

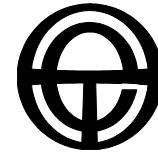
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SUBMISSION TO: INQUIRY INTO CONTAINER DEPOSIT SCHEMES

TEC welcomes this inquiry into CD schemes and notes that the Boomerang Alliance will be providing significant detail on several matters including pricing surveys and an alternative system to the NT and SA, that prevents profiteering. We would appreciate the opportunity to present oral evidence.

Container deposit systems

TEC has a long history in the assessment and advocacy for container deposit (and other product stewardship) schemes at national and state levels and in relation to CD has observed some clear themes emerge:

- Despite setbacks in government decision making and industry campaigns, the public's desire for CD remains unabated with the most recent Newspoll this year showing 82% national support. This is the result of both: the evidence of litter reduction in South Australia with its CDS – further accentuated by CSIRO investigations of marine debris around Australia showing less beverage container litter in SA waters – and ongoing litter in other states despite voluntary approaches over many years; and a (valid) belief there are financial and social benefits to the community, charities and from increased recycling.
- The failure of the claim that kerbside recycling operations will be disadvantaged - as found in the last 5 government reports including the latest Consultation Regulatory Impact Statement into Packaging and the Ritchie report (2012) for the LGSA of NSW.
- The serious ongoing problem with litter and very limited recycling with away-from-home consumption. There is no evidence from overseas and in Australia that the industry's proposed National Bin Network will have any significant impact due to ongoing bin contamination issues and the impracticality of locating and emptying bins, to make much difference.¹
- That modern CD systems can be cost-neutral in terms of consumer impact and also offer a source of additional revenue for recycling programs.
- Finally that a few companies (Coke, Lion, Schweppes) are vociferous opponents of CD (which nevertheless will implement CD once a law is passed) - while other companies are either agnostic or support CD.

The pricing investigations by the Boomerang Alliance and the current Inquiry have been triggered by the pricing behaviours stated by the Australian Food and Grocery Council in its media attacks on CD and the observed prices of some beverages in the NT and SA.

The AFGC has sought to make political capital from the prices in full page adverts by alleging:

¹ Additionally local councils are expected to cover lift, transport and landfill costs under the NBN.

“...a drink container tax....we'll all be paying up to 20cents more for every bottle of drink we buy”

and in the 'Frequently Asked Questions' briefing for MPs (July 2012):

Q2: Consumers don't pay more in SA – why should we believe that they will here?

- The truth is that for many years drink manufacturers spread the cost of the system in SA across national pricing – that is, all Australian families paid for the SA system;
- In recent years that's changed. Manufacturers now typically pass on the deposit and running costs to retailers. Whether that's always reflected in retail prices is something that retailers decide but the fact is SA consumers now pay more for their deposit system;
- In the NT, consumers are paying up to 20c more per beverage container – while only getting 10c back - and we've seen the average price of a slab of beer increase up to \$4;
- At the end of the day, you cannot expect to add \$1.8 billion of cost to a supply chain and not have costs increase for consumers. That's just the fact of the matter.
- Modelling has shown that a CDS is likely to raise the cost of an average household grocery basket by 1.35%¹ - double government estimates of the inflationary impact of the carbon price on grocery bills. It is therefore a significant – and permanent – increase in the cost of necessities, coming at a time when many families cannot afford it.

(Note: the AFGC seeks to imply in the last 2 points that the prices of all products will rise by 20cents)

The statements make it clear that the product prices include the full costs of the system as well as the deposit – which are either passed onto the consumer by the retailer or at the very least are paid by the retailer to the wholesaler. The behaviour in regard to the handling/transport fee may be carried out by all or only some companies for all or some products. However it is more generally the case that all the deposit is passed on.

The issue of profiteering arises because while 100% of the products supplied by the wholesaler carry the deposit and in some cases all or part of the handling/transport fee – not all the products are returned for recycling by the consumer or individual or charity collectors. In the case of South Australia this is about 20% of sales; and in the Northern Territory up to 60%. Thus the beverage companies are retaining the additional fees.

The unacceptable aspect of the behaviour is called profiteering because the surplus funds should be used to cover the costs of the system - not simply pocketed. After all the consumer (or the retailer) has paid for an environmental scheme and would rightly expect that their funds are used for environmental purposes. It thus appears that some companies are profiteering in the SA and NT.

The SA and NT CD laws do not have anti-profiteering provisions and this makes it difficult for the government to act. Further there is inadequate provision for the supply of consumption, recovery and financial information.

Nor will it be sufficient for the AFGC or companies to quote individual retail or wholesale prices for specific products or point to irregular discounting – a full picture of sales is necessary. We should also highlight that while a previous complaint to the ACCC in the NT did not find any problems – the inquiry was only into representations about prices (with retailers simply passing on what the wholesalers charged) – not the behaviour of the wholesalers in relation to unused funds.

The Senate Inquiry should seek to clarify the situation by requiring the supply of the necessary information from the wholesalers to obtain a picture of:

- a) How much money in unredeemed deposits and unused handling/transport fees in gross terms has been received by the key individual companies – since the NT scheme began this year and in each of the last 5 years of the SA scheme.
- b) A full accounting of what has been done with this money.

Profiteering and product stewardship schemes

Current legislation is inadequate to monitor and take action against profiteering.

This includes the Trade Practices Act (TPA) which can only examine 'representations' about price rises. Thus if a wholesaler says a product stewardship scheme is costing a certain gross amount and that is the case – then there is no misrepresentation. Neither the TPA nor the Product Stewardship Act (PSA) have provisions that ensure all environmental levies or deposits are spent on the product stewardship scheme – which would reduce the gross costs. Further because of the limitations of the TPA, previous ACCC investigations into beverage prices in the Northern Territory are not relevant to the core investigation of the Committee.

Australia has made a few attempts at regulatory product stewardship programs which aim for comprehensive results. These include used oil; the recent national e-waste scheme and there has also been a long standing 'tyre environmental levy' which may soon be absorbed into a co-regulatory system under the Product Stewardship Act (PSA).

The oil product stewardship levy is payable by oil producers and importers for petroleum-based oils and their synthetic equivalents. The levy currently stands at 5.449 cents per litre (or kilogram for greases). The levy offsets the costs of benefits paid to oil recyclers as an incentive to undertake increased recycling of used oil.² The Australian Taxation Office administers the Act and there is a broad representative advisory council. Thus the funds are separated from industry operators and prevent profiteering.

On the other hand the current tyre environmental levy (ranging from \$2-5) voluntarily imposed by industry and managed by individual businesses has been the subject to allegations about misuse. According to Hyder (2012) only 16 % of tyres were domestically recycled in 2009-10 compared to 11% in 2007-08 and 18% were exported compared to 10% in 2007-08.³

The allegations have been fuelled by a lack of transparency and doubts about which (if any) environmental purposes for which the levy is used. However the most recent proposal is to establish Tyre Stewardship Australia (TSA) as a not-for-profit company to administer a new scheme under the PSA. TSA is to be funded by tyre importers at a rate proportional to the number of tyres imported into Australia and this cost may be passed through the wholesale/retail chain to the consumer as an expense associated with the operation of the scheme. The eventual scheme will need to be properly established to ensure transparency so it can be ascertained that the total levies charged are all contributed to the TSA.

The product stewardship scheme for e-waste operates under the PSA as a co-regulatory arrangement and allows multiple arrangements for collection with fees paid by the computer and TV producers as liable parties. While there are provisions for transparency about revenue and expenditure and audits; there is no clear stated link to examine and reveal the actual fees and whether they were entirely used to cover the scheme costs.

A particularly un-transparent scheme is Mobile Muster. It is funded voluntarily by handset manufacturers Nokia, Motorola, Samsung Electronics Australia, Sony Ericsson, LG Electronics, Sharp, NEC, Panasonic, i-Mate, HTC, battery distributors Force Technology and mobile phone network service providers Telstra, Optus, Vodafone, 3 Mobile, Virgin

² <http://www.environment.gov.au/settlements/waste/oilrecycling/program/levy.html>, accessed 25/10/12

³ 'Study into domestic and international fate of end-of-life tyres' for COAG SCEW

Mobile and AAPT. Each pay an advance recycling levy raising 42 cents for every handset they import into Australia.⁴

However there is no clear linkage showing all levies are directed to financial support for the scheme, giving rise to allegations of profiteering because only a small portion of sales (up to 9million are purchased a year) are being recovered for recycling. The scheme's annual reports contain no financial information.

In general the PSA has strong inspection, information demand, audit and compliance powers. However as suggested above, the Act should be amended to clarify a purpose of preventing profiteering by making transparent the fees collected, prices charged to retailers and consumers; and expenditure on a scheme. We believe this to be a better location than amending the Trade Practices Act but it should also include additional specific powers to the ACCC to monitor profiteering; as environment departments lack expertise in this area. Further there should be a requirement that invoices to retailers and consumers show the charges associated with a scheme.

Thus it should not be difficult for the PSA to establish a CD scheme with the appropriate structures and protections against profiteering. The Boomerang plan includes a not-for-profit governing body; management of funds independent of beverage companies; and recommends anti-profiteering provisions.

Jeff Angel
Executive Director
26 October 2012

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<http://www.optus.com.au/aboutoptus/About+Optus/Corporate+Responsibility/Our+Environment/Material+use+%26+waste+management/Mobile+Muster>, accessed 26/10/12