

Australian Capital Territory

Waste Management and Resource Recovery (Processing Refund Protocol) Determination 2018

Disallowable Instrument DI2018 - 208

made under the

Waste Management and Resource Recovery Act 2016, section 64L (Processing Refunds)

1 Name of instrument

This instrument is the Waste Management and Resource Recovery (Processing Refund Protocol) Determination 2018.

2 Commencement

This instrument commences on 30 June 2018.

3 Processing Refund Protocol

The attached document is the Processing Refund Protocol made by the Waste Manager under section 64L(2) of the *Waste Management and Resource Recovery Act 2016*.

Jim Corrigan
Deputy Director-General, Transport Canberra and City Services
Waste Manager

27 June 2018



ACT
Government

ACT CONTAINER DEPOSIT SCHEME

PROCESSING REFUND PROTOCOL

*Section 64L – Waste Management and Resource
Recovery Act 2016*

TRANSPORT CANBERRA AND
CITY SERVICES DIRECTORATE

JUNE 2018

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1 DOCUMENT INFORMATION

DOCUMENT DETAILS

Name: Processing Refund Protocol

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REVIEW AND APPROVAL

Date Approved: 20 June 2018

Date Effective: 30 June 2018

Approved by: Waste Manager
 Jim Corrigan, Deputy Director-General City Services, Transport Canberra and City Services

Review period: 12 Months from effective date

VERSION CONTROL

| Version | Issue Date | Author | Details | Signature |
|---------|--------------|-----------------|--|-----------|
| 1.0 | 13 June 2018 | Julian Thompson | Draft for approval | |
| 1.1 | 20 June 2018 | Jim Corrigan | Waste Manager, Deputy Director-General City Services | |

2 ABOUT THIS DOCUMENT

This document is the “Processing Refund Protocol” for Material Recovery Facilities (Protocol) made under section 64L(2) of the *Waste Management and Resource Recovery Act 2016* (Act).

It sets out the methodology and conditions to be applied in determining the amounts payable to Material Recovery Facility (MRF) Operators by the Scheme Coordinator as Processing Refunds under the ACT Container Deposit Scheme (CDS).

3 APPLICATION

3.1 PROCESSING REFUND PROTOCOL APPLIES

Under section 64L(5) of the Act, a Processing Refund is not payable to a MRF Operator unless a Processing Refund Protocol is in force in relation to the Processing Refund.

This Processing Refund Protocol applies only to Processing Refunds in respect of Kerbside Containers received, processed and dispatched for recycling by a MRF Operator within the ACT. That is, containers directly from:

- (i) the provider of a Waste Collection Service established in the Territory by the Waste Manager under section 64(1) of the Act (that is, from the Territory’s domestic ‘Yellow-Lidded Bin’ comingled recycling collection service); or
- (ii) a domestic kerbside recyclables collection service established in another Australian jurisdiction with a legislated Container Deposit Scheme for which a Processing Refund claim has not been made in that other jurisdiction.

3.2 REFUND SHARING

Further to section 64L(3) of the Act, a MRF Operator is not entitled to be paid a Processing Refund in relation to a container collected in the course of a Waste Collection Service unless (i) and (ii) (below) are satisfied:

- (i) a Refund Sharing agreement is in force between the MRF Operator and the Territory, or between the MRF Operator and a local council in a state with a legislated Container Deposit Scheme, and, the Territory (or Council) has notified the Waste Manager in writing that it considers the terms of the agreement fair and reasonable;

OR

if there is no Refund Sharing agreement in force between the MRF Operator and the Territory (or Council) in a state with a legislated Container Deposit Scheme, the Territory (or Council), has

notified the Waste Manager in writing that it considers it fair and reasonable that there is no Refund Sharing agreement in force.

AND

- (ii) The Waste Manager has approved in writing the Refund Sharing agreement, or the absence of it, and confirmed to the Scheme Coordinator the ability of the MRF Operator to be paid a Processing Refund in respect of those Kerbside Containers collected by, or on behalf of, the Territory (or Council).

In the case of any inconsistency between the Protocol, and the Act and Regulation, the Act and Regulation prevail to the extent of the inconsistency.

4 REVIEW OF PROTOCOL

The Protocol will be reviewed by the Territory, at a minimum, within one year of its publication, and may be reviewed more frequently when considered appropriate by the ACT Government.

5 DEFINITIONS

Terms within this Protocol have the same meaning as defined within the Act or a Regulation made under it. In addition, the following definitions apply unless the context requires otherwise:

Abbreviations

Act the *Waste Management and Resource Recovery Act 2016 (ACT)* as amended by the *Waste Management and Resource Recovery Amendment Act 2017 (ACT)*.

ACT or Territory when used:

- (1) in a geographical sense, the Australian Capital Territory; and
- (2) in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)*.

Annual Recycling Statement the statement required to be produced by the MRF Operator under section 10.1 of this Protocol, each year.

Annual Throughput Reconciliation the report required to be produced by the MRF Operator under section 10.2 of this Protocol, each year.

Approved Person a person approved by the Waste Manager to assess and sign claims for Processing Refunds.

CDS or Scheme the ACT Container Deposit Scheme established by Part 10A of the Act.

Comingled Material means material delivered to MRF, regardless of its Source, which contains mixed materials designated for recycling, separation and processing into Recyclable Materials at the MRF

Kerbside Container a “Container” (as defined in the Act) which is eligible for a refund under the Act; and

- (1) is collected through a Waste Collection Service in the ACT, or in another jurisdiction a domestic Waste Collection Service provided by a Council, commonly known as a Yellow-Lidded Bins recycling service; and
- (2) is eligible for a Processing Refund to be paid in respect of that container as set out in Section 3 of this protocol; and
- (3) which is delivered to the MRF Operator on or after the commencement day of the Container Deposit Scheme; and
- (4) which the MRF Operator has processed and delivered for reuse or recycling.

A Kerbside Container does not include a container:

- (i) for which a Processing Refund is not payable (e.g. a container which is not part of the CDS); or

- (ii) for which a refund has already been paid (e.g. at a collection point, by a Network Operator or from another Container Deposit Scheme); or
- (iii) which has been delivered to a MRF and Sourced from anywhere except a Waste Collection Service in the Territory, or an equivalent domestic recycling service in a state with a legislated Container Deposit Scheme.

| | |
|--|---|
| HDPE | High-density polyethylene. |
| LPB | Liquid paperboard. |
| MRF | a Material Recovery Facility as defined in the Act. |
| MRF Operator | an operator of a Material Recovery Facility in the Territory which receives and processes Kerbside Containers. |
| Method | a method for estimating the total number of Kerbside Containers processed for reuse or recycling by a MRF Operator, being either weighing or direct counting. |
| Output Material Type | has the meaning given by section 7.3 of this Protocol. |
| PET | Polyethylene terephthalate. |
| Protocol or Processing Refund Protocol | this “Processing Refund Protocol” for Materials Recovery Facilities. |
| Processing Refund | has the meaning given by the Act. |

| | |
|--------------------------------|---|
| Processing Refund Requirements | the requirements that must be complied with by an MRF Operator for making a claim for a Processing Refund, as set out in section 7.8. |
| Kerbside Ratio | the calculated ratio of the total quantity of all Recyclable Material received at a MRF to the quantity of Recyclable Materials (which includes Kerbside Containers) received at a MRF from domestic kerbside Sources, determined in accordance with section 8.2 of this Protocol. This includes kerbside Sourced recyclables from the Territory and any other jurisdictions which have a legislated Container Deposit Scheme. |
| Recyclable Materials | any or all of aluminium, PET, HDPE, mixed plastics , glass, steel and LPB or any other material defined as a Recyclable Material by the Territory from time to time. |
| Refund Amount | has the meaning given by the Act. |
| Refund Sharing Agreement | a written agreement between a MRF Operator and the Territory, or a local council in a state with a legislated Container Deposit Scheme, under which the operator agrees to pay the Territory or the council (as the case may be) a proportion of all Processing Refund Amounts paid to the MRF Operator by the Scheme Coordinator (on or after the Scheme commencement day) in respect of containers collected by, or on behalf, of the Territory or the council, from its area, as part of a Waste Collection Service. |
| Regulation | <i>Waste Management and Resource Recovery Regulation 2017</i> |
| Sampling Plan | the plan prepared by the Scheme Coordinator and approved by the Waste Manager, under section 9.2 of this Protocol. |
| Scheme Coordinator | has the meaning given by the Act. |
| Source | the location from which Recyclable Materials delivered to a MRF originated, or the location from which those materials were collected from residential properties. A Source may include the ACT, a business, a suburb or location, or a local government agency within a State or Territory. |

| | |
|--------------------------|---|
| Waste Collection Service | has the meaning given by the Act or, when applied to a local Council in a state with a legislated Container Deposit Scheme, means a domestic recyclables collection service carried out by, or on behalf of a local government authority. |
| Waste Manager | has the meaning given by the Act. |
| Yellow-Lidded Bins | the Territory's 'Yellow-Lidded Bin' domestic comingled recycling stream, being a Waste Collection Service established in the Territory by the Waste Manager under section 64(1) of the Act, or a domestic recyclables collection operated by, or on behalf of, a local government authority in another jurisdiction with a legislated Container Deposit Scheme. |

6 AIMS OF THE PROTOCOL

The aims of the Protocol are to:

- (a) protect the integrity of the CDS;
- (b) maximise legitimate container refunds for containers processed in the Territory which are collected from domestic kerbside collections (Yellow-Lidded Bins) in the ACT and states with a corresponding law;
- (c) support equity between scheme participants; and
- (d) promote efficiency in container collection and counting.

7 MAKING A CLAIM

7.1 MRF OPERATOR MAY MAKE A CLAIM

A MRF Operator may make a claim for the payment of a Processing Refund for Kerbside Containers processed by the MRF and delivered from the MRF for reuse or recycling by lodging a Processing Refund claim with the Scheme Coordinator.

For each quarter, only one Processing Refund claim can be made by a MRF Operator for each MRF that it operates.

It is a condition of a MRF Operator being entitled to submit a Processing Refund claim that it has, in relation to the relevant quarter:

- (a) measured and reported to the Scheme Coordinator and the Waste Manager the total weight of all materials received at and dispatched from each MRF, including a breakdown by Source and Material Type (see Section 7.5);
- (b) where Method 1 (Weight based) has been used to estimate the number of Kerbside Containers processed, measured and reported to the Scheme Coordinator and the Waste Manager, the total tonnes of Kerbside Containers delivered each month from each MRF for reuse or recycling by Output Material Type (Section 7.6); and
- (c) where Method 2 (Direct counting) has been used to calculate the number of Kerbside Containers processed, counted and reported to the Scheme Coordinator and the Waste Manager, the total number of Kerbside Containers delivered each month from each MRF for reuse or recycling by Output Material Type (Section 7.6).

7.2 AVAILABLE CALCULATION METHODS

One of the following methods must be used for estimating or calculating the total number of Kerbside Containers processed for reuse or recycling by a MRF Operator during any given quarter:

- (a) Method 1 – Weighing (refer to Section 7.6); or
- (b) Method 2 – Direct Counting (refer to Section 7.7).

7.3 OUTPUT MATERIAL TYPES

All materials dispatched from a MRF for the purpose of reuse or recycling, (including Kerbside Containers and other materials), must be separated by the MRF Operator into one or more of the following Output Material Types:

- (a) Aluminium;
- (b) PET;
- (c) HDPE
- (d) Mixed plastics (PET, HDPE and other plastics);
- (e) Steel;
- (f) Liquid Paperboard;
- (g) Glass,
- (h) Fibre (paper & cardboard), and
- (i) Other output material (as approved in writing by the Waste Manager).

The MRF Operator may seek approval of other Output Materials by application in writing to the Waste Manager, copied to the Scheme Coordinator, at least 28 calendar days before the commencement of the

quarter for which a MRF Operator intends to make a Processing Refund claim for the proposed Output Material Type for which approval is sought.

The Waste Manager may add or approve new Output Material Types (including by approval of an application under this section) in its absolute discretion.

7.4 NOMINATION OF METHOD

The Waste Manager nominates in this Protocol which of the available methods (section 7.2) for estimating or calculating the number of Kerbside Containers processed through a MRF will apply to which specific Output Material Types as set out in the Table below.

TABLE 1: Specific Methodology by Material Type

| Output Material Type | Method nominated by Waste Manager |
|--------------------------------|-----------------------------------|
| Aluminium | Method 1 - Weighing |
| PET | Method 1 - Weighing |
| Glass | Method 1 - Weighing |
| HDPE | Method 1 - Weighing |
| Mixed plastic (including HDPE) | Method 1 - Weighing |
| Steel** | No method specified |
| LPB** | No method specified |

This table may be modified as a result of ongoing audit results from sampling carried out by the Scheme Coordinator or Territory and changing requirements or trends, as indicated by the Scheme Coordinator or the Waste Manager.

Any changes to the Methods available for different Output Material Types will be reflected in an updated version of this Protocol being issued by the Waste Manager.

The nominated method in Table 1 may change in the future depending on the capability of a MRF being able to auto-count materials such as Aluminium, PET, HDPE and Mixed Plastics. The Territory expects that in the near future, MRF's will be able to introduce technology to auto count eligible containers.

**No method has been specified at the present time for Steel and LPB, therefore these materials will not be eligible for a Processing Refund. This is due to the low number of CDS Eligible Containers manufactured from these materials currently included in kerbside collection audit data. This Protocol may be updated to nominate a Method for Steel and LPB at a later date.

7.5 MEASUREMENT AND REPORTING OF TOTAL MATERIALS RECEIVED AND DISPATCHED BY A MRF OPERATOR

A MRF Operator must measure and report for each month the following information to the Scheme Coordinator in the manner and format advised by the Scheme Coordinator within 14 days after the end of that month.

REPORTING

The **Source** of each load of material received at a MRF must be recorded as being from one of the following Sources:

- (a) **ACT Kerbside:** The domestic kerbside recyclables collection of Yellow-lidded Bins (containing Kerbside Containers) collected by a Waste Collection Service from households in the ACT;
- (b) **Council Kerbside:** The domestic kerbside recyclables collection of Yellow-lidded Bins (containing Kerbside Containers) collected by or on behalf of a local government authority in another Australian jurisdiction with a legislated Container Deposit Scheme;
- (c) **ACT Other:** Recyclable Materials Sourced from within the ACT (e.g. commercial & industrial recyclables, waste paper & cardboard, containers where a refund has already been paid);
- (d) **Council Other:** Recyclable Material from another Australian jurisdiction with a legislated Container Deposit Scheme (e.g. commercial & industrial recyclables, waste paper & cardboard, containers where a refund has already been paid);
- (e) **Any other:** Any material Sourced from an Australian jurisdiction without a legislated Container Deposit Scheme or loads containing materials from multiple Sources.

Each load of material received at a MRF from each of these Sources must be identified as to whether it contains Comingled Material **or** material designated for recycling from a single material stream Source (eg. a Source separated paper & cardboard collection).

Note: *These Sources are mutually exclusive*

A MRF Operator must also ensure each load of waste or recovered resources leaving the MRF is weighed and recorded as being from one of the following outbound material **streams**:

- (i) the weight of material containing Kerbside Containers (reported by Output Material type) delivered from the MRF for reuse or recycling in the month; or
- (ii) the weight of recovered resources (reported by Output Material type) which do not contain Kerbside Containers in the month; or
- (iii) The weight of non-recyclable waste materials generated at the MRF, whether amongst recyclables delivered to the MRF, or generated as part of processing of recyclables at the MRF, which are to be disposed of, or sent to another waste facility for further processing.

Note: *These streams are mutually exclusive*

Additionally, a claimant MRF Operator must also ensure that the ACT kerbside and Council kerbside material is received, counted, processed and weighed, separately from all other materials received at the MRF.

7.6 METHOD 1 - WEIGHING

A MRF Operator applying Method 1 for one or more Output Material Types must measure and record the total quantity and Source of all material (including Sources containing Kerbside Containers) received at each of its MRFs.

The quantity of materials received at a MRF must be determined by measuring the weight of that material using calibrated weighing equipment, and in accordance with the *National Measurement Act 1960* (Cth) (as amended or replaced from time to time), and in accordance with the following:

- (a) the weight must be measured in tonnes;
- (b) the weight must be measured using weighing equipment that has the following minimum accuracy:
 - i. For weighbridges: +/- 20kg;
 - ii. For all other weighing equipment: +/- 1 kg
- (c) the weight must be recorded to a minimum 2 decimal places;
- (d) weighing equipment must be calibrated in accordance with all manufacturer requirements; and
- (e) weighbridges, where used as weighing equipment for the purpose of this Section, must be verified (within the meaning of the *National Measurement Act 1960* (Cth) at least once per year.

Where Method 1 is applied, verification of the conversion factor from weight (per Output Material Type) to Kerbside Container number (called the Eligible Container Factor – Efi) must be undertaken. This verification varies depending on Output Material Type:

- I. For Glass containers: the conversion factor (Efi) is derived from the number of Kerbside Containers counted per tonne of kerbside comingled recycling received at a MRF.
- II. For all other containers: the conversion factor (Efi) is derived from the number of Kerbside Containers per tonne of that Output Material type delivered from a MRF for reuse or recycling.

More detail about calculating the Eligible Container Factor for a particular Output Material Type is in contained in section 9.2.

REPORTING

The reporting requirements in section 7.5 apply for outbound material streams

7.7 METHOD 2 - DIRECT COUNTING (MANUAL OR AUTOMATED)

A MRF Operator applying Method 2 for one or more Output Material Types must count the number of individual Kerbside Containers, of each relevant Output Material Type, delivered from a MRF for reuse or recycling.

Counting under Method 2 may be undertaken on a manual or automated basis.

Where Method 2 is applied, manual recounts must be undertaken monthly of the proportion of Kerbside Containers and other material determined in accordance with the Sampling Plan (as detailed in Section 9.2) to assess the accuracy of the counting procedures undertaken.

Documentary evidence of all recounts must be maintained by the MRF Operator. Manual recounts can be undertaken concurrently where counting under Method 2 is undertaken on an automated basis.

REPORTING

A MRF Operator must report for each month the following information to the Scheme Coordinator in the manner and format advised by the Scheme Coordinator within 14 days after the end of that month:

- (a) The reporting requirements in section 7.5; and
- (b) The number of Kerbside Containers delivered from the MRF for reuse or recycling, by Output Material Type.

7.8 MAKING A PROCESSING REFUND CLAIM

Processing Refund claims must:

- (a) be made in writing by a MRF Operator;
- (b) include any information, documents or reports required under the Act or Regulation or prescribed under this Protocol, to be included with the claim (together, the “**Processing Refund Requirements**”);
- (c) be signed by an Approved Person who has assessed the claim and determined that the Protocol has been correctly applied in determining the amount of the claim;
- (d) be accompanied by a statutory declaration signed and completed in accordance with Section 7.10 by the Approved Person who has assessed the claim;
- (e) be lodged with the Scheme Coordinator in the manner and format advised by the Scheme Coordinator, and received within 10 calendar days after the end of the relevant quarter; and
- (f) have a copy sent to the Waste Manager.

7.9 INFORMATION TO BE INCLUDED WITH ALL PROCESSING REFUND CLAIMS

The following information must be included in each Processing Refund claim:

- (a) the name, address and contact details of the MRF Operator making the claim;
- (b) the ABN and ACN of the MRF Operator making the claim;
- (c) the name and work contact details of a contact person for the claim;
- (d) bank account details, including BSB and account number, for payment of Processing Refunds;
- (e) the total claimed Processing Refund Amount (excluding any deductions under section 8.4), including the calculations used to determine that sum;
- (f) the following data:
 - a. the total weight of all materials received at the MRF during the quarter, and a breakdown of that total weight by Source;
 - b. where Method 1 is used for any Output Material Type, the total weight of Kerbside Containers and the total weight of all other materials delivered from the MRF for reuse, recycling or disposal during the quarter;
 - c. where Method 2 is used for any Output Material Type, the total number of Kerbside Containers and the weight of all other material and contamination that has been delivered from the MRF for reuse, recycling or disposal during the quarter; and
- (g) the information in the breakdown of the weight of material received at a MRF by Source should include those Sources set out in section 7.5;

Note: The information in section 7.9 (a) – (d) once provided by a MRF Operator in respect of its first Processing Refund claim, does not need to be provided again for the second and subsequent Processing Refund claims unless any of this information has changed and requires updating.

7.10 INFORMATION TO BE VERIFIED

Each Processing Refund claim must be accompanied by a statutory declaration:

- (a) signed by a person approved by the Waste Manager;
- (b) which confirms that:
 - i. based on all reasonable steps having been taken to verify the information in the claim, the claim is accurate and complete;
 - ii. the claimant has correctly applied the Protocol in determining the details of the claim;
 - iii. the Kerbside Ratio applied is true and correct;
 - iv. the material the subject of the claim has not been and will not be the subject of a claim for Refund Amounts from any other Source (including but not limited to another MRF

Operator, a Network Operator or a Collection Point Operator under the Act, or any equivalent participant in a legislated Container Deposit Scheme in another jurisdiction);

- v. the material has been processed by the claimant for reuse or recycling; and
- vi. the material has not been received at the MRF before the commencement date of Part 10A of the Act.

NOTE: In approving persons to sign a statutory declaration relating to a Processing Refund claim, the Waste Manager may require that the person be one of the following:

- (a) a director of a MRF Operator or of the ultimate holding company of the MRF Operator;
- (b) the chief executive officer of a MRF Operator or the ultimate holding company of the MRF Operator;
- (c) the chief financial officer of a MRF Operator or of the ultimate holding company of the MRF Operator;
- (d) the company secretary of a MRF Operator or of the ultimate holding company of the MRF Operator; or
- (e) any designated person to whom the above persons have delegated their authority in writing.

8 ASSESSMENT OF CLAIMS

The Scheme Coordinator is required, on receiving a valid Processing Refund claim, to pay a MRF Operator a Processing Refund for Kerbside Containers that have actually been processed for reuse or recycling by the MRF Operator.

The amount payable by the Scheme Coordinator to a MRF Operator must be determined using the calculation detailed in this Section 8.1.

8.1 CALCULATION OF THE NUMBER OF KERBSIDE CONTAINERS BY OUTPUT MATERIAL TYPE

8.1.1 METHOD 1

Where a MRF Operator makes a Processing Refund claim and has used Method 1 for a particular Output Material Type, the Scheme Coordinator must determine the estimated number of Kerbside Containers processed for reuse or recycling during the quarter using the following calculation:

$$E_i = (Q_i \times S \times EF_i)$$

Where:

E_i is the estimated number of Kerbside Containers processed for reuse or recycling during the quarter for Output Material Type for the quarter.

Q_i is the total weight of Output Material Type measured in tonnes delivered from a MRF for reuse or recycling during the quarter, including Kerbside Containers.

S is the Kerbside Ratio determined using the calculation detailed in Section 8.2.1.

EF_i is the Eligible Container Factor for Output Material Type as referenced in section 9.

8.1.2 METHOD 2

Where a MRF Operator makes a Processing Refund claim using Method 2, for a particular Output Material Type, the Scheme Coordinator must determine the estimated number of Kerbside Containers processed for reuse or recycling during the quarter using the following calculation:

$$E_i = (QE_i \times S)$$

Where:

E_i is the estimated number of Kerbside Containers processed for reuse or recycling during the quarter for Output Material Type.

QE_i is the total counted number of Kerbside Containers for Output Material Type delivered from a MRF for reuse or recycling during the quarter.

S is the Kerbside Ratio determined using the calculation detailed in Section 8.2.1.

8.2 KERBSIDE RATIO OF CONTAINERS

8.2.1 KERBSIDE RATIO

Claims for Kerbside Containers will be assessed and Processing Refunds calculated by the Scheme Coordinator by applying the “Kerbside Ratio” of the weight of materials received by a MRF through kerbside Sources (ACT and other jurisdictions with a Container Deposit Scheme) to the total weight of Comingled Materials received by the MRF.

$$S = N/T$$

Where:

S is the Kerbside Ratio.

N is the total weight of material received at the MRF from domestic comingled kerbside Yellow-Lidded Bin recycling from the ACT and local government (council) areas of another jurisdiction with a legislated Container Deposit Scheme (excluding any material for which a Refund Amount has already been paid).

T is the total weight of all Comingled Material received at a MRF (excluding any material for which a Refund Amount has already been paid). Note: This calculation only relates to Comingled Material being received at a MRF and does not include in the total weight those deliveries that contain “pure” materials, such as paper / cardboard only, where no CDS content is demonstrable.

8.3 CALCULATION OF PROCESSING REFUND

8.3.1 CALCULATION OF THE TOTAL PROCESSING REFUND PAYABLE

The Scheme Coordinator must calculate the total Processing Refund payable to a MRF for each quarter using the following calculation:

$$P_i = \sum E_i \times RA_i$$

Where:

P is the total Processing Refund payable to a MRF Operator for the quarter.

$\sum E_i$ is the sum of the estimated number of Kerbside Containers processed and delivered for reuse or recycling during the quarter for all Output Material Types.

RA_i is the Refund Amount per container, as set out in the Regulation.

This Protocol allows Kerbside Containers from local government (council) areas in other jurisdictions with a legislated Container Deposit Scheme to be identified and entitled to a Processing Refund (see section 3.2), if processed within a MRF located in the ACT.

8.4 DEDUCTION OF SAMPLING COSTS

The Scheme Coordinator may deduct from the total Processing Refund payable to a MRF Operator the direct monetary cost actually and reasonably incurred by it to undertake the procedures set out in the Sampling Plan (Section 9.2).

8.5 CLAIM ASSESSMENT

Where a MRF Operator makes a Processing Refund claim, the Scheme Coordinator must issue the MRF Operator with a claim assessment.

The claim assessment must include:

- (a) the total Processing Refund payable to a MRF Operator for the quarter;
- (b) the sampling cost deduction for a MRF Operator for the quarter;
- (c) the Scheme Coordinator’s assessment of the sum of the estimated number of Kerbside Containers processed for reuse or recycling during the quarter for all Output Material Types;

- (d) where Method 1 was used for any Output Material Type claimed, the Scheme Coordinator’s assessment of the:
 - a. the total weight of each Output Material Type for the quarter;
 - b. the Eligible Container Factor applied to each Output Material Type for the quarter;
 - c. the Ratio applied in calculating the estimated number of Kerbside Containers processed for reuse or recycling during the quarter for each Output Material Type;
 - d. the estimated number of Kerbside Containers delivered for reuse or recycling during the quarter for each Output Material Type;
- (e) where Method 2 is used for any Output Material Type the Scheme Coordinator’s assessment of the:
 - a. total counted number of Kerbside Containers processed for reuse or recycling by a MRF for each Output Material Type in the quarter;
 - b. the estimated number of Kerbside Containers delivered for reuse or recycling during the quarter for each Output Material Type; and
- (f) any other information required to be included in a claim assessment by the Act, Regulation or this Protocol.

8.6 TIMEFRAME FOR ISSUING CLAIM ASSESSMENT

Where a MRF Operator makes a Processing Refund claim, the Scheme Coordinator must issue the MRF Operator with a claim assessment in accordance with Section 8 within 28 calendar days of the end of the quarter to which the claim relates. Where the 28th calendar day falls on a weekend or public holiday, the claim assessment may be issued on the next business day.

8.7 TIMEFRAME FOR PAYMENT OF PROCESSING REFUNDS

Processing Refunds must be deposited into the nominated bank account of a MRF Operator within 7 days of the issuance of the claim assessment by the Scheme Coordinator. The nominated bank account is the bank account listed by a MRF Operator in its relevant claim.

8.8 REFUSAL OF CLAIMS

The Scheme Coordinator may refuse a Processing Refund claim or any aspect of a Processing Refund claim where it reasonably determines that a claim has not been made in accordance with this Protocol.

8.9 AMENDING PROCESSING REFUND CLAIMS – MRF OPERATOR INITIATED

An MRF Operator may request an amendment to a Processing Refund claim assessment by submitting a request in writing to the Scheme Coordinator.

A request for an amendment must be made within 100 calendar days from the date of the original claim and include relevant information supporting the requested amendment. Requests for amendment of a Processing Refund claim assessment will not be accepted by the Scheme Coordinator where the initial Processing Refund claim was not lodged with the Scheme Coordinator within 10 calendar days of the end of the quarter in the approved manner as detailed in Section 7.8.

In deciding whether to amend a Processing Refund claim assessment, the Scheme Coordinator:

- (a) must have regard to the matters required by the Processing Refund Requirements; and
- (b) may have regard to any other matter that it considers relevant.

If the Scheme Coordinator refuses to amend a claim assessment upon request by a MRF Operator, the Scheme Coordinator must notify the MRF Operator accordingly and provide clear and justifiable reasons for refusing.

8.10 AMENDING PROCESSING REFUND CLAIMS – SCHEME COORDINATOR INITIATED

The Scheme Coordinator may amend a Processing Refund claim assessment, even where an amendment has not been requested by the MRF Operator, if one of the following assurance related circumstances occurs:

- (a) a qualified assurance conclusion; or
- (b) an adverse assurance conclusion; or
- (c) a conclusion that the assurance provider is unable to form an opinion about the matter being assured, and

the conclusion is issued in relation to assurance carried out under Section 11 of the Protocol.

If the Scheme Coordinator amends a claim assessment/s on this basis, the Scheme Coordinator must notify the MRF Operator and the Waste Manager accordingly and provide clear and justifiable reasons for the amendment.

8.11 REVIEW OF CLAIM ASSESSMENTS

A MRF Operator may request the Scheme Coordinator to reconsider a Processing Refund claim assessment made under this Protocol. The request must be:

- (a) in writing;
- (b) provide a description of the matter to be reconsidered with reference to the Protocol and relevant supporting information; and
- (c) received by the Scheme Coordinator no later than 60 calendar days after the assessment is made.

The Scheme Coordinator must reconsider the assessment and confirm, vary or set aside the original assessment. The Scheme Coordinator must give written notice of its decision regarding the reconsideration to the MRF Operator within 60 calendar days after the request is received by the Scheme Coordinator.

8.12 RECONCILIATION OF PAYMENT OF PROCESSING REFUNDS

8.12.1 UNDERPAYMENT

Where a Processing Refund claim assessment is amended or reviewed under this Protocol and it is determined that there has been an underpayment to a MRF Operator, the amount of the underpayment is a debt due from the Scheme Coordinator to the MRF Operator.

The Scheme Coordinator must deposit the outstanding Processing Refund Amount into the nominated bank account of the MRF Operator within 7 days of amending the claim assessment and within 7 days of the provision of written notice of decision under Section 8.11.

8.12.2 OVERPAYMENT

Where a Processing Refund claim assessment is amended or reviewed under this Protocol and it is determined that there has been an overpayment to a MRF Operator, the amount of the overpayment is a debt due from the MRF Operator to the Scheme Coordinator.

The Scheme Coordinator must advise the MRF Operator in writing where there has been an overpayment and detail the extent of that overpayment.

The MRF Operator must:

- (a) reimburse the Scheme Coordinator the total amount that has been overpaid within 7 days of being notified of the overpayment by the Scheme Coordinator; or
- (b) where the MRF Operator believes on reasonable grounds that a lump sum repayment will create financial hardship, it may either:
 - a. make repayments by a series of instalments under a repayment negotiated between the MRF Operator and the Scheme Coordinator; or
 - b. make repayments by way of one, or a series of, deductions negotiated between the MRF Operator and the Scheme Coordinator from any future Processing Refunds otherwise payable to the MRF Operator.

9 ELIGIBLE CONTAINER FACTOR

9.1 DETERMINING ELIGIBLE CONTAINER FACTOR

The Eligible Container Factor (EFi) referred to in section 8 will be calculated periodically by the Scheme Coordinator as requested and approved by the Waste Manager. The EFi will be published by the Scheme Coordinator and may be updated from time to time to reflect changes in the mix of beverage container materials and packaging technology.

The Eligible Container Factor for each Output Material Type will be determined using:

- (a) sampling data;
- (b) data from a MRF collected in accordance with the Sampling Plan;
- (c) claim information; and
- (d) any other information considered relevant by the Waste Manager.

9.2 SAMPLING PLAN

A Sampling Plan, which must be approved by the Waste Manager will be developed and published for the following purposes:

- (a) in relation to Method 2—to set out the proportion of containers to be manually recounted to assess the accuracy of container counts; and
- (b) in relation to the determination of the EFi—to set out the sampling requirements for the collection of representative data on the number of Eligible Containers per tonne of material delivered to or processed at a MRF from all of the various Sources which deliver material to that MRF.

9.2.1 FACILITY BASED SAMPLING

For each quarter, the Scheme Coordinator may arrange and pay for independent sampling auditors to undertake facility based sampling in accordance with the approved Sampling Plan. All sampling results will be provided by the independent sampling auditors to the Scheme Coordinator to enable it to calculate the EFi referred to in Section 8.

The Scheme Coordinator may arrange with a MRF Operator for the sampling auditors to take samples at their facilities at any time within normal business hours. A MRF Operator must provide all reasonable assistance and facilities required by the sampling auditor and their team including providing a safe means of taking samples, a suitable and safe area for sorting the samples and conducting site based analyses.

9.3 APPROVAL OF THE ELIGIBLE CONTAINER FACTOR

The Waste Manager will approve in writing the Eligible Container Factor determined by the Scheme Coordinator based on a range of data specified in section 9.1. In the initial stages of the Scheme, the EFi will be determined more regularly to ensure it accounts for any changes to MRF inputs during that time. As more data is collected, and MRF inputs stabilise over time, the Waste Manager will review this approach with a view to updating the EFi less frequently as the Scheme develops and container counting technology changes.

9.4 PUBLISHING OF ELIGIBLE CONTAINER FACTOR

The Scheme Coordinator will publish the EFi before the end of the first quarter of the scheme and then periodically thereafter. Where a new or updated EFi is published by the Scheme Coordinator, it must only be used by a MRF in making a Processing Refund claim for any quarters which commence after the day on which the updated EFi is published.

10 REPORTING AND RECORD KEEPING REQUIREMENTS

10.1 ANNUAL RECYCLING STATEMENT

A MRF Operator is required to prepare and submit an Annual Recycling Statement for each MRF to the Scheme Coordinator and the ACT within 60 calendar days of the end of each year ended 30 June (the 'reporting period').

The Annual Recycling Statement must be in writing and must contain the following information:

- (a) MRF throughput reconciliation, prepared in accordance with Section 10.2
- (b) where Method 1 has been applied:
 - i. the total weight of Kerbside Containers processed for reuse and recycling for which a Processing Refund claim has been made during the reporting period by Output Material Type; and
- (c) Where Method 2 has been applied:
 - i. the total number of Kerbside Containers counted by a MRF Operator during the reporting period.

10.2 ANNUAL THROUGHPUT RECONCILIATION

A MRF Operator is required to prepare an Annual Throughput Reconciliation within 60 calendar days of the end of each year ended 30 June, of all input materials received and all Output Materials by material type for the MRF, including:

- (a) total quantity (in tonnes) of material received at the MRF from ACT Sources;
- (b) total quantity (in tonnes) of material received at the MRF from local government areas in another State or Territory with a legislated Container Deposit Scheme serviced by the MRF Operator;
- (c) total quantity (in tonnes) of material received at the MRF from Sources outside the ACT, excluding quantities reported in (b);
- (d) total quantity (in tonnes) of Output Material Types collected from kerbside Sources received at the MRF, and containing Kerbside Containers;

- (i) delivered from the MRF for recycling, and
 - (ii) remaining at the MRF at the end of the year,
- with both (d) (i) and (d) (ii) reported by Output Material Type;
- (e) total quantity (in tonnes) of all Recyclable Material leaving the MRF, not captured in (d) and reported by Output Material Type;
 - (f) total quantity (in tonnes) of material which is residual waste or non-Recyclable Material which is sent to landfill or another destination for disposal or further processing;
 - (g) total opening and closing stock on hand.

10.3 STOCKTAKE

A MRF Operator intending to make claims for Processing Refunds must undertake a stocktake of all materials at its MRF on 30 June 2018 and annually thereafter on 30 June. The stocktake must capture the amount (in tonnes) of:

- (a) all Source materials that remain unprocessed at the MRF on the day of the stocktake, reported by Source (section 7.5)
- (b) all Output Material processed through the MRF but not yet dispatched from the site for recycling or reuse, reported by material type (section 7.5)
- (c) all other materials at the MRF on the day of the stocktake not captured in (a) and (b) and reported with a description of that materials (eg. waste or reject destined for landfill, material destined for reprocessing)

The stocktake must be accompanied by an Independent Assurance Report prepared in accordance with the assurance requirements in section 11. Any costs associated with the conduct of the stocktake and the independent assurance report must be met by each MRF Operator.

10.4 RECORD KEEPING

All records of evidence and documents supporting each Processing Refund claim must be kept by the MRF Operator in a form that is easily and quickly accessible for inspection. This may be an electronic or hard copy format.

A MRF Operator must keep records of the activities that:

- (a) allow it to report accurately under the Protocol; and
- (b) enable the Scheme Coordinator to ascertain whether the MRF Operator has complied with its obligations under the Protocol.

A MRF Operator must retain all records for 7 years from the end of the reporting period to which the records relate.

11 ASSURANCE REQUIREMENTS

11.1 ANNUAL RECYCLING STATEMENT

Each Annual Recycling Statement must be accompanied by an Independent Auditing Report which complies with this Section. The independent auditor is to be proposed by a MRF Operator to the Waste Manager at least 30 days before the end of each reporting year and requires approval in writing by the Waste Manager (such approval not to be unreasonably withheld). A claimant MRF Operator is responsible for payment of any costs associated with the independent auditor.

The matters to be assured and covered by the assurance report are whether:

Reasonable assurance matters

- (a) the person(s) who have made claims during the reporting period met the definition of a MRF Operator in accordance with the Act and Regulations;
- (b) the Annual Recycling Statement has been prepared in accordance with Section 10.1 of the Protocol;
- (c) the quantities of each Output Material Type from a MRF Operator during the reporting period measured in accordance with section 7 of the Protocol;
- (d) the Annual Throughput Reconciliation for the reporting period, calculated in accordance with Section 10.2 of the Protocol; and

Limited assurance matters

- (e) the Output Materials from a MRF Operator included within the Annual Recycling Statement have been reused or recycled or will be reused or recycled within 12 months from the date that the Processing Refund claim was submitted.

11.2 SCHEME COORDINATOR INITIATED ASSURANCE

The Scheme Coordinator may, in addition to the verification activities completed by the Scheme Coordinators' internal audit team, appoint an appropriately qualified assurance practitioner as an assurance team leader to carry out assurance of a MRF Operator's compliance with one or more aspects of the Protocol.

The Scheme Coordinator must give written notice to a MRF Operator of a decision to appoint an assurance team leader. The notice must:

- (a) specify the assurance team leader;
- (b) specify the period within which the assurance is to be undertaken;
- (c) specify the type of assurance to be carried out;
- (d) specify the matters to be covered by the assurance; and

- (e) be given to the MRF Operator at a reasonable time before the assurance is to be undertaken.

A MRF Operator must provide the assurance team leader and any assurance team members with all reasonable facilities and assistance necessary for the effective exercise of the assurance team leader's duties under the Protocol.

If a MRF Operator is given a notice under this Section, the MRF Operator must arrange for the assurance team leader to carry out the assurance.

- (f) The costs associated with the Scheme Coordinator assurance activities will be covered by the Scheme Coordinator, unless the assurance activities uncover an adjustment in favour of the Scheme Coordinator. In this case, the costs of the assurance activities are to be shared on a 'pro-rata' basis between the MRF Operator and the Scheme Coordinator to reflect the size of the adjustment in proportion to the adjusted Processing Refund Payment for that quarter.

11.3 ASSURANCE REPORTS

Assurance reports issued under Section 11 of the Protocol must include one of the following conclusions for the matters in Sections 11.1 or 11.2(d):

- (a) a reasonable assurance conclusion; or
- (b) a qualified reasonable assurance conclusion; or
- (c) an adverse conclusion; or
- (d) a conclusion that the assurance provider is unable to form an opinion about the matter being assured.

An assurance report under this Section must be the result of an assurance engagement which:

- (e) was conducted in accordance with the relevant requirements for limited assurance engagements and reasonable assurance engagements under the Australian Standard on Assurance Engagements ASAE 3000 *Assurance Engagements other than Audits or Reviews of Historical Financial Information* and Australian Standard on Assurance Engagements ASAE 3100 *Compliance Engagements*; ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information*; and
- (f) had an assurance team leader who is:
 - i. registered as a Registered Company Auditor under the *Corporations Act 2001*; or
 - ii. registered as a Category 2 auditor under sub Regulation 6.25(3) of the *National Greenhouse and Energy Reporting Processing Refund requirements 2008*; or
 - iii. other registered auditors deemed appropriate by the ACT as set out on the ACT CDS website.

12 DISPUTE RESOLUTION

12.1 NEGOTIATION OF DISPUTE

If a difference or dispute (**Dispute**) arises between a MRF Operator and the Scheme Coordinator in relation to any aspect of the Scheme, either may give notice to the other that a Dispute exists, which specifies details of the Dispute. A MRF Operator and Scheme Coordinator must first endeavour to resolve the Dispute by negotiations.

Each party must continue to perform its obligations under this Protocol and the Scheme notwithstanding the existence of a Dispute.

12.2 EXECUTIVE NEGOTIATION

If the Dispute is not resolved by negotiation within 28 days of the notice of Dispute, either party may submit the Dispute to appropriate senior executives for consideration.

The senior executives must, within 15 business days of notice from either party of a referred Dispute, meet and undertake good faith negotiations with a view to resolving the Dispute.

12.3 EXPERT DETERMINATION

If the senior executives cannot resolve the Dispute, either party may submit the Dispute for expert determination. The expert determination must be conducted by:

- (a) an independent industry expert agreed by the parties ; or
- (b) where the parties fail to reach an agreement, an independent industry expert appointed by the Chief Executive Officer of the Australian Commercial Disputes Centre.

Within 10 business days of acceptance by the expert of the appointment, the claimant will submit in writing to the expert the claim and all the evidence which the claimant wishes the expert to take into account. Within 20 business days thereafter the other party will submit in writing to the expert that party's response to the claim, particulars of any counterclaim and all the evidence which that party wishes the expert to take into account.

Copies of documents sent to the expert must be sent to the other party at the same time. The expert may meet with the parties jointly but not separately and may ask questions of the parties which must be answered orally or in writing as requested by the expert.

The expert will:

- i. act as an expert and not as an arbitrator;
- ii. proceed in any manner he or she thinks fit;
- iii. conduct any investigation which he or she considers necessary to resolve the dispute or difference;

- iv. examine such documents, and interview such persons, as he or she may require; and
- v. make such directions for the conduct of the determination as he or she considers necessary.

As soon as possible the Expert must give the parties the Expert's determination in writing as to the respective rights and entitlements of the parties and the amount (if any) which the expert considers is due from one party to the other.

Unless otherwise agreed between the parties, the expert must notify the parties of their decision within 28 days from the acceptance by the expert their appointment.

Unless otherwise agreed by the parties, the costs of expert determination will be shared equally between the parties, and each party will bear its own costs.

12.4 MEDIATION

Where a Dispute between a MRF Operator and the Scheme Coordinator remains unresolved after 28 days following notice of the Dispute, either party may give written notice to the other party (Mediation Notice) requiring that the dispute be submitted to mediation. The mediation must be in accordance with the Resolution Institute Mediation Rules. The mediator must be:

- (a) agreed between the parties within 10 business days after the receipt of the Mediation Notice; or
- (b) if the parties fail to reach agreement, the President for the time being of the Resolution Institute will nominate the mediator.

Failing any agreement to the contrary by the parties, the costs of mediation will be shared equally between the parties, and each party will bear its own costs.

12.5 PAYMENT MUST NOT BE WITHHELD

No payment by the Scheme Coordinator to a MRF Operator shall be withheld on account of a Dispute except to the extent that such payment is the subject of such Dispute.

12.6 REPEAL OF PROTOCOL

The effect of Section 12 shall survive in the event that the Protocol is repealed.

13 COMPLIANCE AUDITS

An ACT authorised Scheme Compliance Officer may conduct audits or other checks to monitor compliance of a MRF Operator with the Protocol, including reporting of data in relation to quantities, weights, financial matters or any other matter which the ACT thinks fit, at any time.

A MRF Operator must cooperate with all persons conducting those audits or checks and provide all reasonable assistance and facilities required by the ACT authorised Scheme Compliance Officer. The ACT is not liable for the cost, if any, incurred by a MRF Operator associated with audits and other checks under this section.

14 FORMS AND STATEMENTS

The ACT may reasonably require any form, record, report, document or statement required under this Protocol to be in a particular form.



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June 2018