

# Container Deposit Scheme

## Bottle Crushing Service Operator Processing Refund Protocol

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# Contents

<b>1.</b>	<b>About this document</b>	<b>5</b>
<b>2.</b>	<b>Review of protocol</b>	<b>5</b>
<b>3.</b>	<b>Definitions</b>	<b>5</b>
<b>4.</b>	<b>Aims of the protocol</b>	<b>5</b>
<b>5.</b>	<b>Making a claim</b>	<b>6</b>
	<b>5.1 Available methods</b>	<b>6</b>
	<b>5.2 Method 1 - Weighing</b>	<b>6</b>
	5.2.1 Monthly reporting	6
	<b>5.3 Method 2 - Direct counting</b>	<b>7</b>
	5.3.1 Monthly reporting	7
	<b>5.4 Making a processing refund claim</b>	<b>7</b>
	<b>5.5 Information to be included with all processing refund claims</b>	<b>7</b>
	<b>5.6 Information to be verified</b>	<b>8</b>
	<b>5.7 Manner of lodging</b>	<b>8</b>
<b>6.</b>	<b>Assessment of claims</b>	<b>8</b>
	<b>6.1 Calculation of the number of eligible containers by output material type</b>	<b>8</b>
	6.1.1 Method 1	8
	6.1.2 Method 2	9
	<b>6.2 Receiving containers from states other than NSW</b>	<b>9</b>
	<b>6.3 Calculation of the total processing refund payable</b>	<b>9</b>
	<b>6.4 Deduction of sampling costs</b>	<b>9</b>
	<b>6.5 Claim assessment</b>	<b>9</b>
	<b>6.6 Timeframe for issuing claim assessment</b>	<b>10</b>
	<b>6.7 Timeframe for payment of processing refunds</b>	<b>10</b>
	<b>6.8 Refusal of claims</b>	<b>10</b>
	<b>6.9 Amending processing refund claims – bottle crushing service operator initiated</b>	<b>10</b>
	<b>6.10 Amending processing refund claims – Scheme Coordinator initiated</b>	<b>10</b>
	<b>6.11 Review of claim assessments</b>	<b>11</b>
	<b>6.12 Reconciliation of payment of processing refunds</b>	<b>11</b>
	6.12.1 Underpayment	11
	6.12.2 Overpayment	11
<b>7.</b>	<b>Eligible container factor</b>	<b>11</b>

7.1	Determining eligible container factor	11
7.2	Sampling Plan	11
7.3	Publishing of eligible container factor	12
8.	<b>Reporting and record keeping requirements</b>	<b>12</b>
8.1	Annual recycling statement	12
8.2	Throughput reconciliation	12
8.3	Record keeping	12
	8.3.1 Minimum record keeping requirements	13
9.	<b>Assurance requirements</b>	<b>13</b>
9.1	Independent assurance report	13
9.2	Scheme Coordinator initiated assurance	14
9.3	Assurance team leader duties	14
10.	<b>Dispute resolution</b>	<b>15</b>
	10.1 Mediation	15
	10.2 Expert determination	15
	10.3 Payment must not be withheld	15
	10.4 Repeal of protocol	15
11.	<b>Compliance audits</b>	<b>16</b>

# 1. About this document

This document is the Bottle Crushing Service Operator Processing Refund Protocol (Protocol) which sets out the methodology to be applied in determining the amounts payable to bottle crushing service operators as processing refunds under the NSW Container Deposit Scheme. It is associated with the Material Recovery Facility Processing Refund Protocol referred to in the *Waste Avoidance and Resource Recovery Act 2001* and the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 (Regulation).

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

**This Protocol only applies to bottle crushing service operators as defined in clause 7 of the Regulation.**

## 2. Review of Protocol

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

## 3. 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
Protocol	Bottle Crushing Service Operator Processing Refund Protocol
Scheme material	Any material received from a network operator, a collection point operator or another MRF operator

## 4. 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.

# 5. Making a claim

A bottle crushing service 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 each bottle crushing service operator. The claim must cover relevant information required under this Protocol.

## 5.1 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 bottle crushing service operator during any given quarter:

- a. Method 1 – Weighing (refer to Section 6.1.1); or
- b. Method 2 – Direct Counting (refer to Section 6.1.2).

A bottle crushing service operator must nominate which Method they will use by completing the **NSW Container Deposit Scheme – Bottle Crushing Service Operator Registration Form** and submitting it to the EPA.

If a bottle crushing service operator wishes to change the nominated Method, a **NSW Container Deposit Scheme - MRF 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.

## 5.2 Method 1 - Weighing

Each bottle crushing service operator applying Method 1 must measure and record the total quantity of all glass received from within NSW and delivered for re-use or recycling.

The quantity of glass received by the bottle crushing service operator from within NSW and delivered for re-use or recycling must be determined by measuring the weight of all glass using calibrated weighing equipment and in accordance 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 2 decimal places
- the date of delivery and destination of each load of glass 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.

### 5.2.1 Monthly reporting

Each bottle crushing service operator applying Method 1 must report the following information to the Scheme Coordinator in the approved form and manner within 14 days after the end of each month:

- the total measured weight of all glass received by the bottle crushing service operator from within NSW and delivered for re-use or recycling
- the total number of bins received from all venues within NSW that use a bottle crushing machine operated by the bottle crushing service operator; and
- the average bin weight for all bins received from within NSW by the bottle crushing service operator; and

- the date of delivery and destination of each load of glass received by the bottle crushing service operator.

## 5.3 Method 2 - Direct counting

Each bottle crushing service operator applying Method 2 must count the number of individual eligible containers received by the bottle crushing service operator from within NSW and delivered for re-use or recycling. Counting must be undertaken on an automated basis, and the eligibility of each container that enters the bottle crushing machine must be scanned and recorded.

### 5.3.1 Monthly reporting

Each bottle crushing service operator applying Method 2 must report the following information to the Scheme Coordinator in the approved form and manner within 14 days after the end of each month:

- the number of eligible glass containers processed through each glass crushing machine in NSW operated by the bottle crushing service operator and delivered for re-use or recycling
- the total number of containers processed through each glass crushing machine operated by the bottle crushing service operator
- the weight of all material processed through each bottle crushing machine operated by the bottle crushing service operator; and
- the date of delivery and destination of each load of glass.

## 5.4 Making a processing refund claim

A bottle crushing service operator may make a processing refund claim to the Scheme Coordinator each quarter. The claim must:

- 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
- be accompanied by any documents or reports required by the Processing Refund Requirements; and
- be assessed by an approved person for the purposes of determining whether the Protocol has been correctly applied in determining the amount of the claim; and
- be signed by an approved person; and
- be accompanied by a statutory declaration signed and completed by the approved person who has assessed the claim; and
- be lodged with the Scheme Coordinator in the approved form and manner, and received within 28 calendar days of the end of the quarter.

## 5.5 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:

- the name, address and contact details of the bottle crushing service operator; and
- the ABN and ACN of the bottle crushing service operator; and
- the name and contact details of a contact person for the claim; and
- the total weight of glass received by the bottle crushing service operator from within NSW and delivered for re-use or recycling during the quarter (where Method 1 is used); and
- the total number of eligible glass containers received by the bottle crushing service operator from within NSW and delivered for re-use or recycling during the quarter (where Method 2 is used);
- The date of delivery, quantity and destination of each load of glass delivered for re-use or recycling; and

- g. bank account details, including BSB and account number, for payment of processing refunds.

## 5.6 Information to be verified

The processing refund claim must:

- a. be verified by an approved person, who is one of the following:
  - i a director, chief executive, chief financial officer, or company secretary of the bottle crushing service operator; or
  - ii 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, to the best of their knowledge, the material that is the 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 MRF operator, Network Operator or Collection Point Operator under the *Waste Avoidance and Resource Recovery Act 2001*
  - iv The claimant confirms that, to the best of its knowledge, the material was not received before 1 December 2017.

## 5.7 Manner of lodging

A claim under Section 6 of the Protocol must be submitted to the Scheme Coordinator in the form and manner specified by the Scheme Coordinator.

# 6. Assessment of claims

The Scheme Coordinator is required, on receiving a valid processing refund claim, to pay the bottle crushing service operator a processing refund for eligible containers that have been re-used or recycled (excluding any Scheme material, or material received from interstate or, material received before 1 December 2017). The amount payable by the Scheme Coordinator must be determined using the calculation detailed in this section.

## 6.1 Calculation of the number of eligible containers by output material type

### 6.1.1 Method 1

Where a bottle crushing service operator makes a processing refund claim using Method 1, the Scheme Coordinator must determine the estimated number of eligible glass containers processed during the quarter using the following calculation:

$$E = (Q \times EF)$$

Where:

E is the estimated number of eligible glass containers processed for re-use or recycling during the quarter

Q is the total weight of glass measured in tonnes received by the bottle crushing service operator from within NSW and delivered for reuse or recycling during the quarter.

EF is the eligible container factor for glass as referenced in Section 8.



## 6.1.2 Method 2

Where a bottle crushing service operator makes a processing refund claim using Method 2, the estimated number of eligible glass containers processed during the quarter using the following calculation:

$$E = QE$$

Where:

E is the estimated number of eligible glass containers processed during the quarter.

QE is the total counted number of eligible glass containers received by the bottle crushing service operator from within NSW and delivered for re-use or recycling during the quarter.

## 6.2 Receiving containers from states other than NSW

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

## 6.3 Calculation of the total processing refund payable

The Scheme Coordinator must calculate the total processing refund payable to a bottle crushing service operator for each quarter using the following calculation:

$$P = E \times RA$$

Where:

P is the Total Processing Refund payable to the bottle crushing service operator for the quarter.

E is the estimated number of eligible containers processed and delivered for re-use or recycling during the quarter (calculated in accordance with Section 7.1)

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

## 6.4 Deduction of sampling costs

The Scheme Coordinator may deduct from the Total Processing Refund payable for each bottle crushing service operator the monetary cost incurred to undertake the procedures set out in the Sampling Plan prepared by the EPA. This cost shall be recovered proportionally from each Processing Refund Claim.

## 6.5 Claim assessment

Where a bottle crushing service operator makes a processing refund claim, the Scheme Coordinator must issue the bottle crushing service operator with a claim assessment. The claim assessment must include:

- a. the total processing refund payable to the bottle crushing service operator for the quarter;
- b. the sampling cost deduction for the bottle crushing service operator for the quarter;
- c. the estimated number of eligible containers processed for re-use or recycling during the quarter;
- d. where Method 1 was used:
  - i the total weight of glass processed for the quarter;
  - ii the eligible container factor applied for the quarter; and
  - iii the estimated number of eligible containers delivered for re-use or recycling during the quarter.
- e. where Method 2 is used:

- i the total counted number of eligible glass containers processed and delivered by the bottle crushing service operator for reuse or recycling in the quarter.
- f. any other information required by the Processing Refund Requirements.

## **6.6 Timeframe for issuing claim assessment**

Where a bottle crushing service operator makes a processing refund claim, the Scheme Coordinator must issue the bottle crushing service operator with a claim assessment within 45 calendar days of the end of the quarter to which the claim relates. Where the 45<sup>th</sup> calendar day falls on a weekend or public holiday, the claim assessment may be issued on the next business day.

## **6.7 Timeframe for payment of processing refunds**

Processing refunds must be deposited into the nominated bank account of the bottle crushing service operator within 10 business days of the issuance of the claim assessment by the Scheme Coordinator.

## **6.8 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.

## **6.9 Amending processing refund claims – bottle crushing service operator initiated**

The Scheme Coordinator may amend a processing refund claim if the bottle crushing service 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 5.4.

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 a bottle crushing service operator, the Scheme Coordinator must notify the bottle crushing service operator accordingly and provide clear and justifiable reasons for refusing.

## **6.10 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 on this basis, the Scheme Coordinator must notify the bottle crushing service operator accordingly and provide clear and justifiable reasons for the amendment.

## 6.11 Review of claim assessments

A bottle crushing service operator may request the Scheme Coordinator to reconsider an assessment made under this section. 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 bottle crushing service operator within 60 calendar days of receiving the request.

## 6.12 Reconciliation of payment of processing refunds

### 6.12.1 Underpayment

Where a processing refund claim is amended or reviewed in accordance with this section, and it is determined that there has been an underpayment to the bottle crushing service operator, the Scheme Coordinator must deposit the outstanding processing refund amount into the nominated bank account of the bottle crushing service operator within 10 business days of amending the claim, and within 10 business days of the provision of written notice of decision.

### 6.12.2 Overpayment

Where a processing refund claim is amended or reviewed in accordance with this section, and it is determined that there has been an overpayment to the bottle crushing service operator, the Scheme Coordinator must advise the bottle crushing service operator in writing that there has been an overpayment and detail the extent of that overpayment. The bottle crushing service 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 a bottle crushing service operator is financially unable to meet this requirement, a repayment plan is to be negotiated between the bottle crushing service operator and the Scheme Coordinator.

# 7. Eligible container factor

## 7.1 Determining eligible container factor

The eligible container factor (EF) referred to in Section 7 will be calculated by the EPA. The eligible container factor for bottle crushing service operators using Method 1 may be determined using any combination of the following:

- sampling data
- sales data
- claim information
- any other relevant information.

## 7.2 Sampling Plan

An EPA prepared Sampling Plan will be used to determine the Eligible Container Factor referred to in Section 7.

## 7.3 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 43<sup>rd</sup> calendar day falls on a weekend or public holiday, the Eligible Container Factor may be published on the next business day.

The EPA will determine the Eligible Container Factor for each quarter based on a range of data. In the initial stages of the scheme, the factor will be determined after each quarter to ensure it accounts for any changes in inputs during that time. As more data is collected, and as inputs stabilise over time, the EPA will review this approach with a view to releasing the factor prior to each quarter, or potentially half yearly or annually.

# 8. Reporting and record keeping requirements

## 8.1 Annual recycling statement

Each bottle crushing service operator is required to prepare and submit an Annual Recycling Statement to the Scheme Coordinator and the EPA within 60 calendar days of the end of each year ended 30 June (the 'reporting period'). The Annual Recycling Statement must be prepared in accordance with the **NSW Container Deposit Scheme - Annual Recycling Statement Template** available on the EPA website, and must contain the following information:

- a. a throughput reconciliation, prepared in accordance with Section 8.2
- b. Where Method 1 has been applied:
  - i the total weight of glass processed for re-use or recycling for which a processing refund claim has been made during the reporting period; or
- c. Where Method 2 has been applied:
  - i the total number of eligible containers counted by the bottle crushing service operator for which a processing refund claim has been made during the reporting period.

## 8.2 Throughput reconciliation

Each bottle crushing service operator is required to prepare an Annual Throughput Reconciliation of all input materials received and all output materials delivered during the reporting period, including:

- total quantity (weight in tonnes) of glass received by the bottle crushing service operator from within NSW;
- total quantity (weight in tonnes) of glass received by the bottle crushing service operator from outside NSW;
- total quantity (weight in tonnes) of glass from within NSW re-used or recycled;
- total quantity (weight in tonnes) of glass from outside NSW re-used or recycled.

For bottle crushing operators using Method 2, the following must also be included:

- total number of eligible containers received by the bottle crushing service operator from within NSW
- total number of all containers received by the bottle crushing service operator.

## 8.3 Record keeping

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

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

Each bottle crushing service operator must provide the EPA and Scheme Coordinator with any records required to be kept under the Processing Refund Requirements on request.

### 8.3.1 Minimum record keeping requirements

1. Each bottle crushing service operator must keep records of the activities that:
  - allow the bottle crushing service operator to report accurately under the Protocol; and
  - enable the Scheme Coordinator to ascertain whether the bottle crushing service operator has complied with its obligations under the Protocol.
2. Each bottle crushing service operator must collect and keep the following records:
  - a list of all venues that use a bottle crushing machine operated by the bottle crushing service operator; and
  - the number of bins received from each venue that uses a bottle crushing machine operated by the bottle crushing service operator; and
  - the average bin weight for all bins received by the bottle crushing service operator.
3. Each bottle crushing service operator must advise venues they service that:
  - sales data for each venue that uses a bottle crushing machine operated by the bottle crushing service operator must be made available to the EPA and Scheme Coordinator on request;
  - the sales data must provide enough detail on beverages sold to be able to determine the type of container (e.g. glass or aluminium) and whether or not it is eligible. If a venue does not provide the EPA and Scheme Coordinator with data on request, the weight of material received from that venue must will be subtracted from the total weight claimed each quarter.

## 9. Assurance requirements

### 9.1 Independent assurance report

Each Annual Recycling Statement must be accompanied by an Independent Assurance Report which complies with this Section. Each bottle crushing service 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 who made claims during the reporting period met the definition of a bottle crushing service operator in accordance with the Act and Regulations;
- b. the Annual Recycling Statement has been prepared in accordance with Section 8 of the Protocol;
- c. the Throughput Reconciliation for the reporting period was calculated in accordance with Section 8.2 of the Protocol; and
- d. the quantities of glass received and delivered by the bottle crushing service operator during the reporting period were measured in accordance with Section 6 of the Protocol;

#### *Limited assurance matters*

- a. the glass received by the bottle crushing service operator, for a which a processing refund was claimed, was re-used or recycled or will be re-used or recycled within 12 months from the date the processing refund claim was submitted.

## 9.2 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 bottle crushing service operator's compliance with one or more aspects of the Protocol.

The Scheme Coordinator must give written notice to the bottle crushing service 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 bottle crushing service operator at a reasonable time before the assurance is to be undertaken.

The bottle crushing service 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 bottle crushing service operator is given a notice under this Section, the bottle crushing service 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.

## 9.3 Assurance team leader duties

Assurance reports issued under Section 9 of the Protocol must include one of the following conclusions for the matters in Sections 9.1 or 9.2(d):

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

An assurance report under Section 9 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 EPA NSW website.

# 10. Dispute resolution

## 10.1 Mediation

Where a dispute between the bottle crushing service 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 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.

## 10.2 Expert determination

Where a dispute between the bottle crushing service operator and the Scheme Coordinator remains unresolved after taking part in mediation in accordance with Section 10.1, 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 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.

## 10.3 Payment must not be withheld

No payment by the Scheme Coordinator to the bottle crushing service 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.

## 10.4 Repeal of protocol

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

# 11. Compliance audits

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