

# **Independent Competition and Regulatory Commission (Inquiry into beverage price impacts relating to the ACT Container Deposit Scheme) Terms of Reference Determination 2018\***

## **Disallowable Instrument DI2018-69**

Made under the *Independent Competition and Regulatory Commission Act 1997*, section 15 (nature of industry references) and section 16 (terms of industry reference)

---

### **1 Name of instrument**

This instrument is the *Independent Competition and Regulatory Commission (Inquiry into beverage price impacts relating to the ACT Container Deposit Scheme) Terms of Reference Determination 2018*

### **2 Commencement**

This instrument commences on the day after it is notified.

### **3 Industry reference for investigation (Section 15)**

I, Meegan Fitzharris, Minister for Transport and City Services, pursuant to Section 15(1)(e) of the *Independent Competition and Regulatory Commission Act 1997*, provide an industry reference to the Independent Competition and Regulatory Commission to investigate the impact on beverage prices and competition in the beverage industry of the ACT Container Deposit Scheme (“Scheme”) to be established under Part 10A of the *Waste Management and Resource Recovery Act 2016*.

### **4 Terms of reference (Section 16)**

I request that the Commission monitor and report on the impact on beverage prices and competition in the beverage industry of the Scheme in accordance with these terms.

(1) I request the Commission monitor:

- a. the effect of the Scheme on prices of beverages supplied in a container in the Territory;
- b. the performance and conduct of beverage suppliers in relation to beverage pricing in the Territory before and after the implementation of the Scheme; and
- c. any other market impacts on consumers that arise from the implementation of the Scheme, for the period from 1 June 2018 to 30 June 2019 (monitoring period).

(2) The Commission is to provide a report to the Minister for Transport and City Services regarding:

- a. the effect of the Scheme on prices of beverages supplied in a container in the Territory for the period from 1 June 2018 to 30 June 2019;
- b. the framework for monitoring the Scheme including the behaviour of suppliers;
- c. the effect of the Scheme on suppliers; and
- d. any recommendations for actions by government to address any adverse effects or behaviours arising from the operation of the Scheme.

(3) In undertaking the monitoring, the Commission should have regard to:

- a. any changes in prices of beverages before or after 1 June 2018 that purport to be in response to the Scheme;
- b. any information provided by Scheme participants and consumers;
- c. the behaviour of suppliers and major retailers before and after 1 June 2018 including whether beverage prices have increased beyond the amount suppliers are charged by the Scheme Coordinator;
- d. the manner in which beverage suppliers are recovering the costs imposed on them by the Scheme; and
- e. any impacts on beverage prices in the Territory which could be attributed to the commencement of the NSW Container Deposit Scheme on 1 December 2017; and
- f. any impacts on the cross border movement of beverage containers which could be attributed to the commencement of the Scheme and its interaction with the NSW Container Deposit Scheme; and

g. any other associated matters the Commission considers relevant.

The Commission should undertake public consultation. The Commission is requested to release a progress report in February 2019 which provides a draft framework for the review and reports on the first three months of the ACT Container Deposit Scheme.

The Commission is to provide a final report to the Minister for Transport Canberra and City Services in July 2019. The final report is to also recommend whether any further monitoring of beverage prices or any other monitoring of the impact of the container deposit scheme not included in these terms of reference is considered necessary.

At any time during the monitoring period, if the Minister or the Commission considers that any behaviour or market outcomes have arisen that appear unfair or unjustified on consumers or Scheme participants, the Commission is to:

1. Investigate the matter immediately at its own discretion or, on request from the Minister, and
2. Provide an interim report to the Minister as soon as practicable.

#### Definitions

**Act** means the *Waste Management and Resource Recovery Act 2016*.

**Beverage, Container, Scheme Coordinator, Scheme participant, Supply Arrangement** all have their meaning given by the Act

**Container Deposit Scheme** means the scheme established by Part 10A of the Act.

**Supplier** means a supplier, as defined in the Act, who is required under the Act to enter into a supply arrangement with the Scheme Coordinator.

Meegan Fitzharris MLA

Minister for Transport and City Services

Minister administering the *Waste Management and Resource Recovery Act 2016*

4/4/2018