Second Reading

Mr IAN COHEN [11.20 a.m.]: I move:

That this bill be now read a second time.

In addition to introducing the Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008—about which I am very enthusiastic—I seek leave to table a draft of the Beverage Container Tax Bill 2008, which cannot be introduced into the House as it imposes a levy and a tax. The Beverage Container Tax Bill 2008 will work in conjunction with the Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008.

Leave granted.

Document tabled.

I am both pleased and excited to bring this bill before the House; it gives the State of New South Wales the opportunity to take proactive steps towards increasing beverage container recycling. Now more than ever, the citizens of New South Wales understand the imperatives of, and impetus for, employing an effective package recycling regime. This week, the mythology of this nation's packaging waste management achievements was shattered, leaving exposed the bare flesh of a poorly conceived and toothless regime. Reports on the true figures achieved by the National Packaging Covenant show that the self-regulatory regime has been an unequivocal, abject failure. The shockwave that has hit the packaging covenant has opened a treasure trove of half-baked and half-hearted defences of the covenant. Yet no member of the packaging industry has dared gather the resolve to suggest that the covenant is effectively attaining its objectives. Such a position is totally untenable and the industry has had the political acumen to temper its public enthusiasm for the self-regulatory scheme.

With our newfound immunity from the flimsy and dubious statistics relentlessly propagated and perpetuated by the packaging industry, it is now time for alternative measures. How we respond to the fallout caused by the failed covenant will test the resolve of the New South Wales and Federal governments to respond effectively to a waste management and environment issue in the face of strident packaging industry opposition. If the Government cannot garner the political courage to face off against the packaging industry on the issue of management of waste, how will it make the difficult decisions on climate change mitigation options?

The Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008 gives the people of New South Wales a chance to make a real contribution to recycling rates. The bill proposes to amend the Waste Avoidance and Resource Recovery Act 2001 for the purpose of implementing a beverage container deposit scheme in New South Wales and, with the introduction of the Beverage Container Tax Bill 2008 in the New South Wales Legislative Assembly, we can join South Australia in adopting this progressive environmental and waste management scheme. Consumer consciousness on waste management is coming of age. People are realising that container deposit schemes are about more than reducing the unsightly aesthetic blight of pollution and littering. Reducing the production of single-use containers minimises energy use and energy inputs supplied by fossil fuel generated power.

In a carbon-constrained, sustainability-conscious world, container deposit legislation translates to avoided greenhouse gas emissions, avoided landfill space, avoided litter and avoided energy use. One-way packaging consumption is unsustainable and a patent failure to internalise, at the appropriate source, the environmental costs of container packaging. Community demands that the packaging industry be responsible for the waste management of its products and internalise the environmental costs into its bottom line are consistent with principle 16 of the Rio Declaration on Environment and Development and the general tenor of the New South Wales Government's numerous extended producer responsibility priority statements.

Citizens of this State are starting to evaluate their personal carbon and waste footprints and are taking voluntary measures to mitigate the impact of their daily activities. Segments of the corporate sector are not shying away from embracing a new sense of environmental responsibility either, with some introducing innovative ways to acknowledge extended producer responsibility as part of corporation social responsibility programs. But for every progressive corporation and eco-conscious citizen there are groups in the packaging industry that are refusing to hold their end of the bargain. Self-regulatory control and the freedom to dictate its targets have compounded the packaging industry's abysmal failure to implement the most basic measures to minimise packaging wastage and increase recycling rates. The industry has shirked its responsibility, made a mockery of principles it pioneered, such as shared responsibility and product stewardship, and obliterated any hint of extended producer responsibility.

Jenny Pickles, General Manager of the Packaging Stewardship Forum of Australia, who has 14 years

experience in waste management, submits that effective waste management is a complex interaction of systems, infrastructure and behaviours. Even in adopting that paradigm, the inherent deficiency of the covenant is glaringly obvious. The covenant does not instil responsible and innovative corporate behaviour. Compliance with submitting covenant participant annual reports has been disappointing. Participants do not have to commit to reforming archaic waste management cultures but merely investigate the feasibility of reforming waste management cultures. This was aptly highlighted in the 2004 Nolan-ITU Review of the National Packaging Covenant.

The covenant systems and methodologies for measuring recycling rates gains have been shown to be open to manipulation and no objective criterion to evaluate annual reports has been properly adopted. The covenant does not establish the necessary industry-wide infrastructure as each participant develops its own waste reduction measures that are not easily transferable and amenable to technology transfer. Currently, used packaging waste management obligations are not expressed in objective, mandatory criteria. Aspirational language couched in weak commitments is the hallmark of the current regime, the National Packaging Covenant. The poor results that have been reported in the covenant's annual reports are indicative of a regulatory system that is big on aspirational discretionary rules and low on objective benchmarks and obligations.

The recently leaked audit of the national recycling report irrefutably demonstrates that self-regulation has not only failed, but may have pushed us backwards on recycling rates. The National Packaging Covenant is a voluntary regime established by all levels of government and industry to reduce the environmental effects of packaging on the environment. Industry and government signatories have committed to increase the amount of post-consumer packaging recycled from its current rate of 48 per cent, using 2003 baseline data, to 65 per cent by 2010. The National Packaging Covenant 2005-06 annual report revealed that, at publication, the current rate of recycling was 56 per cent, which was 9 per cent off the 2010 target. However, the Pitcher Partners data review report covering the National Packaging Covenant 2005-06 annual report dated November 2007 showed total recycling rates at 48 per cent. That is exactly where we were in 2003.

If we take into account further amendments to the paper and cardboard component, the total packaging rate figure drops back to 43 per cent. The leaked audit confirms that glass packaging recycling rates are floundering at 36 per cent, not 44 per cent as industry claims. The audit further highlighted that the people of Australia cannot trust data produced by covenant participants. Visy Industries was caught out including glass recycled from New Zealand, which bolstered the Australian result by almost 70,000 tonnes. Amcor confused newspaper and office paper recycling with cardboard and carton packaging, boosting the figure by almost 300,000 tonnes. These reports cast dark clouds over the industry's characterisation of empirical data of the covenant.

Cooking the books on recycling rates by covenant participants has exhausted the community's faith in the process. It is clearly a process in crisis and the ethic of sharing responsibility for the environmental impacts over the lifecycle of product packaging has become farcical with the packaging industry contributions a mere drop in the ocean. This has become more and more evident as stakeholders start to question the status quo and look at alternative measures.

Last month Family First Senator Steve Fielding introduced the Drink Container Recycling Bill 2008 into the Senate. The Senator rightfully highlighted that this is a win for families and the environment, and that it is in the economic interests of his constituents to push for a national container deposit scheme. What was omitted was the acknowledgement, at least in New South Wales, that producers are best placed in the product lifecycle chain to take responsibility for post-consumer waste. Sadly, this commonsense understanding of capacity is derailed by a myriad of reports and statistics bombarding consumers, policy makers and general stakeholders about recycling efficiency and effectiveness.

Somehow, through the fog, the South Australian jurisdiction has cut through the ideological backlash to extended producer responsibility [EPR] from the packaging industry and maintained a container deposit scheme for the past 33 years. Enacted in 1975 under the Beverage Container Act 1975 and later incorporated into the South Australian Environment Protection Act 1993, container deposit legislation [CDL] has been instrumental in the South Australian Government achieving a recycling rate of 70 per cent in relation to beverage containers and providing a new income stream for community organisations and the State's most disadvantaged groups.

In comparison, New South Wales and other States are dragging their feet at an average of 30 per cent recycling rates for polyethylene terephthalate [PET], 36 per cent for glass bottles and 37 per cent for steel cans. Covenant proponents will point to positive rates on aluminium, which are at 71 per cent; however, the high demand for the material inflates recycling rates, and realistically we should be aiming for recycling rates in the 80 to 85 percentile band. The 2001 Independent Review of Container Deposit Legislation in New South Wales by Dr Stuart White suggested New South Wales could recover 80 to 90 per cent under a container deposit scheme. This bill will enable New South Wales to reach those targets.

The Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008 sets out the substantive provisions of a container deposit scheme. The financial and tax instruments funding the beverage container deposit scheme are omitted from this bill and are contained in the Beverage Container Tax Bill 2008, which I

have tabled in the House. To give effect to the scheme outlined in the Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008 the Beverage Container Tax Bill 2008 will need to be introduced in the lower House at a later date, if I am successful. The object of this bill is to introduce a container deposit scheme in New South Wales if the targets of the latest National Packaging Covenant are not met after the mid-term review of the covenant in 2008. The proposed beverage container scheme will provide for the payment of a 10¢ refund on containers declared to be subject to the scheme. The introduction of a beverage container deposit scheme as outlined in the proposed part 4A is conditional upon the failure of the current National Packaging Covenant to achieve its modest recycling targets.

Proposed section 18C prescribes the key triggers or conditions precedent that would require the Minister to declare the operation of a container deposit scheme in relation to a specific material. If targets for recycling rates of specific materials—paper and cardboard 70 to 80 per cent; glass, 50 to 60 per cent; steel 60 to 65 per cent; aluminium 80 to 85 per cent; plastics 30 to 35 per cent—are not substantially achieved the Minister must make a declaration that a container deposit scheme comes into effect in relation to that material. Proposed section 18D requires the Minister to make a declaration to implement a container deposit scheme in relation to a specific material if there is a failure to achieve recycling rate targets for specific material by July 2010, the currently scheduled expiry date of the National Packaging Covenant. Proposed section 18E establishes a product labelling scheme to inform consumers that a 10¢ refund is payable upon return to an authorised New South Wales collection depot. Approval and establishment of collection depots will be at the discretion of the relevant Minister under proposed section 18G.

Flexibility in establishing collection depots ensures that entities, whether commercial or community, who do not have the capacity for efficient scheme participation in collection and refund efforts, are not forced into collection efforts. The bill encourages a variety of collection depots and points ranging from community-based facilities to drive-through recycling centres without dictating compulsory retailer collection. The mechanics of the scheme envisage a process whereby the return of an unbroken, empty beverage container to a collection depot requires the collection depot to return the scheduled deposit. These deposits are recorded by the collection depot and reported to the Minister. Based on the data provided to the Minister, the collection depots are reimbursed from a beverage container deposit scheme central account.

In instances where beverage containers are not returned to a collection depot, unredeemed deposits will be applied and distributed to a variety of programs to support kerbside recycling, offset collection costs in the operation of the scheme and provide funds to drive product development in relation to recyclability and reusability. The proposed container deposit scheme would in no way detract from kerbside collection and would work hand-in-hand with council kerbside recycling to maximise recycling of packaging consumed both in the home and in public places. Dr Stuart White's independent review of container deposit legislation in New South Wales of November 2001 reported:

> Local Government would realise financial benefits from the introduction of CDL through reduced costs of kerbside collection and through the value of unredeemed deposits in the material collected at kerbside.

The report further concluded that:

> while the system (CDS) would cost between $30 and $50 million a year to put in place, the net benefit would be in the order of $70 to $100 million annually.

A container deposit scheme reconfigures the current cost burden of local council kerbside collection operations, which is inconsistent with the core principles at the heart of the covenant: shared responsibility and product stewardship. The current cost burden is placed disproportionately on taxpayers through local council rates. The national cost of kerbside recycling is approximately $294 million per annum with the gross portion of that sum subsidised by ratepayers. The packaging industry's contribution is $3 million a year to national kerbside recycling and public place recycling. This does not accord with the principles enunciated by the covenant.

Shared responsibility under the covenant appears to be a duty of the public as to 99 per cent and a duty of the packaging industry as to 1 per cent. The implementation of container deposit legislation will balance this disproportionate burden and save the average family $30 a year. The packaging industry will claim they have 54 projects that have been funded through the covenant and that total investment in these projects is $47 million, and industry has contributed more than $4.9 million in funding, but when compared with the $294 million spent by local councils it is a mere drop in the ocean.

Local kerbside recycling has been a success in engaging the public in recycling efforts, and the Greens in no way wish to detract from kerbside schemes. The people of New South Wales have made a substantial contribution to recycling via kerbside recycling. The issue is that kerbside recycling captures only a certain proportion of beverage container consumption and that away-from-home use of beverage containers could represent anywhere between 30 and 50 per cent of all beverage container use. This is a significant proportion of containers falling beyond the scope of kerbside recycling. The packaging industry will also highlight that the handling fees for container deposit legislation means that another 4¢ per container will be passed on to the consumer in addition to the 10¢ deposit. Passing on handling fees will be at the discretion of the beverage

industry, but through various market forces consumers pay an 8¢ to 9¢ fee per container to send that container to landfill.

I anticipate strong opposition to this bill. Pervading industry concerns about reductions in profitability caused by container deposit legislation will sufficiently fuel opposition. There may also be concerns about the operation or legality of the scheme considering the effect of section 92 of the Commonwealth Constitution or the Commonwealth Mutual Recognition Act 1992 and its State counterparts. I have received advice on this matter and I am of the view that neither section 92 of the Constitution nor the Mutual Recognition Act will automatically invalidate the scheme. I look forward to discussion and debate on this bill and I hope that New South Wales can play a leading role in implementing a container deposit scheme. I commend my bill to the House.