The length of time industry will need before the requirement for the NSW refund mark is imposed.*

Industry will be best placed to comment on any time period for the introduction of a NSW refund mark. Monitoring of the timing for introduction of other jurisdictions’ proposed schemes (Queensland, ACT and WA) will be needed to ensure unnecessary duplication of refund marks is avoided.

LGNSW considers that the existing refund marks on beverage containers such as the South Australian and the Northern Territory marks should be sufficient for refund purposes for a transitional twelve-month period. This position is dependent upon specific conditions that may be imposed relating to legacy litter clean up provisions in the section *Obligations on collection point operators*.

3. Obligations on collection point operators

The Government is interested in feedback on:

- *Whether there should be a time delay in the provisions allowing collection point operators to refuse to pay the refund amount on containers that do not have the refund*

mark beyond a transition period required by the beverage and retail industries to clear existing stock (see discussion under ‘Refund mark’ above) and if so, how long.

- *Whether there should be a time delay in the provisions allowing collection point operators to refuse to pay the refund amount on containers in specific circumstances, and a time delay in the offence for claiming the refund amount on a container acquired before the commencement of the Scheme, to incentivise the community to clean up littered containers from the environment and if so, how should this work and how long should the delay be in place before these provisions come into force.*

LGNSW has consulted with its members over these issues, and there is strong support for allowing a scheme to begin with a transition period before the refund mark is obligatory for paying out a refund on return of containers (see previous section).

Part of the local government support for an open warrant start to the scheme extends from the recognition that the beverage industry has been on notice for a prolonged period that a CDS was to be introduced, and recognition that existing beverage container litter is a responsibility appropriately shared by the beverage industry. The beverage industry has previously provided funding for community litter clean-ups. The establishment of a CDS will deliver a mechanism for the beverage industry to leverage the cost of litter reduction from consumers from the time of introduction.

The opportunity for an incentive based clean-up of legacy litter is a once-in-a-lifetime chance to swiftly and positively get buy-in from the community for the scheme. It is in effect a communication and education approach to launch the CDS, and fully aligned with its purpose to reduce litter. The environmental benefits would amply repay any scheme costs.

One issue to be carefully managed is the possibility of hoarding of containers acquired prior to commencement of the scheme. The NSW Government should exercise caution with the timing of any announcement of a container “amnesty” period.

Some councils have proposed that individuals might only be allowed to claim a refund on containers not identified with refund mark or without labels for a short period (say, one month after commencement). However, registered environmental clean-up groups might be able to access refunds on these legacy litter containers for an extended period (say, 6-12 months after commencement). Registration of these clean-up groups may require satisfaction of safety management or other criteria for approval. Depending upon the time of scheme commencement, this extension of the amnesty for unmarked containers could be extended to include the next following official Clean Up Australia Day event.

The “one-off” opportunity to recover legacy litter at the start of the CDS should be supported by amnesty periods for containers purchased prior to the scheme commencement or presented without labels. These amnesty periods may be different for individuals or registered clean up groups who provide improved safety awareness for collectors.

4. Interaction with kerbside collection services

The scheme describes the interaction of kerbside collection services by reference to specified refund payments to MRF operators (subject to conditions including guarantee of recycling and agreement with councils). It is recognised that many MRFs in NSW have a high level of automation, and so the scheme provides means to seek refunds for eligible containers remaining in kerbside in a manner that does not require extensive alterations to existing recycling practices. It is not proposed in the discussion paper to treat MRFs as Collection

Points and thus handling fees are not included in the proposal. The MRF will seek refunds directly from the Scheme Coordinator rather than a Network Operator.

Two refund redemption pathways are made available to a MRF operator:

- 1) The MRF uses an EPA-approved methodology to determine the number of containers in each material stream. This deemed estimate is then calculated as a number of containers per weight of material and refund payments sought direct from the Scheme Coordinator on that basis. (For example, a tonne of aluminium recovered at a MRF will contain a mix of eligible cans, aerosol containers and pet food containers. The MRF audit estimates 800 kg per tonne of aluminium is eligible containers, which when calculated per container provides the number of eligible containers at, say, 80,000 per tonne (average of 10g per container), giving a refund value of \$8,000 per tonne. The MRF can claim this from the Scheme Coordinator and still proceed to sell the mixed (in and out of scheme) tonne of aluminium for its recycling value). Evidence the containers within mixed tonnes were sent for recycling is required. The EPA is considering setting standard conversion factors for materials to reduce compliance cost, with the option for EPA-approved audit at discretion of the MRF. MRFs cannot claim back the additional cost of the audit from the scheme.
- 2) The MRF physically separates eligible containers from mixed recycling and transports them to an authorised Collection Point for redemption of 10 cent refund per individual container. This would likely be a labour-intensive approach, not suitable for automation.

The draft Bill provides only for the payment from the Scheme Coordinator to a MRF making a claim. The discussion paper provides an outline of an incentive for MRFs to share this refund windfall with councils. The incentive is that MRFs will no longer be able to claim the refund after 18 months unless satisfactory evidence of a sharing agreement with councils is provided. There are a number of legal and systemic problems with this proposed element that will be discussed further below.

The inclusion of eligible containers from kerbside recycling in the CDS aligns with other jurisdictions. It represents a significant windfall gain for MRFs. Without a Cost-Benefit Analysis of the scheme the exact extent of gain is not clear. In the early stage of the scheme's introduction, before the full coverage of Collection Points and before consumer behaviour has changed significantly the windfall will be very high, falling gradually as more containers are redeemed by individuals through Collection Points. With an estimated 2.7 billion containers flowing through the kerbside recycling systems, if levels drop to South Australian rates for containers remaining in kerbside this will still leave around \$50 million value in NSW kerbside systems.

LGNSW considers that this as the most important topic for its members. The design of this element will either support or damage the existing kerbside recycling systems that have been operated and paid for by ratepayers via councils over many years.

It is noteworthy that under the existing NSW resource recovery strategy and the Waste Less Recycle More Initiative, MRFs have continued to be located in a narrow band in the east of the state, penetrating at the greatest only 350 kilometres inland from the coast. Several of those inland MRFs have changed activity to operate as bulking or aggregation and transfer centres, transporting mixed material to much larger central MRFs for separation into material streams. This means that the "standard" model of MRF as the point of baling for recycling purposes may not be consistent with the experience of many regional councils.

The incentive provided by redeeming the value of containers presented to MRFs may in time encourage MRFs to locate in more regional centres, improving local employment opportunities.

The proposal for refund payment within the discussion paper is for the same payment to MRFs for materials without regard to location and dependent only on audited levels of containers presented. LGNSW urges the NSW Government to give consideration to differential returns to MRFs depending on region (with regard to the discussion on MRF redemption in the following section). If it is accepted that Collection Points should receive a differentiated handling fee based on regional location, the same principle should extend to MRFs. This may encourage new MRF operations in regional areas.

The discussion paper further proposes that only MRF operators who hold an environment protection licence (EPL) will be eligible to claim for refund payments. LGNSW strongly opposes this restriction which would effectively preclude almost all but large regional centres and city-based MRFs from redeeming eligible containers remaining in kerbside recycling. To ensure that kerbside recycling continues to be supported under the scheme demands eligibility across all MRF levels, irrespective of whether they reach a threshold for requiring an EPL. There is no justification within the discussion paper as to why this restriction is sought by the NSW government. In the absence of any additional environment protection being required to redeem containers using existing recycling operations, such restriction is unwarranted, and would fail the objective to “complement, not compete” with existing kerbside recycling systems in NSW.

This proposal to exclude MRFs without an EPL is only included in the reference tables within the discussion paper, and not the draft Bill or body of the discussion paper, and there is concern this “fine print” may not be picked up for comment by many submissions. This scheme proposal must be rejected by the NSW Government.

Contractual issues with proposed refund sharing

MRF operators are provided with access to the refund under the draft Bill without need to greatly alter operations or incur cost, for a minimum period of 18 months. This period will see a high level of eligible containers remain within the kerbside scheme, owing to roll out of alternative Collection Points accessible to the community. To fully operationalize this part of the scheme’s structure the discussion paper proposes to rely on individual councils to negotiate with MRF operators before any refund value can be accessed.

LGNSW is disappointed that this critical element of the CDS is left to councils to negotiate given that an aim of the scheme was to complement kerbside recycling. There is concern that even if negotiations eventually provide for refund value to flow back to communities that the sharing will be reliant upon the individual circumstances of each council, the resources that they can commit to negotiation, and the level of expertise available to them individually in resolving their contracts.

To even allow for contractual negotiation of this level, councils would need far more information on the extent of any costs incurred by MRF operators. The NSW Government would need to impose this information transparency on MRF operators as part of the regulatory framework. LGNSW acknowledges that there will likely be some additional costs for MRFs to comply with the scheme (such as audits and additional reporting).

The discussion paper does not provide (nor indicate future provision of) any guidance document or template for councils as to what elements may need to be resolved in the contract negotiation (for example, contamination rates as a proportion of recycling will likely escalate as eligible containers migrate away from kerbside, allowing penalty clauses to be invoked unless addressed in negotiations).

LGNSW’s consultation with the local government sector has not surprisingly revealed a very low appetite for negotiating as proposed to receive an as yet unspecified share of refund value

under the scheme. Many councils would prefer to see the percentage of refund sharing or a deemed payment be set up by the regulatory framework itself and remove from them the onus of contractual negotiation. LGNSW is also concerned that negotiated changes to contract terms occurring between time of tender and award of contract or start of scheme may leave councils open to legal challenges over the validity of their tendering process.

Furthermore, the proposed refund sharing arrangement outlined in the discussion paper relies upon a “standard” direct contract relationship between an individual council and MRF operator. This standard model is not widely matched by the on-ground reality of MRF and council relationships. There is often a lack of a direct contractual relationship between MRF and councils that may preclude this envisaged sharing agreement without a high level of additional complication.

The key issue across NSW appears to be that many individual councils do not legally own the material in kerbside collection once picked up. For many and various reasons, a large number of councils have entered contracts with kerbside collection service providers that vest ownership with collection contractor at point of pickup. Given the short time frame provided for completing this submission, LGNSW can only provide an indicative level of the prevalence of these contracts, and the number may be somewhat higher or lower depending upon details of individual contracts.

In the Sydney Metropolitan Area this form of collection contract where ownership of recycling material moves to the collector is found in *at least* 14 contracts out of the 30 current councils (owing to amalgamations the number of councils affected may not coincide with the number of existing contracts at this time). These include large councils and are present across almost all regions of the Sydney Metropolitan Area.

Other regions indicate even greater prevalence of these contractual arrangements. They affect several large coastal councils (north and south coasts), 10 out of 11 contracts in the Hunter region, 9 out of the 10 kerbside contracts in the NETwaste region, one council in the NEWaste region, 11 out of 12 councils in the Northern Inland Regional Waste group. The Canberra region joint organisation of councils reports that their contracts provide a direct relationship with the MRF operator, however many councils in that group deliver across the border to the ACT-based MRF and effectively remain out of the NSW scheme pending any decision on a CDS by the ACT Government.

A conservative number of at least 47 councils (over a third of councils) may not be able to directly or simply enter an agreement with the MRF to which their recycling material is delivered.

This contractual issue may be dealt with by side deeds, or even tripartite agreements between MRF, collection contractor and council, but such agreements are not addressed in the draft Bill or discussion paper and this would raise serious uncertainty around the proposed design of this scheme structure.

LGNSW options for refund value sharing

The value of any refund within kerbside collection systems has been paid by consumers and the scheme makes clear that the full value should be refunded on any container returned under the scheme. If a scheme allows for the redemption of value by a range of options such as redemption at a Collection Point or redemption through kerbside systems then the value remains with the community, not a MRF operator. The full 10-cents value of the refund must return to the council as the community’s agent until such time as that value is recognised and included within publicly contested processing contracts.

LGNSW acknowledges that over a sufficient period of time new tendering and contested agreements may provide for the value of redeemed containers to be structured into council contracts (both direct with MRF and indirect through a collection contractor). The issue of the shared refund value will selectively impact councils with contracts continuing to apply through the arbitrary 18 month negotiation period and beyond.

LGNSW estimates that this will continue to apply to approximately 35 separate contracts which will be in force and not expire until the end of 2017 with the latest expiring in 2024. It is urgent that the mechanism for distribution of refund value be made known so that councils approaching tenders can accommodate this within their tendering specifications. Changing the terms of contract after close of tender or after award may lead to challenges to tender awards.

The following options are presented for the EPA's consideration to address the sharing of refund value in kerbside recycling between MRFs and councils.

OPTION 1: Remove the distribution of any refund value from contractual negotiation or agreement between individual councils and MRFs. This could be achieved by a variety of mechanisms, which include:

- The legislation sets up the powers for a fair and equitable transitional sharing rate to be deemed under the Regulations, rather than full payment to MRF.

The Scheme Coordinator in agreement with the EPA sets an agreed transitional sharing value with the MRF, and distributes the community share to councils by another metric, such as on the basis of population. (While the contribution of eligible containers will vary from council to council, it will also vary from collection cycle to collection cycle within a single council. Recognising that this is a state-wide scheme and returning the value across the community for the transitional period will preserve confidence in the fairness of the scheme.

OPTION 2: Set a handling fee arrangement for MRFs, with the full deposit returned direct to council on some metric such as tonnage collected and recycled. A handling fee for MRFs varying by region could be considered to encourage MRFs into regional areas.

OPTION 3: Should the NSW Government decide to rely on the distribution of refund value as it is outlined in the discussion paper, LGNSW strongly urges the following amendments to be incorporated:

- Reduce the period for MRF operators reaching agreement with councils to a maximum of six months. The 18-month provision is excessive and will distort expectations for MRF operators of anticipated revenue. MRF operators will have no incentive to negotiate with any council needing to renew contracts prior to the end of this period. Shortening the agreement period will also reduce any perverse incentive for MRF operators to delay negotiations while they continue to receive refunds under the scheme.
- Provide for a retrospective agreement for the sharing backdated to the commencement of scheme. There is strong support for such a provision amongst councils on the basis that any fair and equitable distribution of refund value should be fair and equitable from the outset of the scheme.
- Simplify the deemed refund value of the materials processed at a MRF as noted in the discussion paper at section 6.7 with a standard conversion factor. This will improve transparency and reduce overall scheme cost.
- Provide a Guidance paper for councils on relevant considerations for negotiations and increase the transparency of information for councils to enter negotiations with MRF operators.

- Provide full funding and set up legal and technical advisory panel to assist councils with preparations and negotiations with MRF operators (as outlined in the section *General Response* at the start of this submission). The CDS is an industry-funded scheme and the costs of negotiating the structure of value sharing with MRF operators under the scheme must not reside with local government.

System-design issue with proposed refund value sharing

LGNSW wishes to draw the attention of the EPA to a potential design flaw with the proposed scheme. The discussion at sections 6.13 to 6.16 in the discussion paper refers explicitly to “refunds from the Scheme Coordinator through the auditing methodology”. There is no explicit discussion of the refund value should a MRF operator elect to physically separate eligible containers and seek to redeem their individual value through a Collection Point. It appears that under such an arrangement the MRF operator would not be obligated to negotiate a sharing arrangement of the refund value.

However, the draft Bill does not exclude the owner of a MRF from also setting up (separately or jointly) as a Collection Point operator. It would be possible, and financially enticing, for the owner of a MRF (of a suitable scale) to set up a legitimate separate Collection Point. The operation may then physically separate containers from the MRF for redemption at the co-owned Collection Point, and avoid sharing the value with councils delivering to the MRF (who are likely paying gate fees). The co-owner of the Collection Point can then legitimately seek reimbursement of refunds paid out to the MRF operator, plus a handling fee on top. This effectively enables any joint co-owner of a MRF and Collection Point to:

- exclude sharing of refund,
- be paid and reimbursed the refund, and
- collect a handling fee, all as legitimate parts of the scheme.

An 18-month period of receipt of deemed deposits may make such a scenario possible financially and allows development time for any infrastructure.

LGNSW recommends that the draft Bill or regulations makes explicit that all refunds acquired by a MRF from council recycling material be shared with council. The sheer number of containers physically separated and redeemed at a Collection Point should in any event require a declaration as provided for under the Scheme.

LGNSW prefers OPTION 1 (the legislation sets the distribution of refund value to MRFs and councils) to be incorporated into the Scheme as the mechanism for distribution of refund value. The distribution of refund value must apply to all refund value obtained by a MRF from material collected at kerbside, whether that is acquired through the deemed material value established by the auditing methodology, or through physical separation and redemption by a MRF operator at a Collection Point.

5. State-wide coverage/access target

The Government is seeking feedback on:

- *The proposed metrics, and also suggestions for appropriate levels for a coverage/access target that will ensure reasonable access to refunds across the state.*
- *Metrics:*
 - *Distance*
 - *Time*

- *Population*
- *Opening hours*
- *Collection frequency*
- *Whether there should be a build-up period to full coverage/access, and if so, what should the build-up look like and how long should it take to reach full state-wide coverage/access.*

Feedback from LGNSW members strongly supports a very short ramp up period of no more than 12 months to full 100% coverage for the scheme, with as broad an inclusion as possible across all regions at the introduction of the scheme. LGNSW considers that if the scheme is deferred for any reason to 2018 that a shorter period for full coverage be included.

The majority of councils LGNSW consulted supported a strong momentum for rolling out the scheme. Councils would prefer a combination of metrics including population minimums and realistic opening hours. Other metrics are sought to preserve rationality in the coverage such as regional councils indicating that the travel time between Collection Point locations is more relevant than distance.

With regard to the coastal regions outside the larger population centres, the NSW Government should exercise caution with regard to any population-based coverage targets for the scheme. Councils have reported to LGNSW that there can be significant population fluctuations based on season and holiday periods. Since these periods also coincide with significant increases in litter, the setup of any collection point coverage network needs to address the seasonal fluctuations in these regions rather than rely on the permanent population figures as a benchmark.

Viability of Collection Points remains a high concern, as noted earlier in this submission. Regional councils are concerned that should Collection Points be located in areas that will not be supported by existing supply of eligible containers that local government will be asked to step into the collection gap. Closure of any non-viable Collection Points after the scheme introduction will have a strong negative impact on community support for the scheme. With regard to viability, successful “bottle drives” by community, social enterprise or charity groups may impact on the viability of these regional Collection Points, and may need require careful management by Network Operator in coordinating such groups.

Councils and LGNSW envisage *ad hoc* arrangements with local pubs or service stations could be relied on to aggregate enough material in low population centres to transfer to “authorised” collection points. Such transfer may be importantly provided by “back-load” arrangements with logistic companies delivering to these outlets. Recognition of these as part of geographic coverage should be considered in the metrics of the scheme. If 90% of population is covered under the target for placement of Collection Points, then towns below 1000 could just as effectively rely on these *ad hoc* arrangements. These arrangements may best be considered for a “convenience” metric. The important consideration for the coverage metric then becomes the servicing capacity of more centrally located Collection Points. Coverage needs to also consider portable or mobile depots entering areas on a periodic basis. Separate metrics for these centred on regularity, capacity and access times need to be considered.

Reliance on a population metric in isolation may distort the coverage needed. A 1,000 population town would typically host up to 400 households, with a demand for return of below 2,000 containers per week on average. In larger towns with mature kerbside recycling, the coverage for proximity to litter problem points becomes a greater criterion for coverage than access in population centre. Population metrics and coastal regions have been discussed

earlier in this submission, but it is important to address the peak seasonal population via increased temporary coverage rather than to deem coverage based on base residential population.

LGNSW recommends that a communications/education target be incorporated at least into the early stages of the CDS for the Scheme Coordinator. Metrics that assess the promotion of the scheme in regional versus city areas should be included. Metrics for promotion of the scheme at seasonal and holiday periods should be included, as well as promotion of the scheme to tourism operators and airline passengers both international and domestic.

The delivery of this communication/education target should not require additional work of councils in order to deliver. All communications for the scheme should reinforce the operation of the scheme is industry-led and a scheme hotline and central dedicated website need to be provided for enquiries or complaints by the public.

LGNSW considers that a combination of population, convenience and access times should form the basis of the coverage/access target, with provision for capacity and counting of more *ad hoc* arrangements organised by Network Operators. A communication/education target should be incorporated into the early stages of the scheme, which may be slightly different from a more mature scheme target.

6. Recovery targets

LGNSW notes that past experience with Extended Producer Responsibility schemes indicates that satisfying a minimum recovery target may lead to “Stop-Start” operation of collection systems. This should be avoided.

The recovery target needs to be set relatively high, to encourage the Scheme Coordinator to provide a convenient network.

Regional recovery metrics are difficult to assess in terms of effectiveness. The level of data required to ascertain the proportion of containers consumed and then returned in various areas would exceed the value of any metric.

As an overall benchmark, the reduction of litter and overall resource recovery rate will be beneficial for supporting and promoting the benefits of the scheme. Since it is of more benefit as a benchmark than as a trigger for any penalty should the Scheme Coordinator be unable to reach a specified target, it is best that the target not be set until the metrics of the scheme are better known. Establishing a target for year two and later in the scheme may deliver greater opportunity for setting achievable “stretch” targets and for assuring the community the scheme is working.

A recovery target for the CDS should be established from year two of the scheme onward. Any target will need to link with litter indices in the representation of the performance of the CDS. Achieving a recovery target should not be deemed satisfaction of the Scheme’s operations in any year, but form only part of the performance reporting requirements for the Scheme Coordinator.

7. Planning and development application issues

The NSW EPA (separate from the discussion paper) has sought comment on how best to minimise cost and ensure streamlined processing of applications for any infrastructure needed to carry out the Scheme.

The NSW EPA has indicated that it is discussing possible complying or exempt development guidelines for scheme Collection Points with the NSW Department of Planning and Environment.

LGNSW is concerned that the potential environmental issues of noise, traffic, runoff and pests from poorly operated Collection Points will require additional compliance checks and enforcement activity by councils. LGNSW also notes that there may be significant impacts from non-scheme material (plastic bags, hazardous material stored in containers) that will impose additional enforcement costs on councils as a result of the scheme. Members are divided as to whether they prefer to allow sites as exempt or complying infrastructure development to remove the planning assessment burden or whether they prefer to carefully assess the potential impacts of Collection Points via the DA process.

LGNSW notes that separate from council development processes there are minimum standards with certification to AS 5377 required for e-waste storage and processing facilities.

If CDS infrastructure is to be considered as exempt or complying development, or in determining its appropriate zoning, local government as a key stakeholder must be consulted.

LGNSW recommends that minimum safety and environmental standards must be developed by the EPA for Collection Points to operate in NSW, especially as these are to be accessed regularly by members of the public.

LGNSW recommends that regular inspection and enforcement of minimum standards for Collection Points be explicitly made the responsibility of the Scheme Coordinator.

8. Scope of containers and refund amount

LGNSW supports the alignment of a CDS with the existing South Australian and Northern Territory schemes. The broad alignment of “in scope” containers between jurisdictions will make the scheme simple to communicate and interpret, and keeps compliance costs low for beverage suppliers. LGNSW notes the announcements by Queensland, ACT and Western Australian governments of their moves to introduce similarly aligned container deposit schemes which should bear out the benefits of this common scope.

LGNSW stands by its position for the inclusion of wine bottles in the scope of any CDS. While recognising that at present they are not highly represented in litter counts, there are additional benefits to reducing their current inclusion in kerbside recycling. Glass breakage resulting in “glass fines” effectively contaminates other recycled materials such as plastic and paper/cardboard. Removing these containers from recycling bins will increase the value of those other materials and increase their recycling rates.

LGNSW acknowledges that wine bottles are not yet part of the South Australian and Northern Territory schemes, but we urge NSW to take a lead position especially while other states are considering the scope of their schemes. There is no convincing rationale to include glass beer

containers in a scheme while excluding glass wine containers. From the scheme perspective both are glass beverage containers.

Given the alignment of the scope of containers in a NSW CDS to other jurisdictions, a consistent refund at 10 cents per container would be fair and equitable. This should also provide disincentive for cross-border arbitrage of containers. The proposed management of the refund amount through the regulations instead of the Bill allows for simple adjustment in future. LGNSW urges the NSW Government to set up a cross-jurisdictional review process to ensure that adjustments to the refund amount are made in a timely and coordinated manner.

LGNSW understands that a cash return is a minimum requirement for the scheme, and that electronic systems may be counter-productive for smaller returns. LGNSW seeks to ensure that charity groups, social enterprise, community groups and remote communities can nominate to have a joint account set up within the CDS to allow for multiple refunds by individuals to be directed in aggregate. Such a provision will incentivise co-ordinated litter reduction activities.

LGNSW recommends that the NSW Government commit to the inclusion of wine bottles within a period of two years from the start of the NSW CDS, and begins discussion with other jurisdictions to include these containers in the scope of their aligned schemes.

LGNSW recommends that joint accounts for community-based groups be provided to enable aggregate payment of individual refunds as part of the scheme.

9. Other matters

Feedback from councils has shown that the raiding of kerbside bins for redeemable containers ('bin diving') is a minor but consistent concern. LGNSW calls on the NSW government to address concerns over such practices by adding a provision (in the form of a penalty) to the Local Government Act or other legislation and regulations.

The Scheme Coordinator will need to be vigilant on containers redeemed in border areas to identify potential cross-border flows, and report these to the EPA as the regulator. The EPA must have strong regulatory and compliance powers (and resourcing) to follow up such instances. The use of local government staff to enforce compliance with a CDS should not be assumed at any stage, unless fully funded. The EPA would also be an appropriate party to resolve disputes where regular mediation has failed.

LGNSW recommends that the EPA addresses concerns over interference with kerbside collection bins by amendments to relevant legislation.

Any enforcement cost for ensuring compliance with the CDS must be explicitly set out as the responsibility of the Scheme Coordinator or the NSW EPA, to assure local government these costs will not be passed over to it.

SUMMARY OF LGNSW POSITION

1. LGNSW's position is that the responsibility for state-wide coverage resides solely with the Scheme Coordinator, and that this can be achieved by their coordination of Network Operators best able to service particular regions. A Network Operator may elect to provide very broad or even state-wide coverage, but the meeting of a coverage target should not be imposed at this level of the scheme.
2. LGNSW supports a different handling fee (whether for Network Operator or Collection Point) corresponding to different regions, and recommends consideration of Voluntary Regional Waste Groups as a basis for that differentiation.
3. LGNSW considers that the existing refund marks on beverage containers such as the South Australian and the Northern Territory marks should be sufficient for refund purposes for a transitional twelve-month period. This position is dependent upon specific conditions that may be imposed relating to legacy litter clean up provisions in the section *Obligations on collection point operators*.
4. The "one-off" opportunity to recover legacy litter at the start of the CDS should be supported by amnesty periods for containers purchased prior to the scheme commencement or presented without labels. These amnesty periods may be different for individuals or registered clean up groups who provide improved safety awareness for collectors.
5. LGNSW prefers OPTION 1 (the legislation sets the distribution of refund value to MRFs and councils) to be incorporated into the Scheme as the mechanism for distribution of refund value. The distribution of refund value must apply to all refund value obtained by a MRF from material collected at kerbside, whether that is acquired through the deemed material value established by the auditing methodology, or through physical separation and redemption by a MRF operator at a Collection Point.
6. LGNSW considers that a combination of population, convenience and access times should form the basis of the coverage/access target, with provision for capacity and counting of more *ad hoc* arrangements organised by Network Operators. A communication/education target should be incorporated into the early stages of the scheme, which may be slightly different from a more mature scheme target.
7. A recovery target for the CDS should be established from year two of the scheme onward. Any target will need to link with litter indices in the representation of the performance of the CDS. Achieving a recovery target should not be deemed satisfaction of the Scheme's operations in any year, but form only part of the performance reporting requirements for the Scheme Coordinator
8. If CDS infrastructure is to be considered as exempt or complying development, or in determining its appropriate zoning, local government as a key stakeholder must be consulted.
9. LGNSW recommends that minimum safety and environmental standards must be developed by the EPA for Collection Points to operate in NSW, especially as these are to be accessed regularly by members of the public.

- 10. LGNSW recommends that regular inspection and enforcement of minimum standards for Collection Points be explicitly made the responsibility of the Scheme Coordinator.**
- 11. LGNSW recommends that the NSW Government commit to the inclusion of wine bottles within a period of two years from the start of the NSW CDS, and begins discussion with other jurisdictions to include these containers in the scope of their aligned schemes.**
- 12. LGNSW recommends that joint accounts for community-based groups be provided to enable aggregate payment of individual refunds as part of the scheme.**
- 13. LGNSW recommends that the EPA addresses concerns over interference with kerbside collection bins by amendments to relevant legislation.**
- 14. Any enforcement cost for ensuring compliance with the CDS must be explicitly set out as the responsibility of the Scheme Coordinator or the NSW EPA, to assure local government these costs will not be passed over to it.**