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To whom it may concern

Thank you for the opportunity to provide feedback on the *Driving NSW's Circular Economy* Discussion Paper (Discussion Paper) and Cost-Benefit Analysis (CBA), proposing an expansion to the NSW Container Deposit Scheme (CDS), Return and Earn (the Scheme).

The NSW Small Business Commission (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services across NSW.

The Commission's role includes:

- encouraging government agencies and larger businesses to enter productive working relationships with small businesses
- facilitating and encouraging the fair treatment of small businesses
- promoting a fair operating environment in which small businesses can flourish.

The Commission welcomes the Discussion Paper and consultation process as a means to obtain stakeholder feedback to inform subsequent preparation of a Regulation Impact Statement (RIS) should the evidence support a regulatory change. However, as previously raised by the Commission, it is noted that consultation materials give rise to a perception that a decision has already been made and that stakeholder feedback relates to implementation only.

Under the proposals, NSW would be the first jurisdiction in Australia to expand its container deposit scheme to new beverage container types (including wine and spirit bottles) which is opposed by affected industry stakeholders. The Commission has assessed this proposal by reviewing material prepared for and by the EPA. Our comments and recommendations are based on an assessment of this material and are not influenced or prejudiced by a consideration of the broader benefits or costs of recycling.

While the CBA suggests the proposed changes to the CDS would generate net benefits, the impacts and policy outcomes of doing so are uncertain given what appear to be largely speculative assumptions of the associated benefits. The Commission maintains an evidence-based approach is required and that a decision to proceed cannot be justified unless there is a high degree of confidence that the benefits unambiguously outweigh the costs.

Based on the CBA and analysis provided, the Commission is not satisfied that this hurdle has been met due to:

- Compliance cost estimates which may be lower than what industry stakeholders anticipate and that are not subject to sensitivity analysis or more conservative assessments.
- Uncertain rates at which much bulkier wine and spirit bottles will be returned to CDS collection points and the extent to which lower redemption rates will impact the analysis.
- The absence of sensitivity analysis of the full range of scenarios, including where multiple key variables are simultaneously less favourable than expected.

More generally there are significant disadvantages associated with NSW being a first mover, particularly as the largest jurisdiction in Australia would be implementing a policy change that is untested. Further analysis using more conservative assumptions should be undertaken to confirm it is unlikely that benefits will not outweigh costs.

This submission sets out the Commission's concerns below in more detail.

Engagement process

The Commission supports best practice regulatory impact assessment (RIA) and regards it as vital to obtain feedback on the impacts on business, including small businesses. Under best-practice RIA, a decision to proceed with a regulatory proposal should not occur until consultation has been fully completed and proposals have been assessed.

While there is a public consultation seeking feedback on the Discussion Paper, some aspects of the consultation appear to give rise to industry perceptions that a decision to expand the Scheme, including to wine and spirit bottles, has already been made.

This included public announcements indicating the proposed changes were already determined to proceed. Further, the EPA's Driving NSW's Circular Economy [consultation webpage](#) suggests that, while a report on the consultation outcomes will be released, the result of consultation will inform an implementation plan (rather than inform a decision about the proposed changes).

The Commission has sought assurances from the EPA that, while the NSW Government has publicly outlined its preferred option, the EPA is conducting a full and transparent consultation process and that a decision on whether the proposal will proceed will not be considered until this has concluded.

Should policy proposals proceed to regulatory change, the Commission encourages further stakeholder consultation and analysis as part of the development of the accompanying RIS.

Cost-benefit analysis

The Commission is concerned that aspects of the CBA are not fully transparent or clear to the reader while some assumptions may be either unrealistic or have not been subject to appropriate sensitivity analysis.

At this stage, the Commission is not fully satisfied that the CBA provides sufficient confidence that the benefits of the preferred option will outweigh the costs. As noted in the CBA, some assumptions are subject to considerable uncertainties. Extra care should be taken, including ensuring assumptions are sufficiently conservative, to provide additional confidence that the benefits will outweigh costs.

The Commission would welcome further dialogue on these matters to clarify how varying assumptions may impact estimates of costs and benefits.

Compliance cost assumptions

The Commission welcomes the inclusion of estimates of administrative and compliance costs associated with participation in the CDS.

It is essential to consider compliance costs because they will be incurred by first suppliers irrespective of whether redemption rates are high or low. The NSW wine industry, for example, is characterised by a much higher number of smaller firms. While the CBA concludes that '*any costs associated with scheme*

*compliance are not expected to materially alter the conclusions of this analysis*¹ they may become a material factor and jeopardise a finding of net positive benefits in circumstances where benefits are much lower than anticipated.

The CBA acknowledges that compliance cost assumptions, as set out in Table 16, have not been informed by industry feedback. The estimates used in the analysis appear to be central estimates and the Commission has heard feedback that they may significantly underestimate actual compliance costs. The Commission encourages proactive solicitation and inclusion of feedback from affected industries about ongoing administration costs, especially smaller businesses for whom such administration would include entirely new systems and processes.

To address any uncertainty regarding compliance costs the Commission recommends sensitivity analysis of compliance cost assumptions to demonstrate that even when using very high compliance cost assumptions, any finding of net benefits remains unaffected. For example, to more strongly demonstrate that compliance costs would not materially alter the conclusion of the analysis, the CBA could utilise industry estimates of compliance costs and demonstrate net benefits even if they were upscaled by a considerable margin (e.g. doubled or tripled).

Material fate assumptions

The Commission understands the benefits of extending the CDS to new container types are highly dependent on more favourable material rates achieved through the recovery of additional containers through CDS collection points (which would achieve improved outcomes relative to kerbside recycling).

The analysis is unclear how different assumptions around redemption rates – that is, the percentage of containers returned to a CDS collection point – may affect material fates and in turn affect the results of the CBA. The CBA uses an assumed redemption rate of 67 per cent:

*An average redemption rate of total containers supplied of 67% is reported in Return and Earn Annual Statutory Report 2020–21 (p. 15) and Return and Earn: Annual Statutory Report 2019–20 (p. 13). Since wine bottles have not previously been included in the CDSs of other Australian jurisdictions, there is no available evidence to suggest that redemption rates for wine bottles will differ from those of container types currently eligible for the CDS. For this reason, the analysis assumes the same redemption rate at maturity for all eligible container types.*²

The lack of available evidence to confirm means there is insufficient confidence that redemption rates for much larger and bulkier wine and spirit bottles would be similar to existing container types. Consumption patterns of wine and other items newly included in the CDS may be very different to those of other items already part of the scheme. For example, individuals may be less likely to collect heavier items from existing kerbside recycling bins. Further to this the demographics of wine and spirit consumers is different to other beverage consumers.

Given the considerable uncertainties it is essential to perform sensitivity analysis on redemption rates to understand how different assumptions affect the results. It is unclear whether sensitivity analysis of this kind has been performed and, if not, why redemption rates would not be a material factor to consider.

¹ Marsden Jacob Associates Pty Ltd (for NSW EPA) (2022), [Cost-benefit analysis of options to improve resource recovery in NSW](#), page 60.

² Marsden Jacob Associates Pty Ltd (for NSW EPA) (2022), [Cost-benefit analysis of options to improve resource recovery in NSW](#), page 36.

While revenue for the scheme will scale linearly with volume of new material going through the scheme, compliance costs to industry will be fixed because the compliance overhead would remain largely the same. If the proportion of new container types being processed by the CDS turns out to be very low, it is plausible that the costs will exceed the benefits on an ongoing basis.

To better understand the impact of redemption rate assumptions, the Commission would welcome further analysis be undertaken to assess results at redemption rates of 10 per cent, 35 per cent, 67 per cent and 100 per cent. This would provide a much clearer view as to the sensitivities of the analysis to different redemption rate scenarios, and whether there is a critical threshold where the benefits are sufficiently low such that fixed costs (such as compliance costs as discussed above) may become material.

Compounding nature of the assumptions

Assessing the range of possible scenarios is essential to providing confidence that the recommended option will have sufficient net benefits to justify implementation.

The sensitivity analysis in Table 17 does not appear to demonstrate how the results are affected if multiple assumptions are affected at the same time (for example, if conservative assumptions are used for all variables used). Given there is a high degree of uncertainty for many of the assumptions, the Commission's view is that the sensitivity analysis should explore the distribution of potential outcomes (including with respect to differing compliance cost and recovery rate assumptions as discussed above).

Implications of being a first mover

The Commission notes that NSW would be the first jurisdiction in Australia to expand its container deposit scheme to some of the additional container types proposed. As a consequence, assessing the costs and benefits is a somewhat speculative exercise as there is only limited evidence to assess the effectiveness and efficiency of the options considered. This position therefore warrants a cautious/evidence-based approach. As earlier noted, the Commission's maintains there is a need for a higher degree of confidence that the benefits unambiguously outweigh the costs of this proposal.

Thank you for the opportunity to make a submission. If you require further information, please contact Megan Bennett at either megan.bennett@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours faithfully

Chris Lamont
Commissioner
NSW Small Business Commission

Date: 28 November 2022