

Draft Alternative Waste Treatment Facility Processing Refund Protocol

December 2018

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1. Draft Protocol Executive Summary

The Alternative Waste Treatment (AWT) Facility Processing Refund Protocol is being developed to enable AWT operators to claim processing refunds for the eligible containers they recover through their processing activities. The Protocol sets out the methodology to be applied in determining amounts payable for refund claims, and requirements for record keeping and auditing.

The AWT Protocol has been developed in line with the requirements in the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 (the Regulation) by the NSW Environment Protection Authority (EPA). The content of the AWT Protocol largely mirrors the Material Recovery Facility (MRF) Processing Refund Protocol. However, as AWT inputs and outputs are very different to traditional MRFs, amendments to account for this have been made in the draft AWT Protocol. Additionally, a Sampling Strategy and Plan specific to AWTs will be developed.

Regulation of the outputs of AWTs significantly changed on 26 October 2018. Over the next 12 months, the EPA is putting in place arrangements to support the resource recovery industry while alternative options for the application of AWT outputs can be considered. A key objective is to minimise risks of disruption to the industry, including council waste collection services and AWT processing by maintaining the existing collection and processing of mixed waste materials at AWT facilities.

The development of the draft Protocol is required to enable the Regulation to operate. It is independent of, and does not impact, the EPA's work with industry and councils regarding the future of the AWT industry.

1.1 Objectives of the Protocol

In developing the Protocol, the EPA has sought to achieve the following key principles:

- Maximising returns to communities – including small business and councils.
- Supporting equity among scheme participants by enabling AWTs to access refunds, in line with MRFs and bottle crushing service operators.
- Protecting the viability and integrity of the scheme by ensuring the Protocol is supported by a thorough and appropriate governance and audit framework.
- Promoting efficiency through a robust consideration of costs and benefits to the sector prior to implementation.

1.2 Claimable materials

The EPA has determined that aluminium and mixed plastics will be the only output material streams claimable under the AWT Protocol.

The EPA will review the processing capacity for other material types at AWTs as part of the review outlined in Section 3. Any expansion of claimable output material types will take into consideration the costs associated with increasing sampling requirements, contrasted with the expected potential for increases in refunds claimed.

It is proposed that the Protocol will apply from Quarter 2, 2019. Subject to finalisation and gazettal, AWTs will be able to make claims for eligible materials processed from 1 April 2019.

1.3 Sampling Strategy and Plan

The AWT Protocol Sampling Strategy will set out the theory and methodology for the development of the associated AWT Sampling Plan. The Sampling Plan will outline the approach to generating data for the development of the eligible container factors, as referred to in Section 8. The Sampling Strategy will be finalised by the EPA with reference to the objectives outlined in Section 5 of this Protocol. The EPA will consult with the AWT industry to inform the development of the Sampling Strategy and Plan.

Additionally, the Sampling Strategy will incorporate and balance a range of considerations, including but not necessarily limited to:

Adaptive approach – In its initial stages, the Sampling Strategy will use informed assumptions. It is anticipated that as data is collected over the first year of the AWT Protocol that the approach will evolve and the Sampling Strategy will adapt to include this information.

Accuracy - High levels of accuracy can impose high costs, not only in terms of the direct costs of sampling, but in terms of the burden of response on AWT operators. The EPA approach is to assess the need for accuracy in terms of the costs of error and the costs of sampling to the stakeholders in the scheme. As with the MRF Protocol Sampling Strategy, the tolerance for estimation error should be set in the context of risk associated with payments made against the Container Deposit Scheme (CDS) and the costs of sampling. An acceptable margin of error in payments can be then used to determine a sample size to meet that expected level of accuracy.

Sampling outputs – The focus of sampling will be on the outputs from AWTs, rather than on inputs to AWTs or at the kerbside, which is in keeping with one of the primary objectives of the CDS: to promote the recovery, re-use and recycling of empty beverage containers.

Cost efficiencies - Well-established survey sampling methods should lead to gains in the efficiency of sample design over time, as better quality information about the critical sources of population variability become available. The accuracy of the estimates should also improve as the data accumulates and more tailored estimates that build on the data may become possible.

1.4 Stakeholder engagement

The EPA is seeking to engage with stakeholders regarding the draft Protocol and will be liaising with AWT operators, local government and key stakeholders, to discuss the proposed Protocol.

Engagement timeframe	
December 2018	Draft Protocol distributed to stakeholders
Early February 2019	Consultation with industry, councils and key stakeholders
February 2019	Stakeholder submissions reviewed and AWT Protocol finalised
Late February 2019	AWT Protocol gazetted
March 2019	Sampling Strategy and Plan finalised

1.5 Protocol review

Within the first 12 months of operation of the Protocol, the EPA will review Section 6, “Making a claim” and Section 8, “Eligible container factors”. In addition, the Protocol will be reviewed every five years or sooner as required.

The purpose of the early review is to ensure that provisions of the Protocol are fit for purpose, cost effective and providing assurance equivalent to that of the MRF Protocol and Sampling Strategy. The review will take in to account information and data received during the operation of the Protocol, specific to AWT involvement in the Scheme. This may include, but is not limited to, expansion of output material types available to claim under the Protocol; improvements to measurement and reporting; improvements to the Sampling Strategy, Sampling Plan and/or eligible container factor considerations.

2. About this document

This document is the Draft Alternative Waste Treatment Facility Processing Refund Protocol (the Protocol) referred to in the *Waste Avoidance and Resource Recovery Act 2001* and the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017. It sets out the methodology to be applied in determining the amounts payable to Alternative Waste Treatment (AWT) facility operators as processing refunds under the NSW Container Deposit Scheme. The Protocol applies only to AWT operators. A Protocol has been published separately for MRF and bottle crushing service operators.

The Protocol will, subject to finalisation and gazettal, take effect from 1 April 2019 and apply to claims made for Quarter 2, 2019 onwards.

In the case of any inconsistency between the Protocol and the Regulation, the latter prevails to the extent of the inconsistency.

3. Review of the Protocol

The Protocol will be reviewed, at a minimum, within five years of its publication, but may be reviewed more frequently when considered appropriate by the EPA.

The EPA will review Section 6 and Section 8 in the first 12 months of operation of the Protocol.

4. Definitions

Terms within this Protocol have the same meaning as defined within the *Waste Avoidance and Resource Recovery Act 2001* (the Act) and the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 (the Regulation).

Abbreviations

NSW	New South Wales
EPA	NSW Environment Protection Authority
CDS	NSW Container Deposit Scheme
MRF	Material Recovery Facility
Act	<i>Waste Avoidance and Resource Recovery Act 2001</i>
Regulation	Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017
Protocol	Alternative Waste Treatment Processing Facility Refund Protocol
HDPE	High-density polyethylene
PET	Polyethylene terephthalate
Recyclable materials	Aluminium and Mixed plastics (PET, HDPE and other plastics)
Scheme material	Any material received from a network operator, a collection point operator or another AWT or MRF operator

5. Aims of the Protocol

The aims of the Protocol are to:

- protect the integrity of the CDS
- maximise legitimate returns to communities
- support equity between participants
- promote efficiency.

6. Making a claim

An AWT operator may make a claim for the payment of a processing refund by lodging a processing refund claim with the Scheme Coordinator in the approved form and manner. For each quarter, only one claim can be made by an AWT operator for each AWT that they operate. The claim must cover relevant information for all eligible containers that the AWT operator intends to make a processing refund claim upon for that quarter.

In order to make a processing refund claim, an AWT operator must undertake the following:

- select a Method to estimate the number of eligible containers delivered from each AWT for re-use or recycling (Section 6.1);
- measure and report the total weight of materials received at each AWT by source (Section 6.2);
- where Method 1 (Section 6.3) has been selected, measure and report the total tonnes delivered each month from each AWT for re-use or recycling by output material type (as defined in Section 6.2.3);
- Where Method 2 (Section 6.4) has been selected, count and report the total number of eligible containers delivered each month from each AWT operator for re-use and recycling by output material type (as defined in Section 6.2.3).

6.1 Available methods

One of the following methods must be used for estimating the total number of eligible containers processed for re-use or recycling by the AWT operator during any given quarter:

- (a) Method 1 – Weighing (refer to Section 6.3); or
- (b) Method 2 – Direct Counting (refer to Section 6.4).

An AWT operator must nominate to the EPA and the Scheme Coordinator the Method they will use for each output material type (see Section 6.2.3). This nomination must be made using the [NSW Container Deposit Scheme - Claim Method Nomination Form](#)¹ available on the [EPA website](#)² and submitted to the EPA and the Scheme Coordinator at least 28 calendar days before the commencement of the first quarter, unless otherwise advised by the EPA. Different Methods may be nominated for different output material types.

If an AWT operator wishes to change the nominated Method, an updated [NSW Container Deposit Scheme - Claim Method Nomination Form](#) must be submitted to the EPA and the Scheme Coordinator at least 28 calendar days before the commencement of the quarter for which the changed Method is to be used, unless otherwise advised by the EPA.

¹ www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/return-and-earn/claim-method-nomination-form.docx

² www.epa.nsw.gov.au/your-environment/recycling-and-reuse/return-and-earn/material-recovery-facility-operator/refund-sharing-agreement-notification

6.2 Measurement and reporting of total materials received by the AWT operator

6.2.1 Measurement

Each AWT operator must measure and record the total quantity and source of all material received at each AWT. The quantity of materials received at each AWT must be determined by measuring the weight of that material using calibrated weighing equipment, and in accordance with the *National Measurement Act 1960* and with the following:

- the weight must be measured in tonnes;
- the weight must be measured using weighing equipment that has the following minimum accuracy:
 - for weighbridges: +/- 20kg;
 - for all other weighing equipment: +/- 1 kg
- the weight must be recorded to a minimum two decimal places.

The source of each load received at the AWT must be recorded as being from one of the following sources:

- material received from a Network Operator or a Collection Point Operator or another AWT operator (Scheme material);
- material received from another State or Territory, listing the relevant State or Territory;
- material received from sources inside NSW excluding Scheme material.

These sources are mutually exclusive:

- weighing equipment must be calibrated in accordance with all manufacturer requirements; and
- weighbridges, where used as weighing equipment for the purpose of this Section, must be verified (within the meaning of the *National Measurement Act 1960*) at least once per year.

With respect to Scheme material, the claimant AWT operator must ensure that:

- the Scheme material is received, counted or processed and weighed, stored and delivered from the AWT separately from all other materials received at the AWT; and
- the receipt, processing, counting, weighing, storage and delivery from the AWT of the Scheme material is recorded so that the throughput of this material through the AWT can be tracked and audited at all times.

6.2.2 Reporting

The AWT operator must report for each month the following information to the Scheme Coordinator in the manner advised by the Scheme Coordinator within 14 days after the end of that month:

- the total measured weight of all material received in that month at the AWT by source; and
- the total measured weight of all Scheme material:
 - received in that month at the AWT; and
 - counted or processed and stored at the AWT in that month.

6.2.3 Output material types

Under both Method 1 and Method 2, output materials delivered from the AWT for the purpose of re-use or recycling must be separated into one or more of the following output material types:

1. Aluminium
2. Mixed plastics (PET, HDPE and other plastics)

6.3 Method 1 - Weighing

Each AWT operator applying Method 1 for one or more output material types (as detailed in Section 6.2.3) must measure and record the quantity of each of these output material types, excluding any Scheme material, that are delivered from the AWT for re-use or recycling.

The quantity of each relevant output material type delivered from the AWT must be determined by measuring the weight of each output material type using calibrated weighing equipment and in accordance with the following:

- the weight of each output material type must be measured in tonnes;
- the weight must be measured using weighing equipment that has the following minimum accuracy:
 - for weighbridges: +/- 20kg;
 - for all other weighing equipment: +/- 1 kg
- the weight must be recorded to a minimum two decimal places;
- the date of delivery and destination of each load delivered from the AWT must be recorded;
- weighing equipment must be calibrated in accordance with all manufacturer requirements; and
- weighbridges, where used as weighing equipment for the purpose of this Section, must be verified (within the meaning of the *National Measurement Act 1960*) at least once a year.

6.3.1 Reporting

The AWT 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:

- the total measured weight of each relevant output material type (excluding any Scheme material) delivered from the AWT for re-use or recycling; and
- the total measured weight of Scheme material delivered from the AWT by output material type.

6.4 Method 2 - Direct counting (manual or automated)

Each AWT operator applying Method 2 for one or more output material types (as detailed in Section 6.2.3) must count the number of individual eligible containers of each relevant output material type, excluding any Scheme material, delivered from the AWT for re-use or recycling.

Counting under Method 2 may be undertaken on a manual or automated basis. Where Method 2 is applied, the AWT must follow the requirements outlined in the Sampling Strategy prepared by the EPA (as detailed in the Protocol Section 8.2) for verifying the accuracy of counting procedures undertaken. Documentary evidence of all counting procedures must be maintained.

6.4.1 Reporting

The AWT operator must report for each month the following information to the Scheme Coordinator in the manner advised by the Scheme Coordinator within 14 days after the end of that month:

- the number of eligible containers, excluding any Scheme material, delivered from the AWT for re-use or recycling, by output material type; and
- the number of eligible containers that are Scheme material delivered from the AWT, by output material type.

6.5 Making a processing refund claim

An AWT operator may make a processing refund claim to the Scheme Coordinator each quarter for each AWT. The claim must:

- (a) be made via the [Return and Earn Container Deposit Scheme Portal](#)³ on the [Return and Earn website](#)⁴; and
- (b) include any information required under the *Waste Avoidance and Resource Recovery Act 2001*, the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 or prescribed under the Protocol (together, the “Processing Refund Requirements”); and
- (c) be accompanied by any documents or reports required by the Processing Refund Requirements; and
- (d) be assessed by an approved person, as detailed in Section 6.7(a), for the purposes of determining whether the Protocol has been correctly applied in determining the amount of the claim; and
- (e) be signed by an approved person, as detailed in Section 6.7(a), on behalf of the AWT operator; and
- (f) be accompanied by a statutory declaration signed and completed in accordance with Section 6.7 by the approved person who has assessed the claim under Section 6.5(d); and
- (g) be lodged with the Scheme Coordinator in the manner advised by the Scheme Coordinator and received within 28 calendar days of the end of the quarter in the approved manner, as detailed in Section 6.8.

6.6 Information to be included with all processing refund claims

The following information is prescribed for the purposes of inclusion in each processing refund claim made under Section 6 of the Protocol:

- (a) the name, address and contact details of the AWT operator;
- (b) the ABN and ACN of the AWT operator;
- (c) the name and work contact details of a contact person for the claim;
- (d) the total weight of materials received at the AWT during the quarter, by source;
- (e) the total weight of Scheme material received at the AWT during the quarter;
- (f) the total weight of material, excluding any Scheme material, that has been delivered from the AWT for re-use or recycling during the quarter by output material type (where Method 1 is used for that output material type);
- (g) the total number of eligible containers, excluding any Scheme material, that has been delivered from the AWT for re-use or recycling during the quarter by output material type (where Method 2 is used for that output material type); and
- (h) bank account details, including BSB and account number, for payment of processing refunds.

6.7 Information to be verified

The processing refund claim must:

- (a) be verified by a statutory declaration signed by an approved person, who is one of the following:
 - i. a director of the AWT operator or the ultimate parent entity of the AWT operator;
 - ii. the chief executive officer of the AWT operator or the ultimate parent entity of the AWT operator;
 - iii. the chief financial officer of the AWT operator or the ultimate parent entity of the AWT operator; or

³ <https://portal.returnandearn.org.au/cds/login.html>

⁴ <https://returnandearn.org.au/>

- iv. the company secretary of the AWT operator or the ultimate parent entity of the AWT operator; or
 - v. any designated person to whom the above persons have delegated their authority in writing; and
- (b) state that:
- i. based on all reasonable steps having been taken to verify the information in the claim, the claim is accurate and complete as far as the person verifying knows; and
 - ii. the claimant has correctly applied the Protocol in determining the details of the claim
 - iii. the claimant confirms that the import ratio is true and correct; and
 - iv. the claimant confirms that, to the best of their knowledge, the material that is subject of the claim has not been and will not be the subject of a claim for refund amounts or processing refunds by any other AWT operator, MRF operator, Network Operator or Collection Point Operator under the *Waste Avoidance and Resource Recovery Act 2001*
 - v. the claimant confirms that, to the best of their knowledge, the material has not been received at the AWT before 1 December 2017.

6.8 Manner of lodging

A claim under Section 6 of the Protocol must be submitted to the Scheme Coordinator and the EPA in the approved manner via the [Return and Earn Container Deposit Scheme Portal](#)⁵.

7. Assessment of claims

The Scheme Coordinator is required, on receiving a valid processing refund claim, to pay the AWT operator a processing refund for eligible containers that have been processed for re-use or recycling by the AWT operator, from 1 April 2019 (excluding those eligible containers received from interstate or received before 1 December 2017 and Scheme material). The amount payable by the Scheme Coordinator to an AWT operator must be determined using the calculation detailed in Section 7.3.

7.1 Calculation of the number of eligible containers by output material type

7.1.1 Method 1

Where an AWT operator makes a processing refund claim using Method 1 for a particular output material, the Scheme Coordinator must determine the estimated number of eligible containers processed for re-use 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 eligible containers processed for re-use or recycling during the quarter for output material type (i) for the quarter.

Q_i is the total weight of output material type (i) measured in tonnes delivered from the AWT for re-use or recycling during the quarter, excluding any Scheme material.

S is the import ratio determined using the calculation detailed in Section 7.2.1.

EF_i is the eligible container factor for output material (i) as referenced in Section 8.

⁵ <https://portal.returnandearn.org.au/cds/login.html>

7.1.2 Method 2

Where an AWT operator makes a processing refund claim using Method 2, for a particular output material, the Scheme Coordinator must determine the estimated number of eligible containers processed for re-use or recycling during the quarter using the following calculation:

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

Where:

E_i is the estimated number of eligible containers processed for re-use or recycling during the quarter for output material type (i).

QE_i is the total counted number of eligible containers for output material type (i) delivered from the AWT for re-use or recycling during the quarter, excluding any Scheme material.

S is the import ratio determined using the calculation detailed in Section 7.2.1.

7.2 Receiving containers from states other than NSW

AWT operators receiving material from sources outside of NSW are not entitled to a refund for containers received from those sources.

7.2.1 Import ratio

Where an AWT operator has received materials from sources outside of NSW, claims for eligible containers will be assessed and refunds calculated by the Scheme Coordinator by applying the ratio of materials received from NSW sources to total materials received by the AWT against the total estimated number of eligible containers delivered from the AWT using the following calculation:

$$S = N/T$$

Where:

S is the import ratio.

N is the total weight of material received at the AWT from sources within NSW, excluding any Scheme material.

T is the total weight of all material received at the AWT, excluding any Scheme material.

7.3 Calculation of the total processing refund payable

The Scheme Coordinator must calculate the total processing refund payable to an AWT for each quarter using the following calculation:

$$P_i = \sum E_i \times RA$$

Where:

P_i is the Total Processing Refund Payable to the AWT operator for the quarter.

$\sum E_i$ is the sum of the estimated number of eligible containers processed and delivered for re-use or recycling during the quarter for all output material types (i), excluding any Scheme material.

RA is the refund amount per eligible container, as set out in the Regulation.

7.4 Deduction of sampling costs

The Scheme Coordinator may deduct from the Total Processing Refund Payable for each AWT Operator the monetary cost incurred to undertake the procedures set out in the Sampling Plan prepared by the EPA under Section 8.2. This cost shall be recovered proportionally from each Processing Refund Claim as follows:

$$D_i = \sum \left(\left(\frac{\sum E_{i(AWT)}}{\sum E_{i(Total)}} \right) \times C_{i(Total)} \right)$$

Where:

D is the sampling cost deduction for the AWT operator for the quarter.

$\sum E_{i(AWT)}$ is the sum of the estimated number of eligible containers processed for re-use or recycling during the quarter for each output material type (i) for that AWT operator.

$\sum E_{i(Total)}$ is the sum of the estimated number of eligible containers processed for re-use or recycling during the quarter for each output material type (i) for all AWT operators.

$C_{i(Total)}$ is the total monetary cost incurred by the Scheme Coordinator to undertake the Sampling Plan for the quarter for each output material type (i).

7.5 Claim assessment

Where an AWT operator makes a processing refund claim under Section 6, the Scheme Coordinator must issue the AWT operator with a claim assessment. The claim assessment must include:

- (a) the total processing refund payable to the AWT operator for the quarter;
- (b) the sampling cost deduction for the AWT operator for the quarter;
- (c) the sum of the estimated number of eligible containers processed for re-use or recycling during the quarter for all output material types (i);
- (d) where Method 1 was used for any output material type (i):
 - a. the total weight of each output material type for the quarter, excluding any Scheme material;
 - b. the eligible container factor applied to each output material type (i) for the quarter;
 - c. the import ratio applied in calculating the estimated number of eligible containers processed for re-use or recycling during the quarter for output material type (i); and
 - d. the estimated number of eligible containers delivered for re-use or recycling during the quarter for output material type (i);
- (e) where Method 2 is used for any material type (i):
 - a. the total counted number of eligible containers processed for re-use or recycling by the AWT for each material type in the quarter excluding any Scheme material;
 - b. the import ratio applied in calculating the estimated number of eligible containers processed for re-use or recycling during the quarter for output material type (i); and
 - c. the estimated number of eligible containers delivered for re-use or recycling during the quarter for output material type (i); and
- (f) any other information required by the Processing Refund Requirements.

7.6 Timeframe for issuing claim assessment

Where an AWT operator makes a processing refund claim under Section 6, the Scheme Coordinator must issue the AWT operator with a claim assessment in accordance with Section 7.5 within 45 calendar days of the end of the quarter to which the claim relates. Where the 45th calendar day falls on a weekend or public holiday, the claim assessment may be issued on the next business day.

7.7 Timeframe for payment of processing refunds

Processing refunds must be deposited into the nominated bank account of the AWT operator within 10 business days of the issuance of the claim assessment by the Scheme Coordinator. The nominated bank account is the bank account listed by the AWT operator via the Return and Earn Container Deposit Scheme Portal⁶ for that quarter.

⁶ <https://portal.returnandearn.org.au/cds/login.html>

7.8 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 the Protocol.

7.9 Amending processing refund claims – AWT operator initiated

The Scheme Coordinator may amend a processing refund claim if the AWT operator to whom the claim assessment is issued requests, in writing, an amendment. 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 will not be accepted where the initial processing refund claim was not lodged with the Scheme Coordinator and the EPA within 28 calendar days of the end of the quarter in the approved manner as detailed in Section 6.8.

In deciding whether to amend a processing refund claim, 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 an AWT operator, the Scheme Coordinator must notify the AWT operator accordingly and provide clear and justifiable reasons for refusing.

7.10 Amending processing refund claims – Scheme Coordinator initiated

The Scheme Coordinator may amend a processing refund claim if:

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

is issued in relation to assurance carried out under Section 10 of the Protocol.

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

7.11 Review of claim assessments

An AWT operator may request the Scheme Coordinator to reconsider an assessment made under Section 7.5, 7.8 or 7.9. 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 AWT operator within 60 calendar days after the request is received by the Scheme Coordinator.

7.12 Reconciliation of payment of processing refunds

7.12.1 Underpayment

Where a processing refund claim is amended or reviewed in accordance with Section 7.8, 7.9 or 7.10 and it is determined that there has been an underpayment to the AWT operator, the Scheme Coordinator must deposit the outstanding processing refund amount into the nominated bank account of the AWT operator within 10 business days of amending the claim under Section 7.8 or 7.9 and within 10 business days of the provision of written notice of decision under Section 7.10. The nominated bank account is the bank account listed by the AWT operator on the [Return and Earn Container Deposit Scheme Portal](#)⁷ for that quarter.

7.12.2 Overpayment

Where a processing refund claim is amended or reviewed in accordance with Section 7.8, 7.9 or 7.10 and it is determined that there has been an overpayment to the AWT operator, the Scheme Coordinator must advise the AWT operator in writing that there has been an overpayment and detail the extent of that overpayment. The AWT operator must reimburse the Scheme Coordinator the total amount that has been overpaid within 10 business days of being notified of the overpayment by the Scheme Coordinator. Where an AWT operator is financially unable to meet this requirement, a repayment plan is to be negotiated between the AWT operator and the Scheme Coordinator.

8. Eligible container factor

8.1 Determining eligible container factor

The eligible container factor (EF_i) referred to in Section 7.1 will be calculated by the EPA and approved by the Container Deposit Scheme Ministerial Advisory Committee.

The eligible container factor for each output material type will be determined using:

- sampling data from AWTs collected in accordance with the Sampling Plan prepared by the EPA and approved by the Container Deposit Scheme Ministerial Advisory Committee;
- claim information; and
- any other relevant information.

8.2 Sampling Strategy and Sampling Plan

The AWT Sampling Strategy will be prepared by the EPA and will set out the theory and methodology for the development of the associated Sampling Plan, which is then implemented to generate the:

- sampling requirements for the collection of representative data on the number of eligible containers per tonne of material processed at AWT operators across NSW for the determination of the eligible container factor (Section 7.1); and
- the method for validating the accuracy of counting procedures, in relation to Method 2 (Section 7.1.2).

The Sampling Strategy and Sampling Plan will be approved by the Container Deposit Ministerial Advisory Committee.

⁷ <https://portal.returnandearn.org.au/cds/login.html>

8.2.1 Facility-based sampling

For each quarter, the Scheme Coordinator will arrange and pay for independent sampling auditors to undertake facility-based sampling in accordance with the Sampling Plan. All sampling results will be provided by the independent sampling auditors to the EPA to enable it to calculate the eligible container factor (EF_i) referred to in Section 7.1.

The Scheme Coordinator may arrange with an AWT operator for the sampling auditors to take samples at their facilities at any time within normal business hours. The AWT operator must provide all reasonable assistance and facilities required by the sampling auditor and their team.

8.3 Publishing of eligible container factor

The EPA will publish the eligible container factor for the quarter within 43 calendar days after the last day of the quarter. Where the 43rd calendar day falls on a weekend or public holiday, the eligible container factor may be published on the next business day.

Note: *The EPA will determine the Eligible Container Factor for each quarter based on a range of data, predominantly from sampling at AWT facilities. In the initial stages of the Scheme, the factor will be determined after each quarter to ensure it accounts for any changes in AWT inputs during that time. As more data is collected, the EPA will review this approach with a view to releasing the factor prior to each quarter, or potentially half yearly or annually.*

9. Reporting and record keeping requirements

9.1 Annual recycling statement

Each AWT operator is required to prepare and submit an Annual Recycling Statement for each AWT to the Scheme Coordinator and the EPA within 60 calendar days of the end of each financial year, ending 30 June (the 'reporting period'). The Annual Recycling Statement must be prepared in accordance with the [NSW Container Deposit Scheme - Annual Recycling Statement template](#)⁸ available on the [EPA website](#)⁹ at the end of the reporting period, and must contain the following information:

- (a) AWT throughput reconciliation, prepared in accordance with Section 9.2;
- (b) Where Method 1 has been applied:
 - the total weight of material processed for re-use 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:
 - the total number of eligible containers counted by the AWT Operator during the reporting period.

9.2 Throughput reconciliation

Each AWT operator is required to prepare an Annual Throughput Reconciliation of all input materials received and all output materials by material type for each AWT, including:

- total quantity (in tonnes) of material other than Scheme material received at the AWT from NSW sources

⁸ www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/return-and-earn/mrf-annual-recycling-statement.xlsx

⁹ <https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/return-and-earn/material-recovery-facility-operator/refund-sharing-agreement-notification>

- total quantity (in tonnes) of material received at the AWT from outside NSW
- total quantity (in tonnes or number or both) of Scheme material received at the AWT, delivered from the AWT and remaining at the AWT at the end of the year
- total quantity (in tonnes) of material other than Scheme material re-used or recycled for each output material type
- total opening and closing stock on hand other than Scheme material.

9.3 Record keeping

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

AWT operators must keep records of the activities that:

- allow it to report accurately under the Protocol; and
- enable the Scheme Coordinator to ascertain whether the AWT operator has complied with its obligations under the Protocol.

The AWT operator must retain all records for seven years from the end of the reporting period to which the records relate.

10. Assurance requirements

10.1 Independent assurance report

Each Annual Recycling Statement must be accompanied by an Independent Assurance Report which complies with this Section. Each AWT operator must engage an independent appropriately qualified assurance practitioner at their expense to complete the review and assurance report. 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 AWT operator in accordance with the Act and Regulations;
- (b) the Annual Recycling Statement has been prepared in accordance with Section 9.1 of the Protocol;
- (c) the quantities of each output material from the AWT Operator during the reporting period measured in accordance with Section 6 of the Protocol;
- (d) the throughput reconciliation for the reporting period, calculated in accordance with Section 9.2 of the Protocol.

Limited assurance matters

- (a) the output materials from the AWT Operator included within the Annual Recycling Statement have been re-used or recycled or will be re-used or recycled within 12 months from the date that the processing refund claim was submitted.

10.2 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 an AWT operator's compliance with one or more aspects of the Protocol.

The Scheme Coordinator must give written notice to the AWT operator of a decision to appoint an assurance team leader. The notice must:

- (a) specify the assurance team leader; and
- (b) specify the period within which the assurance is to be undertaken; and
- (c) specify the type of assurance to be carried out; and
- (d) specify the matters to be covered by the assurance; and
- (e) be given to the AWT operator at a reasonable time before the assurance is to be undertaken.

The AWT 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 an AWT operator is given a notice under this Section, the AWT operator must arrange for the assurance team leader to carry out the assurance.

The costs associated with Scheme Coordinator assurance activities will be covered by the Scheme Coordinator.

10.3 Assurance team leader duties

Assurance reports issued under Section 10 of the Protocol must include one of the following conclusions for the matters in Sections 10.1 or 10.2(d):

- (a) a reasonable assurance conclusion;
- (b) a qualified reasonable assurance conclusion;
- (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:

- (a) 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
- (b) 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 subregulation 6.25(3) of *the National Greenhouse and Energy Reporting Processing refund requirements 2008*; or
 - (iii) Other registered auditors deemed appropriate by the EPA as set out on the NSW EPA website.

11. Dispute resolution

11.1 Mediation

Where a dispute between the AWT operator and the Scheme Coordinator remains unresolved, 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.

11.2 Expert determination

Where a dispute between the AWT operator and the Scheme Coordinator remains unresolved after taking part in mediation in accordance with Section 11.1, either party may give written notice to the other party (Expert Determination Notice) requiring that the dispute be submitted for expert determination. The expert determination must be conducted by:

- (a) an independent industry expert agreed by the parties within 10 business days after receipt of the Expert Determination Referral; or
- (b) where the parties fail to reach an agreement, an independent industry expert appointed by the President for the time being of the Resolution Institute.

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.

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.

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

11.3 Payment must not be withheld

No payment by the Scheme Coordinator to the AWT operator shall be withheld on account of a mediation or expert determination except to the extent that such payment is the subject of such dispute.

11.4 Repeal of protocol

The effect of Section 11 shall survive in the event that the Protocol is repealed.

12. Compliance audits

An EPA officer may conduct an audit or inspection to determine compliance with the Protocol at any time. The AWT operator must provide all reasonable assistance and facilities required by the EPA officer.