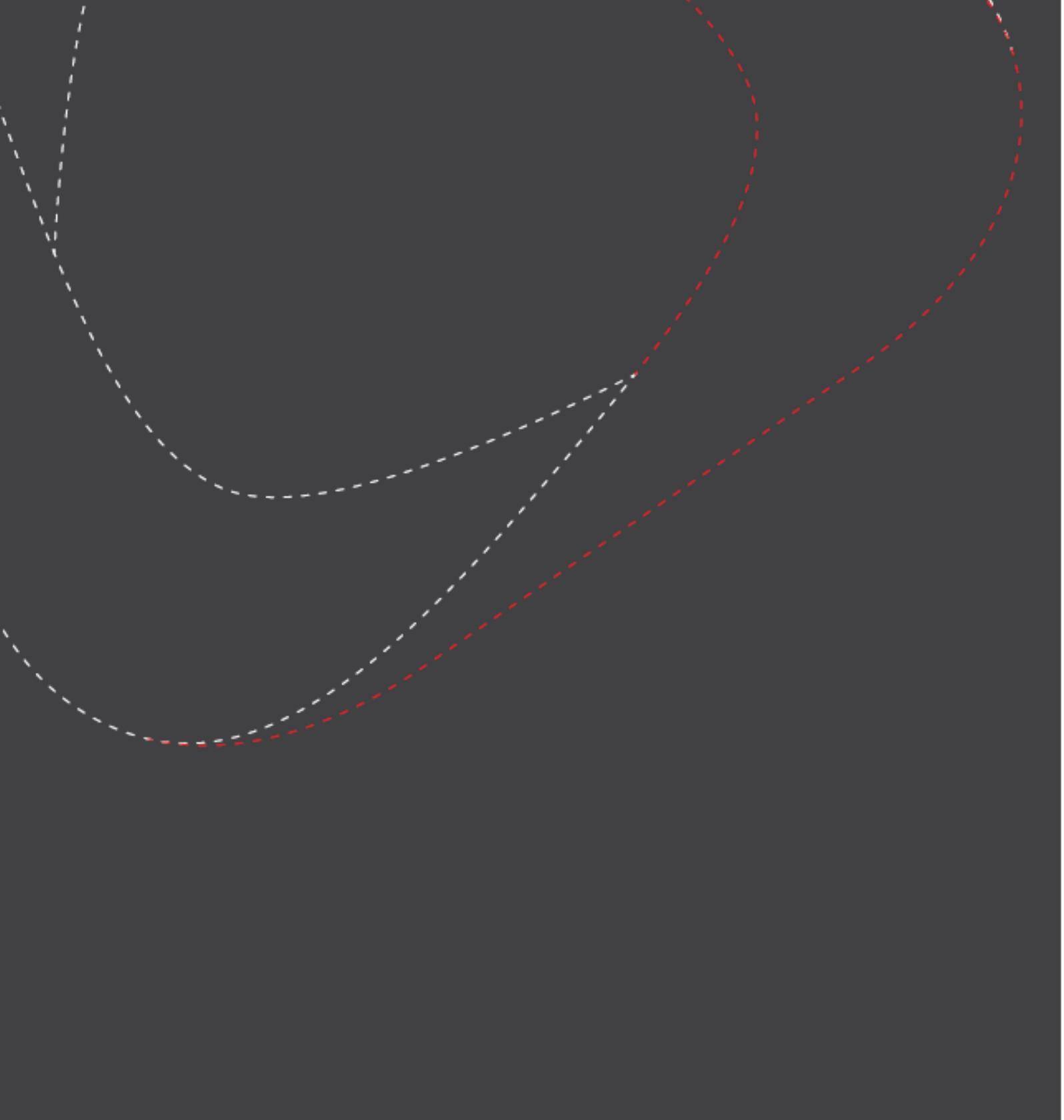




2019

Issues paper

Container Refund Scheme
Price monitoring review



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Have your say

The Queensland Productivity Commission has released this issues paper to assist interested parties to prepare submissions to the review. It outlines the scope of the review and provides background material. It also asks questions about matters on which the Commission is seeking views, comments and information.

Participants should feel free to comment on any matters that are relevant to the review's terms of reference, whether they are raised in this issues paper or not.

Make a submission

The Commission invites all interested parties to make a submission to the review.

Submissions are due by close of business **12 June 2019**. They can be lodged online or via post:

<http://www.qpc.qld.gov.au/research>

Container Refund Scheme

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Submissions will be treated as public documents and published on the Commission's website. If your submission contains genuinely confidential information, please provide the confidential material in a clearly marked separate attachment.

Contacts

Enquiries regarding this project can be made by telephone (07) 3015 5111 or online at:

<http://qpc.qld.gov.au/contact-us/>

Key dates

February 2019

Terms of reference

1 May 2019

Issues paper released

12 June 2019

Due date for submissions on the issues paper

1 August 2019

Draft report published

August and September 2019

Further consultation

15 October 2019

Due date for submissions

1 February 2020

Final report published

About us

The Queensland Productivity Commission is an independent statutory body that provides independent advice on complex economic and regulatory issues.

The Commission has an advisory role and operates independently from the Queensland Government—its views, findings and recommendations are based on its own analysis and judgments.

Further information on the Commission and its functions can be obtained from the Commission's website www.qpc.qld.gov.au.

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1. About the review

The Queensland Container Refund Scheme (scheme) commenced on 1 November 2018—allowing people to take empty drink containers to a collection point for a refund. The scheme is funded through a surcharge on beverage manufacturers.

While the Queensland Government anticipates that beverage manufacturers will increase the price of beverages as a result of the scheme, this review was commissioned to ensure consumer interests are protected from unjustified pricing behaviours. This includes behaviours such as retailers and suppliers using the introduction of the scheme to justify price increases higher than would be expected or reasonable.

1.1 What the Commission has been asked to do

In February 2019, the Queensland Government asked the Queensland Productivity Commission (Commission) to monitor and report on price impacts arising from the Container Refund Scheme (scheme) over its first 12 months of operation.

Specifically, the Commission has been asked to monitor and report on:

- the effect of the scheme on prices of beverages sold in Queensland in an eligible container
- the effect of the scheme on competition for beverages and the performance and conduct of beverage manufacturers and retailers
- any other specific market impacts on consumers that arise from the commencement of the scheme
- any other matters which are relevant to the consumer interest.

The Commission has also been asked to monitor and report on price impacts across a range of consumer, geographical, supplier, retailer and product categories, including:

- state-wide, regions and localities
- types of beverages
- large and small retailers, ranging from general grocers, liquor stores, hotels and online distribution.

In undertaking the review, the terms of reference state that the Commission should also have regard for price impacts on beverage products in 'captive' markets such as entertainment and sporting venues.

The full terms of reference are provided at Appendix A.

1.2 Scope of the review

The terms of reference ask the Commission to provide advice and recommendations to the Queensland Government on any adverse pricing effects or behaviours arising from the operation of the scheme.

The Commission has not been asked to monitor or report on:

- the scheme's effectiveness, including whether the scheme has increased the recovery and recycling of empty beverage containers
- operational aspects of the scheme, such as availability or accessibility of container collection points.

2. Queensland Container Refund Scheme

2.1 About the scheme¹

The scheme was introduced to increase the recovery and recycling of empty beverage containers and thereby help improve the overall recycling rate and reduce the amount of litter in Queensland.

The scheme encourages consumers to collect eligible beverage containers for recycling and exchange them for a refund of 10 cents per container.

Beverage manufacturers fund the scheme under a product stewardship framework. This means that beverage manufacturers take responsibility for the empty containers generated from the products they sell.

The scheme was also designed to complement existing collection and recycling activities—including local governments providing kerbside recycling services.

How the scheme works

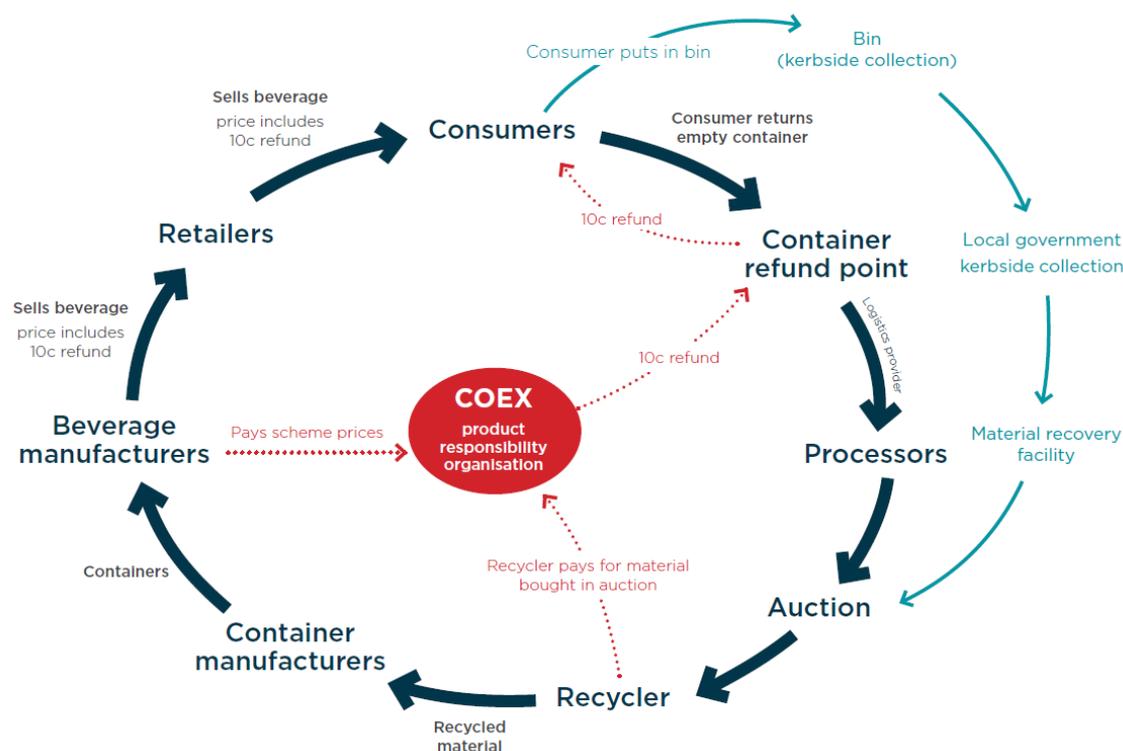
Under the scheme, beverage manufacturers contribute funds to pay for the collection and recycling of empty beverage containers. Only certain beverage containers are eligible for a refund (discussed in section 2.2).

Coordination of the scheme—including the physical collection of the empty containers and the payment of refunds—is undertaken by the 'product responsibility organisation', which is a not-for-profit organisation appointed by the Queensland Government to run the scheme. Other key participants to the scheme are the Department of Environment and Science, operators of refund points, material recovery businesses, logistics providers, local governments and recyclers.

Figure 2.1 provides a snapshot of the flow of containers and financial coordination throughout the scheme.

¹ The following summary is based on information that was publicly available at the time of writing.

Figure 2.1 Beverage container and financial flows under the Container Refund Scheme



Note: This figure presents a high-level, stylised representation of the proposed operation of the scheme.

2.2 Eligible containers

The scheme targets those containers which are more likely to be consumed out of the home—and therefore more likely to be littered (COEX 2019).

Eligible containers

Most glass, aluminium, plastic, steel and liquid paperboard beverage containers with a capacity between 150 ml and 3 litres are eligible for a refund under the scheme (a full list of eligible and non-eligible containers is at Appendix B).

To be eligible, the container must:

- have contained a beverage that has not been excluded from the scheme—for instance cordials and plain milk are not included in the scheme
- have a refund mark—to show it is eligible for a refund²
- be a container that can be recycled (COEX 2019).

² From 1 December 2019 onwards.

Excluded containers

Generally, beverage containers are not eligible for a refund if they have a capacity of less than 150ml or more than 3 litres. In addition, the following beverage containers are not included in the scheme:

- containers for plain milk
- any glass containers that contained wine or spirits
- containers that hold 1 litre or more, which contained flavoured milk, pure fruit or vegetable juice, cask wine or cask water
- containers for concentrated/undiluted cordial or syrup containers.

Figure 2.2 Eligible containers



Source: COEX 2019.

2.3 Scheme participants

Key participants involved in the scheme include the Department of Environment and Science, the product responsibility organisation, owners of container refund points, logistic providers, processors, material recovery facilities, recyclers, beverage manufacturers and members of the public.

Department of Environment and Science

The Department of Environment and Science is responsible for regulation of the scheme according to the *Waste Reduction and Recycling Act 2011* and the *Waste Reduction and Recycling Regulation 2011*.

Product responsibility organisation—COEX

The scheme's operator is the product responsibility organisation. The Queensland Government appointed COEX—short for Container Exchange—to be the product responsibility organisation.

Its main function is to administer the scheme, including:

- establishing a network of container refund points for Queensland consumers to return empty beverage containers for payment of a refund
- ensuring beverage manufacturers fund the scheme
- receiving and dealing with complaints relating to the scheme from members of the public and participating entities.

The objectives that the product responsibility organisation must achieve under the legislative framework include:

- ensuring ongoing, efficient and effective arrangements are available in Queensland for empty beverage containers to be collected, sorted and recycled
- ensuring at least 307 container refund points are established by 1 November 2019 and operate for the remainder of the financial year ending 30 June 2020 and each subsequent financial year
- deciding the percentage container recovery rate for the year with the aim of raising the recycling recovery rate to 85 per cent by 1 July 2021 (section 31 of the *Waste Reduction and Recycling Regulation 2011*).

Governance

COEX is a not-for-profit organisation with a nine-member board that reports to the Minister for Environment and the Great Barrier Reef (the Minister). The board must have a chair that is independent of the beverage industry, at least one large and one small industry representative, and at least one director who represents the interests of the community and is independent of the beverage industry, among other requirements (*Waste Reduction and Recycling Act 2011*).

COEX is also required to report to the Minister on a budget of estimated costs of the scheme for the next financial year including the estimated costs of:

- the organisation
- refund amounts to be paid for empty containers
- the operation of container refund points, including handling, sorting and transporting of containers (*Waste Reduction and Recycling Act 2011*).

Container refund points

A container refund point (CRP) is a place where a person can return eligible containers for the 10 cent refund. Operators of a CRP are required to have a container collection agreement with COEX that includes provisions about:

- sorting the containers and transporting—or arranging for transport of the containers—to a processor or waste facility for recycling
- keeping records and reporting to COEX about the refund amounts paid and the containers collected, sorted and transported
- ensuring the CRP is accessible to the public.

The container collection agreements also specify the amount payable by COEX to the operator of the CRP for:

- refund amounts paid to consumers returning empty eligible containers
- the costs of handling and sorting containers.

Logistics provider

Transfers containers from CRPs to processors. COEX pays logistic providers for this service.

Processor

A processor is responsible for verifying, sorting, and processing containers ready for sale to recyclers. They also supply CRPs with a bin, cage, wool bale, or bulk bag for the collection of containers. Once sold, the processors are responsible for managing the transfer of materials to the recycler who has purchased the material. COEX pays processors for this service.

Material recovery facilities and local government

A material recovery facility (MRF) is a place where recyclable waste is sorted and prepared for recycling. Waste may also be recycled at an MRF. Each MRF enters into a material recovery agreement with COEX to receive payment for sorting and preparing containers for recycling.

In areas with kerbside collection, co-mingled recyclable materials are transported to the MRFs and recyclable materials are sorted into material types and baled for sale. If the MRF receives recyclable material from kerbside collection, a refund sharing arrangement will be entered into with the local government for the 10 cent refund payments made by COEX.

Recyclers

Recyclers recover resources to be used again or transformed into materials that can be used in new products. For example, sometimes containers are washed, sterilised and used again in their original form. At other times they are broken down and treated further, to become a material that can be used in manufacturing.

Recyclers can purchase materials from COEX through its online auction portal. Recycling plants may be local or overseas.

Beverage manufacturers

A manufacturer is defined in the *Waste Reduction and Recycling Act 2011* as being a person who makes a beverage product; imports the beverage product from a foreign country or arranges for the distribution of the beverage product in Queensland.

Manufacturers of a beverage in an eligible container are required to enter into a container recovery agreement with COEX. The agreement includes obligations on the manufacturer to contribute to the costs of refund amounts paid to consumers for the containers and the cost of administering the scheme.

Members of the public

Consumers purchasing beverages in eligible containers can return containers to a CRP for a 10 cent refund per container.

2.4 Costs of the scheme

Beverage manufacturers are required to pay the costs of running the scheme.³ Payment is determined on a 'per container sold basis'. Payment also varies according to the material type of the beverage container.

It is expected that where beverage manufacturers can, they will pass the cost of the scheme on to consumers, by increasing the prices of beverages in eligible containers. If the cost of the scheme increases, the additional funding costs are borne by manufacturers who may further increase prices of eligible beverage containers.

³ Required under the *Waste Reduction and Recycling Act 2011*.

Cost build-up

The direct costs of the scheme include:

- a container refund fee—to be paid to customers upon exchange of eligible containers
- a handling fee—paid to owners of the CRPs for collection of the containers
- the costs associated with transport and processing containers for recycling markets—paid to logistics and processing service providers
- cost of administering the scheme (COEX costs).

Cost recovery

COEX published the initial scheme prices that manufacturers must pay for each container sold—according to container type—on its website (COEX 2019).

The amount a manufacturer pays into the scheme equals the number of containers of each material type it has sold in the previous month, multiplied by the scheme price (Table 2.1 and associated example). An invoice for the manufacturer's share of costs is issued to the manufacturer based on the number of containers declared.

Most beverage manufacturers are required to pay monthly. Small manufacturing businesses—with fewer than 300,000 units of product sold each year—may pay on a quarterly basis (*Waste Reduction and Recycling Regulation 2011*, ss.18–19). This is expected to reduce the compliance burden on smaller organisations.

Table 2.1 Scheme prices

Material type	Scheme price (cents per unit sold) (ex GST) ^a
Aluminium	9.9
Glass	10.5
High-density polyethylene (HDPE)	10.6
Polyethylene terephthalate (PET)	10.3
Liquid paper board (LPB)	10.6
Expected weighted average by number of containers sold	10.2

Source: COEX 2019.

a) From 1 November 2018.

Example 1: Funding

A beverage manufacturer supplies 20,000 glass bottles to the Queensland market in January 2019.

The amount payable to the scheme:

$$20,000 \times 10.5 \text{ cents} = \$2,100$$

COEX issues the invoice to the manufacturer in February 2019.

The initial scheme prices were intended for the start of the scheme only, as the cost of operating the scheme is expected to change as more containers are redeemed for a refund (COEX 2019). Costs of operating the scheme may change due to requirements for more container refund points and potential changes to logistic requirements such as frequency of collection. The exact direction of the change in cost per eligible container is uncertain. For example, costs may decrease through economies of scale, or may increase due to stepped investment requirements, which may have relatively large fixed costs such as establishing a new collection point.

These scheme prices are based on container redemption rates. The redemption rate is the number of eligible empty containers that are exchanged for a refund compared with the number of eligible beverage containers sold.

COEX set the prices for the first twelve months of the scheme using the following projected redemption rates:

- up to 38 per cent of eligible containers redeemed through CRPs
- up to 25 per cent of eligible containers redeemed at MRFs (eligible containers recovered in local government recycling bins).

All beverage manufacturers selling beverages in eligible containers will be required to provide monthly container sales volumes per material type to COEX. That is, manufacturers are funding the scheme in arrears.

Redemption rates will affect the level of funding COEX requires for administration of the scheme. Manufacturers pay the refundable amount for every eligible container—but not every eligible container is returned or redeemed for the 10 cent refund. Where an eligible beverage container is not exchanged for a refund, COEX retains the 10 cents per container.

As redemption rates increase, more refunds will be distributed to container refund points to use in exchange for the empty containers. As more containers are returned for a refund, and assuming the cost of administering the system remains the same over time, COEX may increase scheme prices to continue to cover the cost of administering the scheme (see the example below).

Example 2: Redemption rate price impact

COEX issues an invoice to a beverage manufacturer, for eligible glass bottles sold:

10.5 cents per container x 20,000 containers sold = \$2,100

With a 50 per cent redemption rate, COEX distributes \$1,000 in refunds to the respective container refund points:

10 cents per bottle x 10,000 empty containers = \$1,000

The remaining \$1,100 can be used to administer the scheme (for example, undertake logistics or pay container refund points for their services). In this instance, COEX may be able to drop the scheme prices to recover the costs of administering the scheme.

If redemption rates increase to 85 per cent, the invoice to the beverage manufacturer will remain the same:

10.5 cents per container x 20,000 containers sold = \$2,100

But the refund distributed to the container refund points will increase to:

10 cents per bottle x 17,000 empty containers = \$1,700

This provides COEX with the remaining \$400 to administer the scheme. If this is insufficient to recover the costs of administering the scheme, COEX may increase the scheme prices, which the beverage manufacturer may pass on to consumers through higher beverage prices.

Beverage manufacturers can determine how much of the scheme funding they bear or pass onto their customers. There may be instances, however, where it is difficult to determine who in the supply chain is increasing prices and by what magnitude, and whether this is being impacted by market power of key stakeholders.

3. Other schemes in Australia

Some other states and territories have container refund/deposit schemes. Tasmania, Victoria and Western Australia do not have schemes, although Western Australia is in the process of establishing a scheme which it expects to commence in 2020.

The schemes differ in some of their arrangements. For instance, jurisdictions have different eligibility and exclusion criteria for containers, and manufacturers (or first suppliers) are levied for the costs of the scheme differently. Other differences between schemes include whether the overseeing entity (such as COEX) is for-profit or not-for-profit, how many industry experts sit on their Boards, the timing and calculation methods for fees, types of collection points, methods of payments/refunds, and the degree of damage a container can be in when returned (Department of Water and Environmental Regulation 2017; Environment Protection Authority South Australia 2019; ICRC 2018; New South Wales Environment Protection Authority 2018; Northern Territory Environment Protection Authority nd).

The refund amount provided is consistent across the schemes, however. There is also consistency between the Queensland and New South Wales schemes around the scope of containers that are eligible and not eligible for the refund (Queensland Government 2017).

3.1 Reviews in other jurisdictions

Price and competition reviews of new container refund schemes have been conducted by:

- the Independent Price and Regulatory Tribunal (IPART) in New South Wales (NSW) which published its final report on beverage pricing and competition impacts of the 'Return and Earn' scheme in December 2018
- the Independent Competition and Regulatory Commission (ICRC) in the Australian Capital Territory (ACT) which has released an issues paper and progress report on the pricing and competition impacts of its container deposit scheme.⁴

As noted above, the container refund/deposit schemes for each jurisdiction differ somewhat in terms of operational arrangements across NSW, ACT and Queensland. However, the differences may not be significant enough to justify developing a different monitoring and reporting framework for Queensland.

The terms of reference for the price monitoring task for NSW, ACT and Queensland are similar in many respects (see Table 3.1), requiring consideration of:

- the impact of the respective schemes on the price of beverages
- any other impacts on consumers that arise from the commencement of the scheme
- the impact on competition for beverages
- the performance and conduct of beverage suppliers/manufacturers.

⁴ The ICRC's final report is due in July 2019.

Table 3.1 Reviews of container refund schemes in selected jurisdictions—topics to be investigated

Topics to investigate in the review	ACT	NSW	QLD
Price of beverages	The effect of the Container Deposit Scheme on prices of beverages supplied in a container in the ACT	The effect of the Container Deposit Scheme on prices of beverages supplied in a container	The effect of the Container Refund Scheme on prices of beverages sold in Queensland in an eligible container
Competition, Performance and conduct	The performance and conduct of beverage suppliers in relation to beverage pricing in the ACT before and after the implementation of the scheme	The effect of the Container Deposit Scheme on competition for beverages supplied in a container and the performance and conduct of suppliers	The effect of the Container Refund Scheme on competition for beverages and the performance and conduct of beverage manufacturers and retailers
Any other impacts	Any other market impacts on consumers that arise from the implementation of the scheme	Any other market impacts on consumers that arise from the commencement of the scheme	Any other specific market impacts on consumers that arise from the commencement of the scheme Any other matters which are relevant to consumer interest Consider pricing impacts in relation to beverage products with 'captive' markets such as entertainment and sporting venues
Monitoring period	1 June 2018 to 30 June 2019 (13 months)	1 November 2017 to 1 December 2018 (13 months)	First 12 months of operation

Source: ICRC 2018, pp. 23–25; IPART 2018, pp. 30–32, Appendix A—Terms of Reference.

The main substantive difference for Queensland's monitoring task from the NSW and ACT reviews is the specific direction to consider pricing impacts (of the scheme) on beverage products sold within 'captive markets'.

4. Approach to monitoring and reporting

This section outlines the Commission's proposed approach to monitoring price impacts, competition impacts and changes to participant behaviour.

4.1 Impact on price of beverages

The Commission is required to review the effect of the scheme on prices of beverages sold in Queensland in an eligible container.

While beverage manufacturers are likely to pass on the cost of the scheme to customers, there is an expectation that prices of beverages sold in eligible containers will increase by roughly the costs of the scheme. It is not expected that the beverage manufacturers will increase the prices of beverages sold in ineligible containers.

The Commission is proposing to follow—to the extent it is appropriate for Queensland—the price monitoring frameworks that IPART and ICRC follow in their reviews of the price impacts of container schemes (as outlined in Table 4.1).

While IPART and ICRC used different data sets to inform their analysis, they adopted similar frameworks and statistical methodologies for reviewing the impact of their schemes on prices, competition and conduct of beverage suppliers.

Both IPART and ICRC reviewed beverage prices in the years before and after implementation of their respective schemes. This enabled them to undertake a 'difference in difference' statistical approach to compare price changes over two time periods in the jurisdiction in which the scheme was introduced with price movements in a control group to which the scheme was not applied.

IPART used Victoria, which does not have a scheme, as the control group. Once the change in price is identified, this is compared to the cost of the scheme to assess whether price increases are excessive.

Both IPART and ICRC noted challenges that are likely to be encountered when reviewing prices, such as:

- Determining whether observed changes in prices or behaviour is a direct result of the scheme's operation or some other change in the beverage industry.
- Linking the timing of price changes to the implementation of the scheme—organisations can change prices at any time in a competitive market (for example, not all retailers will change prices immediately following changes in costs, some contracts may also have long time periods).
- Pricing within the supply chain is complex and often opaque (for example, there are discounts, economy of scale purchases, rebates and other incentives).
- Retailers may have a policy of nationally consistent prices (impact of the scheme is therefore unclear).
- Different beverage markets may behave differently.
- Any fixed costs will affect small and large organisations differently (ICRC 2018, p. 14; IPART 2018, pp. 12–13).

IPART noted that these factors suggest that it might be difficult to draw conclusions around the drivers of price changes in the supply chain. They also suggest that:

the pass through of [Container Deposit Scheme] CDS costs into retail prices will vary by product and by retailer, depending on demand responses and bargaining power. The extent that we can measure all these impacts will also depend on the availability of pricing data (IPART 2018, p. 13).

Table 4.1 Approaches to monitoring and reviewing impacts on prices

Indicator	NSW and ACT approaches reviewing pricing impacts	Proposed Queensland approach
Changes in prices of beverages before and after the scheme that purport to be in response to the scheme	<p>How have beverage prices changed in different beverage markets? Are there any price differences between eligible and ineligible beverage containers? (ICRC)</p> <p>Collect and consider reports from consumers and scheme participants on individual instances of price changes in beverages before and after the introduction of the scheme. (IPART)</p>	<p>Look for evidence of:</p> <ul style="list-style-type: none"> • a change in prices of beverages in different beverage markets before and after the scheme commenced • price differences in eligible and ineligible beverage containers from before and after the scheme commenced.
Cost of administering the scheme	Collect information from the Scheme Coordinator on monthly costs of the scheme by container material type. (IPART)	Collect information from the product responsibility organisation on costs of the scheme.
Cost recovery	<p>How have beverage manufacturers and distributors passed costs on to the rest of the industry? How much of these costs have been passed on? (ICRC)</p> <p>Quantifying the extent to which the costs of the Container Deposit Scheme (CDS) are passed through to beverage prices using product level price data. (IPART)</p>	<p>Look for evidence of:</p> <ul style="list-style-type: none"> • how beverage manufacturers and distributors have passed costs on to the industry • what proportion of the costs have been passed on to industry.
Cross-border impacts on prices	How have ACT and NSW beverage prices changed since 1 December 2017? Was there an observed change in ACT prices following the introduction of the NSW CDS? (ICRC)	Look for evidence of cross-border impacts.
Cross-border impacts on volumes	How has the pattern of beverage purchases and container flows between ACT and NSW changed following the introduction of the NSW CDS and subsequent introduction of the ACT CDS?	Look for evidence of changes to the pattern of beverage purchases and container flows between NSW and Queensland following the introduction of the NSW scheme and the Queensland scheme.
Other matters	What additional issues have emerged or have been identified by stakeholders and consumers?	Look for evidence of other issues that may have emerged or have been identified by stakeholders and consumers.

Source: ICRC 2018, p. 15; IPART 2018, p. 15.

Both IPART and ICRC disaggregated price impacts by reviewing different beverage types and considered other impacts on prices such as industry trends, pricing strategies, seasonality and input cost inflation (ICRC 2018, pp. 16–18; IPART 2018, pp. 12–24).

The Commission proposes to compare Queensland beverage prices against the same products in New South Wales (with a scheme) and Victoria (without a scheme). A comparison will also be made with the year prior to implementation. The Commission also proposes to disaggregate information by beverage type and geographic region.

This approach includes price impact analysis and comparison for 'captive markets'. Captive markets occur where consumers face a limited number of competitive suppliers and therefore a lack of options in purchasing decisions. This can result in higher prices and fewer product options, where the consumer's only choice is to either purchase a product from a specific supplier at a specific price or not make the purchase at all. In the context of this review, there are markets that can be considered 'captive' such as entertainment and sporting venues. The Commission is seeking feedback as to which captive markets should be included in its review. The Commission is also seeking feedback on approaches for monitoring captive markets, and on related data sources.

Questions

- Is the Commission's approach to reviewing prices appropriate? Are there alternative approaches that should be considered?
- Is there evidence of price increases attributed to the scheme that are more than the scheme's cost per eligible container and refundable amount?
- Is there evidence of price increases, attributed to the scheme, for beverages sold in ineligible containers?
- Are there differences in price impacts as a result of the scheme on different beverage types, organisation sizes/types, or geographical region?
- Given there are neighbouring schemes, are there any cross-border impacts?
- How might the scheme influence beverage manufacturers' choice of beverage container?
- Are differences in scheme prices between jurisdictions having an impact on production and availability of beverage products?
- How have captive market prices been impacted by the scheme?
- Are there other factors the Commission should consider regarding scheme-related price changes?
- The terms of reference to this price monitoring review require that the Commission examine other matters that would be relevant to the consumer interest. Are there other matters relevant to the consumer interest that the Commission should review?
- Which markets should be included when the Commission is reviewing captive markets? What sorts of relevant data are available for captive markets?

4.2 Competition

Competition generally results in better outcomes for consumers through lower prices, higher service standards and more innovation. Where competition is weak, beverage manufacturers have more scope to pass on cost increases without the fear of losing customers to competitors.

A challenge for the Commission will be identifying and defining the relevant markets within which to assess competition. The Australian beverage industry has a complex supply chain involving manufacturers, wholesalers, distributors and retailers, which include cafes, bars, wineries, supermarkets, stadiums, and hotels. These organisations can be horizontally and vertically integrated and experience varying degrees of competition.

There may also be differences in the degree of substitution between geographical localities and beverage types. For example, there are many different types of beverages. While there is limited substitutability between alcoholic and non-alcoholic beverages, there is more substitutability between different types of alcoholic beverages and between different non-alcoholic beverages.

The Commission intends to take a similar approach when assessing the impact of the scheme on competition in the container beverage market as the approach IPART and ICRC adopted (Table 4.2).

There are unique elements that the Commission may need to consider however. For example, Queensland is bordered by jurisdictions that also have container deposit schemes and this may reduce the impact of cross-border competition issues that can arise.

IPART's review found that the beverage industry was 'workably competitive' in NSW and that this was consistent with other Australian reviews such as the Australian Competition and Consumer Commission's review of grocery retailing (ACCC 2008, p. xvi) and the Competition Policy Review final report which reviewed supermarket competition (Harper et al. 2015, p. 89).

Table 4.2 Approaches to reviewing impacts on competition

Indicator	NSW and ACT approaches to reviewing competition impacts	Proposed Queensland approach
Market structure/ market share	Is there any evidence of an increase in market concentration, firms exiting the market, or reduction in new entry following the container scheme? (IPART and ICRC)	Look for evidence of: <ul style="list-style-type: none"> • changes to market concentration • firms entering or exiting the market after the commencement of the scheme.
Availability of information to consumers	Is there less information available to consumers or has it become more complex? (IPART)	Review if there is less information available to consumers than before the scheme started.
Barriers to entry and exit	Is there a substantial increase in the cost of entering the market as a result of the container schemes? Are these fixed or variable costs? Are firms exiting the market, or not entering the market as a result and affecting the competitive dynamic? Is the impact disproportionate on smaller firms? (IPART and ICRC).	Look for evidence of: <ul style="list-style-type: none"> • whether the cost of entering the market has increased significantly • firms not entering the market due to cost and whether this affects the competitive dynamic • disproportionate impacts on smaller firms.
Consumer behaviour	Are there any obstacles to switching suppliers as a result of the container scheme? Is there any evidence of consumers buying more non-scheme beverages? (IPART). Are consumers changing consumption behaviour as a result of the container scheme? (ICRC)	Look for evidence of: <ul style="list-style-type: none"> • any obstacles to switching suppliers because of the scheme • consumers changing consumption behaviour as a result of the scheme.
Supplier behaviour	How have the costs of the CDS been passed through to consumers? Is there any evidence of less innovation or rivalry between firms? Have there been any changes to the performance and conduct of suppliers? (IPART) Are there changes in behaviour of suppliers, distributors or retailers as a result of the scheme? (ICRC)	Look for evidence of: <ul style="list-style-type: none"> • how the costs of the scheme have been passed through to consumers • changes to performance and conduct of suppliers, distributors or retailers.

Indicator	NSW and ACT approaches to reviewing competition impacts	Proposed Queensland approach
Cross border impacts on supply pricing	Are consumers and suppliers changing beverage purchasing, supply and pricing behaviours as a result of differences between ACT and NSW schemes? (ICRC)	Look for evidence of changes to consumer or supplier behaviour due to differences between Queensland and NSW or Northern Territory schemes.
Cross border container movements	What transfers of full and empty containers occurred before and after the introduction of the scheme? (ICRC)	Look for evidence of changes to cross-border transfers of containers before and after the scheme.

Source: ICRC 2019, p. 21; IPART 2018, p. 27.

Questions

- Has the introduction of the scheme had any unintended impacts on the market (for example, impacts on market efficiency, barriers, consumer and producer behaviour)?
 - Has the scheme had different impacts on competition in different markets within the beverage industry?
 - Are any cross-border issues affecting competition?
 - Have the governance and operation of the scheme changed competitive dynamics within the beverage market?
 - Have competition dynamics changed among eligible and non-eligible container beverages?
-

4.3 Performance and conduct

The terms of reference require the Commission to provide advice and recommendations to the Queensland Government to address any adverse pricing effects or behaviours arising from the operation of the scheme. The Commission has been tasked with reviewing the effect of the scheme on the performance and conduct of beverage manufacturers and retailers.

Poor performance and conduct can have adverse impacts on consumers and other industry stakeholders, possibly warranting government intervention, such as through regulation, to ensure the market is operating effectively.

There is currently no price regulation of the Queensland beverage industry. All businesses are, however, subject to the *Australian Competition and Consumer Act 2010*, which promotes competition and fair trading.

When IPART (2018, p. 28) and the ICRC (2018, p. 16) reviewed whether there was evidence of ‘unfair or unjust behaviour and market outcomes,’ they drew on the ACCC’s guidance about relevant indicators, including:

- providing false or misleading claims (ACCC nd)
- imposing unfair contract terms (ACCC nd)
- undertaking unconscionable or anticompetitive conduct (ACCC nd).

IPART (2018, p. 29) also applied the following criteria to assess complaints received about the NSW scheme:

- the materiality of the behaviour and market outcome
- whether conduct could result in significant consumer or small business detriment
- the nature of the allegations made to them or other relevant bodies about the suppliers’ behaviour or market outcome
- whether it is more appropriate for another regulator to investigate allegations of unfair business practices or competition issues.

The Commission’s approach will be to report to the government, with recommendations, should it find any instances of poor performance or conduct. The ACCC’s guidance on unjust behaviour will be used as a guide, in addition to some of IPART’s criteria outlined above.

Whilst the Commission is seeking information—through written submissions—regarding the behaviour of industry stakeholders, the Commission will only report to the government where a behaviour meets the criteria above. Any formal complaints seeking direct resolution of issues should be submitted directly to the relevant complaints body.

Questions

- Is the Commission's proposed approach to reviewing and reporting on unfair or unjust behaviour appropriate, or should the Commission adopt an alternative approach?
 - Are there instances of unfair or unjust behaviour and market outcomes as a result of the scheme? If so, what are they, who do they impact, and how extensive are they?
 - Are there elements of the scheme that result in systematic unfair or unjust behaviour and market outcomes? Do these elements relate to specific segments of the beverage industry, business type or beverage type?
-

5. Consultation and next steps

The Commission welcomes feedback through written submissions, one-on-one meetings, and data that is provided to the review.

Submissions will be treated as public documents and will be published on the Commission's website. If a submission contains genuinely confidential information, it will be best if the confidential material is provided in a clearly marked separate attachment.

We look forward to undertaking consultation, including with individual beverage manufacturers, retailers, peak bodies, peak retail and hotel associations and consumer organisations. We welcome and encourage everyone's input.

Submissions are due by close of business on **12 June 2019**. They can be lodged online or via post.

The Commission will review feedback from submissions and consultations and analyse data to inform the draft report which will be published on 1 August 2019. After that, there will be an opportunity for further consultation prior to the publishing of the final report on 1 February 2020. For continued updates, anyone can register their interest [here](#).

Appendix A Terms of reference

Terms of Reference

Context

The Queensland Government has decided to commission independent monitoring and analysis of the price impacts of the Container Refund Scheme (CRS) over its first 12 months.

The Container Refund Scheme commenced on 1 November 2018. The scheme is funded under legislation by a surcharge on beverage manufacturers.

The underlying policy aim of this review is to ensure that consumer interests are protected from unjustified pricing behaviour such as retailers and suppliers using the introduction of the scheme to increase prices significantly higher than what would be expected or reasonable.

It is anticipated that the beverage manufacturers will pass the costs of the scheme on to their customers, with some price increases. Price increases should be reasonable and reflect the rate of the surcharge.

Not all beverage products or containers are eligible for a refund under the CRS. For example, plain milk containers are excluded from the scheme. There should be no cost impact on excluded products.

Task

The Queensland Productivity Commission (QPC) is directed to monitor and report on the price impacts of the CRS over its first 12 months of operation.

This specifically comprises:

- the effect of the CRS on prices of beverages sold in Queensland in an eligible container;
- the effect of the CRS on competition for beverages and the performance and conduct of beverage manufacturers and retailers;
- any other specific market impacts on consumers that arise from the commencement of the CRS; and
- any other matters which are relevant to the consumer interest.

The QPC should monitor and report on price impacts across a range of consumer, geographical, supplier, retailer and product categories, including:

- state-wide, regions and localities;
- types of beverages; and
- large and small retailers, ranging from general grocers, liquor stores, hotels and online distribution.

Specifically, the QPC is asked to consider pricing impacts in relation to beverage products with 'captive' markets such as entertainment and sporting venues.

The QPC should provide advice and recommendations to the Government to address any adverse pricing effects or behaviours arising from the operation of the scheme.

Consultation

The QPC must undertake a public consultation process and targeted sectoral consultation with, but not limited to, individual beverage manufacturers and retailers, peak beverage bodies (alcohol and non-alcohol), peak retail and hotel associations and consumer organisations.

Reporting

The QPC must publish an Issues Paper by 1 May 2019, an Interim Report by 1 August 2019 and a Final Report by 1 February 2020. The QPC may also report to the Government at any time on matters relevant to price and market impacts of the CRS that arise during the inquiry.

Appendix B Eligible and non-eligible containers

Eligible containers*			
Beverage	Container type	Container size	
Non-alcoholic		Eligible ^{*(exclusions apply)}	Excluded
fruit or vegetable juice - pure	all materials	• Less than 1L	• Less than 150mL • 1L or greater
milk - flavoured: - cow's or other animal milk - soy or other plant-based milk - low fat milk - ultra heat-treated (UHT) milk, etc.	all materials	• Less than 1L	• Less than 150mL • 1L or greater
soft drinks, carbonated	all materials	• 3L or less	• Less than 150mL • Greater than 3L
soft drinks, non-carbonated - energy drinks - fruit drinks - ready to drink cordials - sports drinks - vitamin drinks	all materials	• 3L or less	• Less than 150mL • Greater than 3L
water intended for human consumption	aseptic packs/casks (made from cardboard, plastic or foil)	• Less than 1L	• Less than 150mL • Greater than 3L
	all other materials	• 3L or less	• Less than 150mL • Greater than 3L

Notes: * Most aluminium, glass, PET, HDPE, steel and paperboard drink containers between 150ml and 3L will be eligible

Source: COEX 2019

Eligible containers*			
Beverage	Container type	Container size	
Alcoholic		Eligible*(exclusions apply)	Excluded
alcoholic beverages (non-grape): - derived from fruit or other substances such as: ◦ cider ◦ alcoholic lemonade ◦ plum wine ◦ sake etc.	all materials	• 3L or less	• Less than 150mL • Greater than 3L
beer/ale/stout	all materials	• 3L or less	• Less than 150mL • Greater than 3L
pure spirituous liquor, distilled alcoholic beverage: - brandy - gin - rum - vodka - whisky	glass	NIL	• all containers
	all other materials	• 3L or less	• Less than 150mL • Greater than 3L
wine, alcoholic and non-alcoholic - beverage produced by the fermentation of grapes only - does not include grape juice which has not undergone fermentation process	glass	NIL	• all containers
	aluminium cans	• Less than 1L	• Less than 150mL • 1L or greater
	plastic	• Less than 250mL	• Less than 150mL • 250mL or greater
	sachets (plastic or foil)	• Less than 250mL	• Less than 150mL • 250mL or greater
	aseptic packs/casks (made from cardboard, plastic or foil)	• Less than 1L	• Less than 150mL • 1L or greater
Spirit-based, flavoured alcoholic beverage: - any beverage that contains spirituous liquor plus additional beverages, ingredients or flavours: ◦ alcopops ◦ ready to drink alcoholic beverages (RTDs) ◦ spirit-based beverages sold in casks	all materials	• Less than 1L	• Less than 150mL • Greater than 3L
wine-based, flavoured alcoholic beverage: - any beverage that contains wine plus additional beverages, ingredients or flavours such as: ◦ fruit flavoured wine ◦ wine coolers ◦ ready to drink alcoholic beverages (RTDs)	aseptic packs/casks (made from cardboard, plastic or foil)	• Less than 1L	• Less than 150mL • 1L or greater
	All other materials	• 3L or less	• Less than 150mL • Greater than 3L

Notes: * Most aluminium, glass, PET, HDPE, steel and paperboard drink containers between 150ml and 3L will be eligible

Source: COEX 2019

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