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NSW Environment Protection Authority
Attn: WARR Branch Container Deposit Scheme
PO Box A290
Sydney South NSW 1232

13 April 2017

Dear Mr Beaman

Re: Container Deposit Scheme (Material Recovery Facility (MRF) Processing Refund Protocol)
Consultation Draft April 2017

Thank you for the opportunity to provide comment on the Draft MRF Protocol for the Container Deposit Scheme (CDS) in NSW. The Waste Management Association of Australia (WMAA) is the peak body for the waste and resource recovery industry, with members based in a broad range of business organisations, government, universities and community groups.

WMAA has consulted with its' members within NSW in preparing the attached response (See Annexure A). WMAA accepts that the NSW Government is committed to implementing CDS in NSW on 1 December 2017, and appreciates that whilst this time frame is tight it will result in additional investment in recycling in NSW, which is a positive.

Overall the Protocol is thorough, however there is significant concern from members to ensure that both the number of audits required, and the cost of auditing is reasonable. It is submitted that reporting and administrative requirements on MRFs should not create an unreasonable additional burden on their operations, whilst still being transparent and accountable. In addition, in the event that it is necessary for MRF operators to seek a review of any Scheme Coordinator decision, any process must adhere to the principles of natural justice, requiring the Coordinator to actively review and provide reasons in order that informed decisions can be made by all parties.

Finally, it is submitted that given the imminent introduction of similar legislation in ACT and Queensland, the NSW Scheme should, where possible, enable NSW Councils to claim refunds when they are required to utilise interstate MRFs due to distance and transportation issues. WMAA looks forward to the positive consideration of the attached feedback. If there are any questions, please do not hesitate to contact the undersigned on (02) 8746 5066 or 0429 076 713.

Yours sincerely

Gayle Sloan
Chief Executive Officer
Waste Management Association of Australia

Annexure A

Section	Content	Comment
1	Table of Contents	N/a
2	About this Document	N/a
3	5 year review	The proposed five (5) year review period, in accord with the Act is supported. However it is noted that protocol should be flexible enough to enable the sampling regime frequency to be modified at any time deemed to be suitable within the five (5) year period.
4	Definitions	<p>The definition of recycled products should be broadened to align with the Regulation and the aims of the protocol. This will prevent the need to rewrite the protocol if new single use containers are introduced to the market made from other material (e.g. new grades of mixed plastics, or new reuse opportunities for glass).</p> <p>It is submitted that the objectives of the Container Deposit Scheme (CDS), and consistency with the Regulation, can be achieved by defining recycled as:</p> <ol style="list-style-type: none"> 1) Diverted from landfill; 2) Meeting the prescribed category of container that is being claimed; 3) Accepted by an offtaker as a product for reuse or recycling. <p>There is minimal risk to the Scheme in having a wider definition, as each MRF needs to sign a statutory declaration that the offtaker is recycling or reusing the containers, which should be sufficient to provide the EPA with comfort that the material is being diverted from landfill and a lever to punish claimants who make false statements about the destination of the containers.</p> <p>Product that is exported should be subject to a higher or better use test, and there must be some way of auditing that this is in fact recycled.</p>
5	Background	N/a
6	Aim of the Protocol	Wording in the Regulation is "recycling or reuse" which would include glass sand or similar conversion into a different product. This should be reflected in the Protocol.
7	Claim process	<p>As this process is currently drafted it places a lot of emphasis on the Scheme Coordinator acting reasonably and fairly at all times- e.g. 7.6 gives very broad discretion to Scheme Coordinator.</p> <p>Further, there must be an ability to recognise that MRFs are often part of larger company structures and will not have their own designated Director, Chief Financial Officer, etc. As such there must be the capacity for a Company that operates the MRF to lodge the returns.</p>

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		Consideration possibly also should be given for Companies to lodge one return for all MRFs in their operation, rather than having to complete individual MRF returns.
7.2	Information included with refund claim	This information may include sensitive commercial data on the MRF operations (e.g. tonnages and recovery rate information; or details of customers for recovered products). As such safeguards are required to protect commercially sensitive material.
7.5	Processing of refunds	<p>Ideally, the cost of the sampling should be on the Scheme Coordinator, akin to the process with Collection Depots and Network Operators, given that the Scheme Coordinator is saving the network handling fee, which will probably exceed the sampling costs.</p> <p>If there is a sampling cost, it should be capped at a rate set by the EPA - e.g. 0.5c per container - with excess costs absorbed by the Scheme Coordinator, at present the protocol simply states that “sampling costs are to be agreed”, without a clear process as to how, noting that the methodology is being imposed on MRFs/ Councils.</p> <p>There should be no discount for sampling costs if the MRF has used the direct counting method, as this method does not involve any costs for the Scheme Coordinator.</p> <p>It is submitted that as a means of managing the demand for auditors and mitigating scheme costs, MRFs should be able to organise their own audits/counts but with a cap to the number of samples required (see below) utilising the prescribed methodologies. The Scheme Coordinator should not be permitted to refuse a claim for payment if the MRF has conducted the maximum number of samples, even if this does not deliver the target statistical outcome.</p> <p>Payment terms are very long. The scheme coordinator will be holding money for almost three (3) months, even assuming that the time frames are calendar days and not working days. In any event payment to Councils can only occur after claims have been accepted and paid by Scheme Coordinator (given that amount paid will only be known ten (10) days earlier), resulting in a significant lag in payments to Councils.</p>
7.7	Appeals and Amendments	<p>As drafted, it is mandatory for the Scheme Coordinator to reconsider an assessment, but failure to do anything results in the Scheme Coordinator’s original decision being upheld. It is submitted that this process is unreasonable, given that this creates no obligation on the Scheme Coordinator to review the claim, and in the worst case simply delays the time until dispute resolution process.</p> <p>It is submitted that under the principles of natural justice, there is an obligation on the Scheme Coordinator to consider the request for reconsideration of the assessment, clear reasons being provided for any refusal, in order that informed decisions can be made by MRFs to progress to dispute resolution under 7.8.</p> <p>Further the onus should be reversed requiring the Scheme Coordinator to positively act when a MRF raises a dispute with a failure to respond being an acceptance of the MRF’s position.</p>
7.8	Dispute resolution	Dispute resolution process should be transparent, accessible and binding on all parties. The further guidance as to the dispute resolution process should not be contingent on the appointment of the Scheme Coordinator. This should be a genuinely independent process that all

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		parties have faith in.
8	Method of Claim Calculation	<p>The proposal to have a choice of methodology is supported, there should be the ability also to use different methods for different products (e.g. direct count of PET but by weight for aluminium or glass). Further, the development of default factors per tonne of output materials, especially for small MRFs is also supported, given this would allow smaller operators to adopt the averages without the need for audits while still having the ability to opt in to audits if they feel their facility is more effective at collecting containers than the industry average.</p> <p>Please note that the storage of samples and the provision of a safe sorting area – particularly for smaller MRFs may be problematic as no allowance has been made for this in the design of the buildings.</p>
8 box	- Method of determining total quantity	Weighing every bale to 0.1 kg accuracy is not standard practice and will introduce heavy cost to MRF operators with no significant increase in accuracy compared to weighbridge records, noting also that the landfill levy liability is based on weighbridges calibrated to +/- 20kg.
9	Sampling & Calculation of Eligible Containers	<p>This scheme places a lot of emphasis on independent auditors- how will the NSW EPA ensure that there will be enough auditors available when the scheme commences to meet the demands of industry and the reporting timescales required by the Regulations?</p> <p>Further how will the EPA ensure that these audits are affordable, noting that at present the cost of Bin Audits in NSW can be almost twice the cost as those currently undertaken interstate. Currently it would appear that there are potentially only three (3) companies with the relevant experience in NSW that will be able to undertake these audits when required when the Scheme commences and arguably these companies will have works already scheduled.</p> <p>It is submitted that the proposed sampling method for glass may not be effective at an AWT where the presence of stringy and oversize material may not result in a representative sample falling into the wheelie bins. For similar material audits, the AWT industry practice is to sample with a front end loader bucket, and then subdivide with a skid-steer loader until the required volume is achieved.</p>
9.1	Material Type	Noted. As per above, may wish to include the ability to include other material types in the event single use containers are introduced to the market made from other material.

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9.2	Sampling Requirements	<p>The principle requiring more accuracy for larger facilities is supported, however an explicit comment that if a MRF achieves more accurate results, the smaller margin of error will be used in further calculations, MRFs could then undertake a cost benefit analysis and if they opt to increase the sampling rate, the EPA will benefit from additional data collection.</p> <p>Ideally the maximum number of samples required for the first year(s) to provide certainty over maximum cost should be specified. The numbers suggested by APC in workshop (5-20 samples per product, per quarter) are reasonable if the cost is not too high. The numbers in the EPA presentation (over 300 samples per quarter) are unrealistic and impractical due to the logistics of sampling and availability of qualified auditors.</p> <p>Clarity is required also as to who appoints and accredits the independent auditors under this Scheme. Ideally this should also have a fixed cost schedule for these audits, noting the comment above the current costs of audits in NSW, compared with other states.</p>
9.3.1	Sample Sorting	MRFs should not be penalised for glass that cannot be identified, this will often be a result of over compaction in collection vehicles that MRFs have no control over. Any methodology of glass auditing must allow for ability to claim for unrecognisable glass given that this is how the MRF receipts it, alternatively audits for glass should occur at kerbside and/ or compaction levels for recycled material should be set and enforced through EPA model contract and Council enforcement.
9.4	Calculating eligible container factor	This section should explicitly state that the actual margin of error is used, not the target margin of error from 9.2.
10.1	Weighing	Consistency with standard practice of industry (weighbridge measurements) is supported, however the measurement should be actual and not an estimate.
10.2	Direct Counting	Flexibility to adapt as technologies and methodologies for counting evolve is supported, as such this should not be too prescriptive.
11	Reporting and Record Keeping	<p>Note that given that this will be potentially commercially sensitive data that is being provided to the Scheme Coordinator, it may be appropriate that this be coordinated by the EPA and where possible be included as part of existing reporting (if applicable) to the NSW EPA. There is a real potential that if this does not occur that there will be duplication of much of the information currently provided to EPA for waste levy and waste tracking requirements.</p> <p>As such there is an opportunity to reduce the administrative burden of the scheme by including the CDS reporting through current Waste and Resource Recovery Portal, noting that most, if not all of the MRFs will already file Waste Contributions Monthly Report which will result in reporting the same material movements twice if the systems are not linked.</p>

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11	Assurance/auditing	
Other	Other/General	<p>Participation in the NSW CDS scheme should be available to all NSW Councils irrespective of the location of the MRF that they are required to process at (primarily due to geographic factors and cost of transportation to a MRF within NSW). Further it should not result in windfalls to MRFs that process product in NSW from interstate. In the absence of ACT and Queensland having an operational CDS scheme when NSW commences on 1 December 2017, the point of sale of a container is the key (ie within NSW) not where it is redeemed.</p> <p>There needs to be an ability as part of ACT and Queensland commencing similar schemes that product purchased in any eligible state in Australia can be redeemed in any of the participating States and that includes redemption by MRFs under (ideally) standard agreed protocols, otherwise Councils and communities will be potentially disadvantaged. MRFs should simply have to demonstrate they hold the relevant license to operate as a MRF for that jurisdiction in order to be eligible (and to ensure that only approved facilities are operating under this Scheme).</p>