



Recyclers of South Australia Inc.

246 BRIGHTON ROAD
SOMERTON PARK SA 5044
TEL: 8326 1813
FAX: 8326 1813
MOBILE: 0411 231 116
EMAIL: recsa@micronet.net.au

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Project Manager, Beverage Container Bill
Environment Protection Authority
GPO Box 2607
ADELAIDE SA 5001

Dear Project Manager

**RESPONSE TO THE
DRAFT ENVIRONMENT PROTECTION (BEVERAGE CONTAINERS)
AMENDMENT BILL 2006**

1.0 OVERVIEW

The introduction of Container Deposit Legislation (CDL) in SA was a first for Australia and originally targeted to control litter. The system was designed to be self-regulating and is best described as a hybrid market system. As environmental policy has evolved, the CDL is now better described as a model of Extended Producer Responsibility (EPR). The system still provides benefits for litter control, however its major benefit is in supporting the environmental and social objectives of the Government.

While RSA supports the proposed amendments to the legislation it remains unconvinced whether or not the proposed changes will achieve the objective of creating a cost effective, equitable and efficient Container Deposit System.

The Explanatory Report highlights some of the inequities and difficulties within the current system but the proposed changes may not achieve their stated objective.

RSA will cooperate with the EPA in working within the new legislative framework on the basis that its members (collection depots) can achieve the ultimate efficiency gains of commodity bulking and payment by count, not weight. There are just two commodities that need to be bulked – glass and aluminium. In RSA’s view if the current system can bulk PET containers then there should be no reason why glass or aluminium cannot be bulked.

In the case of glass, collection depots do all the work in sorting and recycling glass by delivering containers to the glass beneficiation plant. They must keep deposit glass containers separated to accommodate two separate super collectors handling the product. This adds significantly to the cost of the system and is grossly inefficient.

The audit control is undertaken at the beneficiation plant on behalf of super collectors and the cullet is sold to glass reprocessors by the collection depots. Super collectors have only an administrative role and RSA is at a loss to understand why this packaging is not bulked immediately.

Aluminium cans require the separation into three different streams to suit super collector, audit and central control. Aluminium cans are all baled and easily recycled into new aluminium products. There is no reason not to bulk this packaging except the vested interest of three super collectors owned by major fillers/distributors (fillers).

The EPA should note that RSA's stated position to Statewide and Marine Stores (whose contracts have expired) is that new contracts will only be negotiated that include the bulking of all packaging by material type and the payment by count based on actual deposits paid for the product. There is too much inaccuracy and loss of revenue with averaging systems that rely on payment by weight. This will be further exacerbated by any increase in the deposit or the continued variation to volumes of containers in each packaging stream.

If the amendments provide the EPA with sufficient control of the Container Deposit System to achieve bulking and payment by count then RSA supports this new legislative framework and applauds the EPA for taking responsibility for the efficient and cost effective running of the system.

However, if the amendments cannot achieve these outcomes then RSA will support the move to a true Extended Producer model previously outlined to the Minister and the EPA.

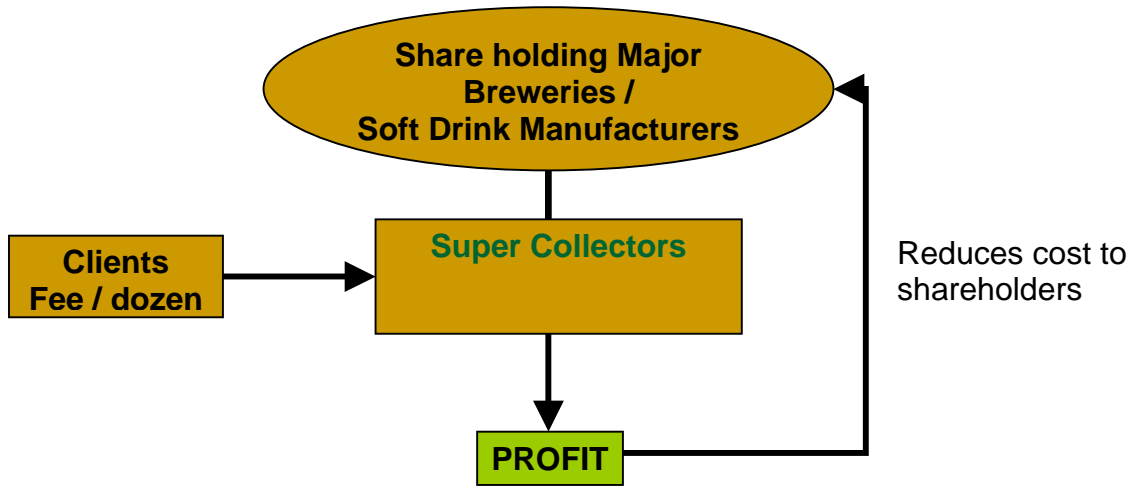
In summary, this model incorporates one only independent coordinator for the system who sets a fixed fee for all fillers to sell CDL items in SA and provides the coordination and liaison with the existing collection depot network for the sorting, aggregating and recycling of all product by the depot.

The benefits of this system are:

- Levels the playing field for all fillers in the State removing the profit received by fillers who happen to own super collectors under the old system (refer Diagram 1 over the page).

Diagram 1

LEVEL PLAYING FIELD V CROSS SUBSIDIZATION



- Removes inefficiencies in the system by the introduction of bulking for all packaging and reduces the overall cost of the system to the fillers.
- Allows the introduction of technology and sustainable Occupational Health & Safety systems within the industry.
- Removes the duplication between central processing by super collectors and the more efficient direct market model by collection depots, ie, no need to pack, transport and re-count at the super collector. All commodities are handled from the consumer to the recycler.
- Provides an opportunity to fund environmental programs for the Government from the coordinator of the system. (Refer to cost model below.)

**Average Cost Model for CDL All Products
(40 million dozen sold annually)**

Fee paid by Distributor / Filler	\$0.84
Collection Depot Handling fee and deposit	\$1.05
Transport, Processing and Administration cost	\$0.05
Total Cost of 100% returns	\$1.10
Cost for Average Return Rate at 76%	\$0.84
Value of Recycled product (scrap value)	\$0.20
TOTAL PROFIT to super collectors or for Environmental Fund	\$7,000,000.00

All prices are per dozen, GST exclusive

The remainder of RSA's submission is set out in the same order and headings as the Explanatory Report (dated October 2006) prepared for the consultation on the draft amendments to the bill.

2.0 Amendment of Definitions

2.1 New Definition: approved collection depot

RSA supports the new definition.

2.2 New definition: approved refund marking

While supporting the new definition for approved refund marking, RSA suggests the following issues should be addressed to lessen the risk of "free riders" within the system and to better promote the environmental benefits of CDL:

- The EPA should give consideration to linking label approval to a registered trademark. Conditions on the use of this trademark may be able to avoid label approval on products where there is no intention by the filler to market a product in SA. An example of where a product has label approval is Toohey's Gold & Red Beer, even though this product is not sold in SA. There are many more examples of this, one of which was highlighted in the Fells' court case.
- The design of the label should be bold and endorsed by the EPA as a trademark that carries prestige for fillers demonstrating their commitment to sustainable environmental packaging practice. This approval should have the same prestige as "Australian Made" branding and marketing.
- The positioning of the label on the container should be carefully considered. Collection depots are required to recognize labels and confirm a deposit is payable. A crushed can negates the reading of a label that is positioned on the body of the container which would be avoided if the labeling is embossed on the top of the can. This was the practice in the past and is superior to labeling the body of the can.
- While the common meaning of the words "when sold in SA" is clear, there is ample evidence to suggest that fillers do not always declare final retail sales in this State. This is especially the case for major supermarket chains that centrally warehouse and move stock around to suit market demand. The amendments must provide the EPA with the ability to control this situation.

2.3 Amended definition of beverage

RSA supports the proposed changes.

2.4 Amended definitions of category A container & category B container

RSA supports the proposed changes.

2.5 Amended definition of container

RSA supports the proposed changes.

2.6 Removal of 'collection area' definition

This definition is out of date and collection depots do compete for customers. While it is acknowledged that the National Competition Policy Review of the Act may have highlighted the need to amend this definition it must be stated that caution needs to be exercised. While it is desirable to have competition at all levels of the CDL system the over-riding objective must be a viable and cost-efficient return and resource recovery system for containers. Uncontrolled admission of collection depots and super collectors means that single commodities need to be sorted to suit audit requirements of new super collectors. This compromises single commodity processing, ie, bulking, and the system is rendered costly and ineffective.

A true market system for the SA Container Deposit model is clearly not possible. To ensure the integrity of the system collection depots have no choice but to deal with super collectors for their label approved containers, regardless of the commercial terms and conditions offered by the individual super collector. There is no opportunity for the collection depots to make their own arrangements to suit their own commercial needs and businesses as there would be if the system was truly market driven.

Similarly if super collectors were in a perfect market situation they would face competition and entry from a myriad of potential super collector companies that have the potential to render the CDL system unworkable.

The challenge for the EPA is to administer and manage the system to achieve a fair and equitable outcome for all stakeholders and achieve the objectives of the legislation.

2.7 Amended definition of 'collection depot'

This revised definition is supported but the association is cautious of the approval of reverse vending machines (RVM's) as a collection depot without considering consistency between the approval conditions of collection depots and RVM's.

The approval of RVM's as collection depots should only proceed if they are linked to existing approved collection depots. This approach would avoid the opportunity to compromise the return system network and ensure that approval conditions are consistent for RVM's and collection depots. Linking RVM's and collection depots controls interstate rorting (refer to later in the amendments) and provides the ideal model to properly service and control this new technology.

2.8 New definition of ‘super collector’

The inclusion of super collectors under the legislation is supported by RSA.

2.9 New definition of ‘waste management arrangement’

This definition is supported by RSA, however it does not, in the association’s view, go far enough in defining the essential elements of a “waste management arrangement”. The key element missing in the definition is the requirement that a waste management arrangement for the “collection sorting and aggregation of containers” must also include the efficiency of handling that class of container.

It is quite possible to conceive a container that cannot be practically handled by the collection depot network. The waste management arrangement for a particular container should not add to the cost of the system. If the container packaging is already being handled within the system then it must be aggregated into that system. This is the only way to ensure cost control and efficiency at the collection depot end. In other words, a waste management arrangement should have regard to the ultimate aim of handling containers of the same packaging material in one system, ie, an aluminium can should be handled in one system similar to what currently exists with the return of PET containers. This must also be the case for glass containers.

3.0 Approval system for ‘classes of containers’

RSA recognizes the need to link approval to the suitability of the product given the environmental objectives of the Government. A strengthening of the waste management arrangements as discussed above gives further impetus to the rationale behind this amendment.

4.0 Approvals for depots and super collectors

4.1 Regulation of super collectors

RSA supports the regulation of super collectors but strongly disputes the statement by the EPA that super collectors are no longer closely aligned with a particular manufacturer. There are four super collectors and in excess of 80% of material handled within the CDL system is controlled by Statewide and Marine Stores. Statewide is owned by Coke and Schweppes, Marine Stores is owned by Lion Nathan and Coopers Brewery. Visy handles predominantly Carlton United Brewery (CUB) products and Flagcan is a minor player whose shareholding relates mainly to collection depots.

4.2 Strengthened approvals system

4.3 Conditions of approval

4.4 Improved appeal rights

RSA supports the strengthening of the approval system with the EPA having power to impose conditions of approval and the accompanying appeal rights against decisions of the EPA regarding the approval process.

4.5 Sustainable waste management system

The EPA, when considering a sustainable waste management system, must have regard to the efficiency and viability of the CDL system. A sustainable waste management system should not be able to compromise issues such as bulking or the viability of the collection depot network. It is not just a matter of considering the objects of the Act and the Beverage Container Provisions when making a determination on an alternative recycling stream.

4.6 Dispute resolution process

The comments by the EPA that there is an imbalance between the power of the super collectors negotiating with collection depots is factual and has led to disputes that had the potential to compromise the CDL system. The current contractual arrangements with super collectors include dispute resolution clauses that have been used in the past to resolve relatively minor issues.

RSA wishes to point out that contracts with both Statewide and Marine Stores have not been renewed by the association on the basis that any new contract must include bulking and payment by count rather than by weight. This means that 80% of the returns in the CDL system rely on contracts that can be terminated between 30 and 45 days.

The EPA, in drafting this amendment, must be sure that it can intervene to achieve an equitable outcome that protects the viability and efficiency of the Container Deposit System. All stakeholders within the CDL system have a right to expect an efficient, viable, equitable system. This is the responsibility of the Environment Protection Authority.

4.7 Annual fees and reports

Annual fees and reporting requirements are supported by RSA subject to understanding the fees proposed. The fees should be set commensurate with the involvement of the EPA to monitor and manage the system. This requires the EPA to understand the intricacies of the system and provide meaningful reports on the performance of the CDL system. It also must contemplate active involvement by the EPA when there is a dispute that has the potential to compromise the CDL system.

The EPA cannot just rely on super collectors and depots to operate the system as it does require administration and management by the EPA.

4.8 Service of documents

Is noted by RSA.

5.0 Amendments to penalties

Is noted by RSA.

6.0 Interstate containers

RSA strongly supports any initiative to stop interstate containers being returned via the CDL system in SA when these containers have not been sold in SA. The amendment to include this as an offence with a penalty of \$4,000 fine or a \$3,000 expiation fee is applauded.

RSA also supports an amendment that allows collection depots to refuse refunds if they believe the containers have not been sold in SA. It should be noted that this would be very difficult for collection depots to enforce. The amendment requiring a statutory declaration to be signed by a person confirming that the containers have been sold in SA is conditionally supported.

A statutory declaration requires a signature from a JP and this is clearly impractical for a depot owner. A declaration in a similar form to the Australian Taxation Office requirements for GST is more practical. However, the transaction amount is more realistically set at \$150 per transaction at the 5 cent deposit level. This should be pro-rated for any increase in the deposit level. While the GST form remains in force for up to five years, RSA would encourage its members to seek a declaration for each transaction that exceeds the suggested level.

7.0 Schedule 1

The rationale is understood and supported by RSA for these amendments.

8.0 Transitional arrangements

RSA supports a transitional phase for the introduction of the new legislation. However RSA would support the introduction of the change of deposit during this transitional period to minimize the disruption to the industry.

It may not be prudent for the EPA to automatically grant approvals to super collectors in this transitional phase given that existing contracts with collection depots have expired and the waste management arrangements rely on the notice period in those contracts for termination, ie, 30 or 45 days. The EPA may need to seize this opportunity of introducing the changes to broker a waste management arrangement that is sustainable and efficient, ie, bulking and payment by count.

9.0 Refund amount

RSA strongly supports an increase in the deposit refund amount from 5 cents to 20 cents. There has not been an increase in the refund amount since the inception of the scheme and the real value of the deposit is well in excess of the 20 cents proposed.

RSA believes a review of the refund amount is timely, given the recent announcement by the WA Government to introduce CDL into that State and a recent trend of decreasing return rates for the highly recognized packaging such as PET, glass and aluminium.

Supporting the argument for an increase in the refund is the current low return rates for newly introduced product to the system such as liquidpaperboard, etc, at less than 40% return rates. Clearly the financial incentive has not been significant enough for return rates of this packaging to meet the return rates of the other packaging covered by the legislation.

The WA Government will need to set a refund amount that does provide sufficient financial incentive, coupled with community willingness to recycle to achieve best practice return rates for Container Deposit Systems. It is RSA's understanding that the refund amount in WA is likely to be 20 cents.

The SA CDL system was the first in Australia and should set an example for the rest of the nation on the appropriate refund amount. The refund amount must be the same for both WA and SA, and underpin consistency across the whole nation. SA is in the best position to take the lead and set a refund amount that will achieve the best practice return rates of other Container Deposit Systems in the world (between 77% and 93%). There is only one chance to set a refund amount and if it is set too low the system will be compromised.

From RSA's point of view, there are issues for collection depots, mainly cashflow management, security and transitional arrangements. RSA believes these challenges can be met by its members and the environmental benefits to the State for increasing the refund amount far outweigh any inconvenience for depot operators.

The impact on the public should only be positive given the results of the EPA survey, and the opportunity for all consumers to return the container and receive the deposit. There is a choice for the consumer and an increase would provide greater return rates and participation from the community.

RSA believes that the impact on the economics of kerbside recycling collection costs will not be significant. The greater diversion rate through the CDL system is likely to be offset by the increased value of the containers left in the kerbside collection systems.

RSA is of the opinion that the ideal implementation date for a refund increase is 1 July 2007. This is the quietest period for the industry and would cause the least disruption. A one to three month transitional period is supported by RSA where collection depots will

be required to refund both 5 cent and 20 cent containers. This will increase the number of splits required by the depot. RSA believes that if this transition period is no greater than three months then the additional costs can be borne by the collection network. If a greater transition period is proposed then substantial additional costs will need to be considered, especially if bulking has not been achieved within the industry.

The additional costs for any transitional period to introduce deposit refund increases reinforce the need to set the level correctly in the first instance.

An interim level of 10 cents deposit refund is not supported by RSA.

Communication with the community should occur at least three months prior to the introduction of an increase in the refund amount. The communication strategy should be coordinated by the EPA in conjunction with super collectors and collection depots represented by RSA.

Experience with the introduction of the new products clearly demonstrates that industry can accommodate changes to the system if all stakeholders are advised and a clear and consistent implementation program adhered to.

RSA does not support a tiered deposit refund scheme for SA. This adds significantly to sorting, handling and audit costs of the system with minimal environmental or social benefit. It is important to protect the overall cost of operating the system and any benefit from a tiered deposit system would not justify the cost increases within the system.

Thank you for the opportunity to respond to the proposed legislative amendments and RSA will continue to work with the Government in improving the CDL system in SA.

If you have any enquiries or would like to discuss the alternative EPR model mentioned in the Overview of this submission do not hesitate to contact the undersigned on mobile 0411 231 116.

Yours sincerely

Bob Naismith
EXECUTIVE OFFICER
RECYCLERS OF SOUTH AUSTRALIA INC