

Draft Submission on Alternative Waste Treatment Facility Processing Refund Protocol

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Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing general purpose councils and related entities. LGNSW facilitates the development of an effective community based system of local government in the State.

This is a draft submission awaiting review by LGNSW's Board. Any amendments will be forwarded in due course.

LGNSW supports the NSW Container Deposit Scheme that provides an incentive refund on return of containers, including those containers remaining in kerbside collection.

The Alternative Waste Treatment Facility Processing Refund Protocol (the AWT Protocol) allows for an AWT facility to claim refunds on aluminium and mixed plastics eligible containers that they collect from processing the kerbside residual bid (red lidded bin) on the basis that a Refund Sharing Agreement (RSA) is in place with the councils the AWT operator services. The Protocol is similar to the gazetted Material Recovery Facility Processing Refund Protocol (MRF Protocol), however the AWT Protocol has a reduced list of output material types.

Opening

LGNSW welcomes the opportunity to make comment on the draft AWT Processing Refund Protocol. Due to the limited timeframe allowed for submissions and the late timing of the briefing workshop held by EPA, LGNSW has sought informal and limited feedback from councils' waste staff and Regional Waste Group coordinators to inform this submission.

Local government is the largest sector assuming responsibility for the collection and recycling of containers identified in the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016* (CDS Act) and associated Regulation. It is also the largest sector assuming responsibility for litter reduction and prevention programs in NSW.

Similar to LGNSW's support of the MRF Protocol, LGNSW supports an AWT Protocol that can be applied equitably across all NSW AWT facilities, is fully funded by industry, and is transparent and encourages fair dealings between AWT facility operators and councils. However educating residents to avoid waste and recycle right should still remain the priority for councils to reduce the number of beverage containers in the red lidded bin.

Once gazetted the AWT Protocol enables councils to enter into RSAs with their AWT facility where a proportion of the residents' eligible container deposits can be returned to councils and the community.

Response

The Mixed Waste Organic Output (MWOO) Exemption Revocation affecting 29 councils and their AWTs has placed a cloud over the future viability of the AWT industry. In this context the timing for consultation on the AWT Protocol is extremely challenging. Many councils have just completed, or are still completing, difficult negotiations for RSAs with their MRF operators that are affecting their relationships with their contract managers and are also in discussions with AWT operators about the future of mixed waste processing contracts.

The timeframe for claiming AWT refunds should also consider when regulatory certainty for MWOO is likely. This is of the highest priority to provide certainty for the future of the AWT industry and council AWT contracts. Unless this is considered, it is possible that, regardless of the interim funding and Phase One support package that is to be provided by EPA to the AWT to offset increased costs, AWTs may use the processing refund stream as leverage to offset costs of the Mixed Waste Exemption Revocation (in a similar way that some MRFs used gate fee changes due to China Sword in their processing refund negotiations).

LGNSW recommends that EPA consider how the MWOO exemption revocation resolution will affect the AWT industry and councils in determining the date from which AWT operators can start to claim refunds for materials.

Councils have been asked to satisfy one of three options outlined in the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Act 2001* for AWT operators to process claims from 1 April 2019. If councils choose to enter into a RSA, any costs the AWT has to pay from refunds to participate in the Scheme are likely to impact on their refund share offering to councils. With costs unknown until a sampling strategy and plan is in place, any councils negotiating before this is done (to maximise returns to their communities) may not have the information to know if the RSA offered is fair and reasonable.

If councils choose to enter into a RSA as soon as possible to maximise the claiming time for returns to their community (even given no transparent sampling and other costs), they have just seven weeks to negotiate. This is in stark contrast to the year provided to councils for MRF RSA negotiations, of which some are still ongoing. The timeframe that ensures maximum returns to the community is simply not attainable as the process of reporting to council to apply the seal of council to execute the agreement can take three to four weeks alone.

With the smaller number of AWT facilities (five) vs MRF facilities (over 30) with which to share sampling costs, these costs are likely to be substantially higher than for MRF operators processing refunds. Coupled with the smaller number of eligible containers in the red bin and reduced claimable material streams, participation in the Scheme may not be financially viable for some AWTs and associated councils, particularly with the overhanging threat of changes to processing contracts in light of MWOO.

The NSW Government has committed to supporting councils access refunds from the eligible containers collected via kerbside recycling, to facilitate downward pressure on waste charges or improved waste services. Yet in regard to AWT processing refunds, no information about the costs of claiming processing refunds and the potential for sharing arrangements (such as assessment of revenue, negotiation tool and sharing agreement modelling) has been provided to councils by the EPA. The level of support provided by the EPA through the Office of Local Government should be the same for AWT operator RSA negotiations as it was for MRF operator RSA negotiations.

LGNSW recommends the Office of Local Government Container Deposit Scheme information and models be updated for AWT facilities immediately.

There have been instances where councils have entered into new processing contracts post 1 December 2017 that at the time of tendering have not considered AWT processing refunds due to the lack of clarity provided by the EPA around when and how AWT processing refunds will occur and when the AWT Protocol will be developed. Given these circumstances and the delay in providing information regarding the AWT Protocol to councils, consideration should be given

to how the EPA can support these councils return to the community the deposits paid on their beverage containers to facilitate downward pressure on waste charges or improved waste services.

LGNSW recommends the EPA explore ways to support those councils that entered into new contracts post 1 December 2017 without considering AWT processing refunds, to return to their communities the deposit paid on their eligible containers and thereby facilitate downward pressure on waste charges or improved waste services.

Whilst the Protocol does require AWT operators to report each month the weight of all Scheme materials received, counted or processed and stored at the AWT in that month by source, this data is not available to the individual councils using the AWT to ensure that fair and reasonable RSAs are put in place or that the best data is used in negotiating new processing contracts that consider processing refunds in the longer term. Without this data it is unlikely that councils will be able to determine a fair and reasonable arrangement. This makes negotiations with the AWT operator extremely difficult and one sided.

LGNSW recommends the EPA or the Scheme Coordinator provide to councils in confidence, any council level data or estimates on Scheme materials received, processed and stored at AWTs that is supplied to the Scheme Coordinator or the EPA to assist in fair and reasonable RSAs being negotiated and ongoing transparency of refund sharing.

Depending on the timeframe from 1 April 2019 to when councils meet the requirements of section 18 of the CDS Regulation, there may be stockpiles of eligible material waiting for claims to be processed at the five AWT facilities. A repeat of the windfall that was provided to MRFs from processing refunds prior to RSAs being put in place should be avoided.

LGNSW recommends the EPA or the Scheme Coordinator provide advice to councils on how to negotiate a fair and reasonable share of processing refunds from any stockpiles arising from the time lag between start of claiming (when protocol is formally gazetted and operational anticipated to be by 1 April 2019) and time of notification to EPA of council agreement.

According to the EPA there has been a range of learnings from the operation of the MRF Protocol over the last 12 months that should be taken into account in developing the AWT Protocol (the AWT Protocol currently mimics the MRF Protocol). These learnings need to be applied to the AWT Protocol which is then reviewed annually, rather than within five years. Resolution of the regulatory uncertainty surrounding MWOO expected in the first half of this year may also warrant changes to the Protocol as LGNSW anticipates that the refund will act as an economic incentive to further decontaminate MWOO if markets are able to be identified for the product.

Changes to AWT technology over time are likely to make collection and recycling of streams other than aluminium and mixed plastic feasible. A process for adding eligible container streams to the protocol should be included to allow these new streams to be claimable under the Scheme. Alternatively, the Protocol should be reviewed annually.

LGNSW recommends that the EPA review the whole AWT Protocol within the first 12 months of operation rather than just Sections 6 and 8 and that the Protocol be reviewed on an annual basis thereafter.

Conclusion

Whilst LGNSW supports the development of an AWT Protocol, we do not believe that the timing and operation of this draft protocol provides enough time and transparency to encourage fair dealings between AWT facility operators and councils. The timing fails to consider the length of time required to negotiate with the AWT operator and to execute RSAs.

If the NSW Government is committed to supporting councils to access refunds from the eligible containers collected via the red-lidded kerbside bins processed at AWT facilities to facilitate downward pressure on waste charges or improved waste services, LGNSW recommends:

- The EPA consider how the MWOO exemption revocation resolution will affect the AWT industry and councils in determining the date from which AWT operators can start to claim refunds for materials.
- The Office of Local Government Container Deposit Scheme information and models be updated for AWT facilities immediately.
- The EPA explore ways to support those councils that entered into new contracts post 1 December 2017 without considering AWT processing refunds, to return to their communities the deposit paid on their eligible containers facilitate downward pressure on waste charges or improved waste services.
- The EPA or the Scheme Coordinator provide to councils in confidence, any council level data or estimates on Scheme materials received, processed and stored at AWTs that is supplied to the Scheme Coordinator or the EPA to assist in fair and reasonable RSAs being negotiated and ongoing transparency of refund sharing.
- The EPA or the Scheme Coordinator provide advice to councils on how to negotiate a fair and reasonable share of processing refunds from any stockpiles arising from the time lag between start of claiming (when protocol is formally gazetted and operational anticipated to be by 1 April 2019) and time of notification to EPA of council agreement.
- The EPA review the whole AWT Protocol within the first 12 months of operation rather than just Sections 6 and 8 and that the Protocol be reviewed on an annual basis thereafter.

For further information, please contact Liz Quinlan, Senior Policy Officer – Waste, on Liz.Quinlan@lgnsw.org.au or 02 9242 4095.