WASTE AVOIDANCE AND RESOURCE RECOVERY AMENDMENT (CONTAINER DEPOSIT SCHEME) BILL 2016

First Reading

Bill introduced on motion by Mr Mark Speakman, read a first time and printed.

Second Reading

Mr MARK SPEAKMAN (Cronulla—Minister for the Environment, Minister for Heritage, and Assistant Minister for Planning) (10:14): I move:

That this bill be now read a second time.

The Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016 forms an important part of the New South Wales Government's commitment to reduce litter and to improve the New South Wales environment. When enacted it will enable the establishment of a container deposit scheme in New South Wales that will allow people to receive a refund when they deliver an eligible beverage container to a collection point. Evidence from container deposit schemes in Australia and many other overseas jurisdictions where such schemes operate indicates that these schemes are highly effective at reducing beverage container litter. They work by providing people with an incentive to hold onto their empty beverage containers for later redemption rather than discarding them into the environment as litter. They also provide an incentive for other people to pick up and redeem containers if they are littered.

Litter is an important issue for New South Wales. According to the Keep Australia Beautiful National Litter Index, which is an annual litter survey undertaken in every jurisdiction in Australia, the volume of litter in New South Wales, at 5.69 litres per 1,000 square metres in 2015-16, is significantly above the national average, which is 4.1 litres per 1,000 square metres. Significant investments in anti-littering programs by the Government over the past four years under the Environment Protection Authority Waste Less, Recycle More initiative and reforms to anti-littering legislation have had some effect. The volume of litter in New South Wales is falling and we are moving towards the Premier's priority goal of a 40 per cent reduction in the volume of litter by 2020. However, these reductions have not been even across all types of litter.

According to the national litter index, beverage containers make up the largest proportion of litter volume in New South Wales and this proportion is growing. In 2014-15 beverage containers made up 44 per cent of the volume of litter in New South Wales, which was almost twice the volume of the next largest category, which was takeaway food containers and cups. The results of the national litter index show that in 2015-16 the overall litter volume in New South Wales fell by 12 per cent, significantly more than the fall in the national average, indicating that the New South Wales anti-littering programs are working. However, the volume of littered beverage containers in New South Wales fell by only 3 per cent, resulting in the proportion of beverage container volume in the overall litter volume increasing.

Drink containers now represent 49 per cent of the total volume of litter in New South Wales. The New South Wales Environment Protection Authority estimates that this represents around 160 million beverage containers being littered across the State each year. Littered beverage containers have a significant impact not only on the amenity value of our public places such as parks, rivers and beaches; they also add significantly to litter clean-up costs. A survey in 2015 of local councils, public and private land managers and community groups found that more than $180 million is being spent each year on managing litter in New South Wales. Despite this, a significant amount of litter is not cleaned up and ends up getting broken up and becoming part of the landscape or making its way into our waterways and the marine environment where it can cause environmental harm.

The New South Wales Container Deposit Scheme that will result from this bill will focus on reducing the growing proportion of litter volume resulting from littered beverage containers and therefore preventing environmental harm. In developing the proposed scheme I acknowledge the assistance and advice of the many people who have provided input. In particular, I thank the members of the advisory committee and the implementation working group. These expert panels devoted a significant amount of time to considering all of the issues involved. I thank the advisory committee for its advice and recommendations on the initial design of the scheme and thank the implementation working group for its advice and recommendations on the regulatory framework.

The expert panels included Jeff Angel from the Total Environment Centre and Boomerang Alliance, Tanya Barden from the Australian Food and Grocery Council, Susy Cenedese from Local Government NSW, Brad Gray from Planet Ark, Professor Don Hine from the University of New England, Liz Livingstone and William Murphy from the Department of Premier and Cabinet, Bill Stanhope from NSW Treasury, Stephen Sykes from Sykes Peer Review, Tony Wilkins from News Corp Australia and Tony Wright from Wright Corporate Strategy.

I also thank the many people who participated in subgroups that sat under the advisory committee and the implementation working group, including representatives from the beverage industry, the waste and recycling industry, community groups, local government, retailers, and other Australian jurisdictions, among others. I also thank all the people who attended the public forums and who provided submissions during the consultation period for the draft bill. More than 300 people attended forums around the State and 138 submissions were received providing detailed comments on all aspects of the draft bill and the proposed regulatory framework. Finally, I thank the hardworking and professional officers of the Environment Protection Authority who contributed to the development of this package. I thank in particular Steve Beaman, Executive Director, Waste and Resource Recovery; Alex Young, Director, Community and Behaviour Change; Jerome Koh, Unit Head, Container Deposit Scheme Implementation Team; and Michael McGee, Project Officer, Container Deposit Scheme Implementation Team.

The Government has listened to stakeholder feedback and incorporated much of it in the design of the bill. The resulting Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016 establishes a New South Wales container deposit scheme that will allow people to receive a 10¢ refund when they return eligible empty beverage containers to a collection point. The bill does this by placing obligations on the suppliers of eligible beverage containers to participate in the scheme and to provide a refund. Division 1, of division 3 of the bill places these obligations on beverage suppliers. The amount of the refund and the types of containers that will be subject to the refund will be specified in regulation under the legislation. The Government has chosen to go with a refund amount and a scope of containers that largely match the existing schemes in South Australian and the Northern Territory. This will help to reduce costs for industry and also the risk of cross-border arbitrage between jurisdictions. The design of the New South Wales Container Deposit Scheme allows for other States to harmonise processes and operations, allowing for consistent and straightforward processes for beverage suppliers and other participants.

The bill allows for recognition of containers in corresponding jurisdictions; that is, other States and Territories with a similar scheme in place. The Government will ensure that detail of this nature is expressed in regulation. This will enable the New South Wales container deposit scheme to be sufficiently flexible so that future changes, such as other jurisdictions establishing a scheme, inflation, and the changing nature of the beverage market, can be adequately addressed. The bill will also establish a governance structure designed to deliver an efficient and effective scheme. Specifically, the bill provides a power to the Minister for the Environment to appoint and to enter into contracts with a scheme coordinator and with network operators, which together will deliver the scheme. This is addressed in proposed section 24. These contractual arrangements will allow the Government to set obligations for the coordinator and network operators to meet specific performance targets, such as accessibility and recovery rates, to ensure an effective scheme is delivered with contractual penalties if targets are not met.

The Government will also be able to set reporting requirements for those bodies to ensure there is a high level of transparency in the scheme. It is intended that under the agreement between the Minister and the scheme coordinator, the scheme coordinator will be required to enter into contracts with all relevant beverage suppliers and to act as a clearing house for the payment of refunds by those beverage suppliers. A key responsibility for the scheme coordinator in this regard will be validating the number of eligible containers sold in New South Wales to ensure that each beverage supplier is correctly reporting its sales and therefore not obtaining an unfair advantage by avoiding the costs of the scheme. It is intended that the scheme coordinator will also be responsible for validating the number of containers recovered through the scheme to ensure that suppliers are paying refunds only for containers that are recovered. The contract between the Minister and the scheme coordinator will also aim to incentivise the coordinator to deliver a cost-efficient scheme. The Minister may impose specific performance targets and responsibilities on the scheme coordinator, particularly regarding recovery of containers and, to ensure that people across New South Wales have reasonable access to collection points.

These targets will be established in regulation, but enforced through the contract between the scheme coordinator and the Minister. It is the Government's intention to consult with key stakeholders on these performance targets prior to them being finalised in the regulation. It is intended that the scheme coordinator will discharge its responsibilities by providing an incentive to network operators to set up and to run networks of collection points where people can redeem their containers. The incentive will be in the form of a fee to be paid on a per container basis for each container collected. This approach provides an incentive for network operators to maximise the convenience of their collection network in order to be able to collect as many containers as they can, while minimising costs.

It is intended that each network operator will be obliged under its contract with the Minister to ensure that the community access target is achieved for the region in which it operates. This will ensure that network operators commit to servicing their region and invest for the long term, rather than cherry-picking only the most lucrative spots or moving in and out of the market, causing consumer confusion and significant difficulties for the scheme coordinator to achieve statewide coverage on a consistent basis. The Government is committed to delivering a stable scheme that delivers on community expectations over the long term.

Making sure that the Minister appoints the best qualified candidates to the roles of scheme coordinator and network operators will be critical to the success of the scheme. The bill provides for processes for interested persons to apply and be considered for these roles—see proposed subsection 24 (3).The bill also provides for the Minister to set up advisory committees which can provide independent advice as part of the selection process—see proposed section 36. Advisory committees will also be able to provide independent advice to the Minister on the ongoing performance of the scheme and the performance of the scheme coordinator and network operators once the scheme is in operation.

The development of the Container Deposit Scheme to date, including establishment and operation of the implementation working group, has been guided and supported by an independent probity adviser, Mr Scott Alden of Holding Redlich. Timely probity advice and guidance will continue to play a key role going forward in the implementation of the scheme, including in the establishment and operation of advisory committees and in the selection of the scheme coordinator and network operators. This will ensure decision-making processes are transparent and all potential or real conflicts of interest are regularly declared and dealt with.

From a community perspective, the main interaction with the scheme will be through the collection points. Under the proposed scheme, network operators may own and operate their own collection points. Experience from existing container deposit schemes suggests that network operators are likely to contract with small businesses, retailers, councils, charities and social enterprises to run the collection points. The proposed New South Wales scheme is therefore likely to see significant opportunities flow to these types of organisations and for a variety of collection solutions to be offered that take advantage of local circumstances. This may include, for example,

reverse vending machines located at local shopping centres, train stations or retail stores. Collection points may also be mobile operations that periodically set up to service a large event or in communities that may not have sufficient volume to warrant a more permanent site. Collection points may also be part of a local small business or charity operation.

Network operators are also likely to contract with existing facilities that are already offering similar collection services, such as community recycling centres where people may be able to drop off a variety of other recyclable materials such as paint, batteries, gas bottles, smoke detectors, oils or other materials. Sharing with existing infrastructure has dual advantages. There are lower set-up costs for establishing such sites and people are already used to visiting these sites for recycling purposes. Being able to drop off multiple materials also increases the convenience of the site and is likely to lead to better recovery rates for all materials.

The development of these community recycling centres has been highly successful. Since the start of Waste Less, Recycle More, $12 million has been awarded in grants to develop 101 community recycling centres across New South Wales. To date, 47 community recycling centres are already operational and almost 1,000 tonnes of problem waste have been collected for recycling or safe disposal.

Experience from schemes in South Australia and British Columbia and from other schemes that offer the community the opportunity to drop off multiple types of materials is that convenience is a surrogate for popularity. Some stakeholders, including environment groups and reverse vending machine operators, advocate a "return-to-retail" model. Under such a model, retailers that sell beverages would be obliged to take back empty containers and pay out the refund. Overseas schemes that rely on this model often make extensive use of reverse vending machines at retail sites. Experience from overseas shows that these types of schemes may result in high recovery rates. However, such an approach could also result in significant costs to consumers, since very few retailers are currently set up to take back empty containers.

Obliging large retailers to provide the collection infrastructure for the scheme is also likely to mean that small businesses, charities and social enterprises would have little opportunity to participate. In the proposed New South Wales scheme, access and convenience are driven by the obligation that can be imposed on the scheme coordinator to achieve recovery and statewide access targets. They are also driven by the obligations on the network operators to achieve regional access targets and the financial incentive the network operators have to maximise the number of containers they can recover.

It should be noted that the proposed New South Wales approach does not stop retailers from participating in the scheme by operating collection points. It just means that every retail site is not obliged to participate. Retailers will still be able to choose to operate collection points and the Government welcomes their involvement. Participating in the scheme could help retailers to differentiate themselves from their competitors, increase foot traffic and deliver a competitive advantage. The Government will work with the scheme coordinator and network operators to encourage retailers, public land managers and shopping centre owners to participate in the scheme.

Ultimately, the bill sets the main obligation for funding the refund on suppliers of eligible beverages—see subdivision 1 of division 3 of the bill placing obligations on those suppliers. While the scheme coordinator and the network operators have responsibilities for delivering the scheme, none of these bodies will exist without the obligation on the relevant beverage suppliers to pay for the refund. It is therefore crucial that all relevant beverage suppliers participate in the scheme. The bill ensures that relevant beverage suppliers participate by prohibiting them from first supplying beverages in eligible containers in New South Wales without meeting three key obligations. First, all eligible containers must be approved by the New South Wales Environment Protection Authority—see proposed section 40. Secondly, all eligible containers must have the specified refund marking—see proposed section 39. Thirdly, there must be a supply arrangement between the supplier and the scheme coordinator covering the approved containers—see proposed section 38.

The supply arrangement with the scheme coordinator will include obligations on the supplier to provide information to the scheme coordinator on the number and types of containers the supplier supplies in New South Wales, as well as an obligation to pay the refund and any costs needed to make this happen. The details of which containers will require approval and the required refund marking will be included in regulation established under the amendment. The Government intends that the refund marking obligation will include a requirement for all eligible containers to have a barcode. The barcode will significantly simplify the container approval and enforcement process, and it may remove the need for suppliers to provide images of each label to the Environment Protection Authority in order for the Environment Protection Authority to be able to verify containers are in the scheme when undertaking compliance activities. This may also remove the need for suppliers to seek additional approvals for any changes to approved labels, allowing suppliers to more easily implement special event labelling and other changes to their artwork.

Barcodes may also assist the scheme coordinator to verify the number of containers that are redeemed and, therefore, to reduce significantly the risk of fraud in the system. The Government acknowledges that it will take time for beverage suppliers to clear existing stocks of beverages that do not have the refund marking. The beverage industry and retailers have indicated that this may take between 12 and 18 months from the time the regulation is made and the refund marking is known. This may mean that stocks have not been fully cleared at the commencement of the scheme. To avoid industry having to liquidate stock, the Government intends to delay the obligation to have the refund marking on eligible containers coming into effect until a date to be proclaimed. The date will be determined once the regulation is made and the refund marking requirement confirmed.

The Government is also working with South Australia, the Northern Territory, and other jurisdictions that have announced an intention to implement a container deposit scheme [CDS] to agree on a common refund mark that suppliers will able to use across all States and Territories. It is intended that this mark will be designed so it will not need to be changed if other jurisdictions adopt a CDS with the same refund amount in the future. Consistency across all jurisdictions will simplify the process for industry, minimise red tape and reduce the need for any future label changes.

The amendment also sets obligations on collection point operators. These are primarily aimed at maintaining the integrity of the scheme and to reduce the potential for fraud. For example, collection point operators will be obliged to pay the refund to anyone who presents an eligible container and asks for the refund—see proposed subsection 42 (1). However, collection point operators will be allowed to refuse payment under certain circumstances—see proposed subsection 42 (2)—for example, if the collection point operator reasonably believes a container was acquired out of New South Wales, a container was acquired before the commencement of the scheme, or a refund has already been claimed on a container.

Furthermore, the collection point operator will also be able to refuse payment if the container does not bear the required refund marking. However, it is intended that this will only come into effect once the refund marking obligations on suppliers comes into effect and consumers have had a reasonable time to consume the beverage and return the unlabelled container for a refund. Collection point operators will also be obliged to refuse payment of the refund if a person seeking the refund is trying to redeem a large number of containers and refuses to provide a refund declaration or the collection point operator is not satisfied with proof of identification—see proposed subsection 43 (3). The number of containers required to trigger this obligation will be specified in the underpinning regulation.

Cross-border movements of containers could undermine the financial viability of the New South Wales container deposit scheme. If containers are purchased and consumed outside the State and then brought into New South Wales to be redeemed, they would impact on the scheme because they would not have been accounted for in the scheme funding. Offences for redemption of containers purchased outside New South Wales as well as the requirement for proof of identification for large-scale redemptions will minimise the risk of cross-border arbitrage. The amendment also creates offences for people who try to cheat the scheme. For example, it will be an offence for a person

knowingly to redeem a container that is purchased outside New South Wales or one that has been previously redeemed—see proposed subsection 44 (1).

There will also be an offence for redeeming a container that was purchased prior to the commencement of the scheme. However, the Government may consider delaying the commencement of this offence to ensure a smooth transition period after 1 July 2017 as community behaviour adjusts to the scheme and to maximise the clean-up of any containers from the environment for a short time at the beginning of the scheme. Those arrangements will be finalised closer to the start of the scheme.

Finally, the Government acknowledges the kerbside recycling services already offer an effective and relatively low-cost system for collecting and recycling containers consumed at home. The aim of the Government has always been for the container deposit scheme to complement the kerbside system. Therefore, the amendment allows for an option for material recovery facilities, where kerbside materials are sorted for recycling after being collected from the kerbside, to be able to claim refund amounts on eligible containers directly from the scheme coordinator—see proposed section 28.

Allowing these facilities to claim refunds will reduce the incentive they would otherwise have to manually separate out containers for redemption at a collection point. That outcome would add significant costs to the system for very little environmental benefit. Instead, material recovery facilities will be able to make use of Environment Protection Authority [EPA] issued methodology to determine an accurate estimate of the number of eligible containers passing through the facility and being recycled and then claim the refund on these containers. How the process will work will be defined in the regulation and in the scheme coordinator contract. The Government's intention with this provision is also to ensure that these refunds are shared with local governments and communities that contract and pay for kerbside services supplying the material recovery facilities through negotiation between local governments and these facilities.

Kerbside services in many cases are provided on a contractual basis, with councils and their ratepayers paying service providers to provide a kerbside collection and recycling service. It is not the intention of the amendment to overturn these commercial contracts. Instead, the Government aims to provide a strong incentive for the relevant parties to come to an acceptable arrangement about how the refunds will be shared. It is intended that the incentive will be that material recovery facilities and relevant local councils must agree on a sharing arrangement within 12 months after the commencement of scheme operations. If the Environment Protection Authority has not been informed and an acceptable agreement has been reached within that period the scheme coordinator will no longer be obliged to pay the refund to the relevant material recovery facility.

Local councils are obliged, under the Local Government Act 1993, to charge only the cost for domestic waste and recycling services and, as such, will be required to pass back their negotiated share of the refunds to residents in the form of a reduced management service charge or the provision of increased waste management services. In this way, households benefit from the scheme, even if they choose to continue to use their convenient kerbside recycling system. Material recovery facilities will not be required to access refund amounts; however it will require very little effort or change to existing processes to access the refund in this way. It is therefore a strong incentive to negotiate a mutually acceptable sharing arrangement with relevant councils. At the same time, councils will be motivated to come to an agreement in order for them to access the refund money from containers going through their kerbside recycling systems.

These requirements are a transitional arrangement to deal with existing commercial arrangements between councils and their kerbside recycling service providers that were entered into prior to the commencement of the scheme. After the scheme starts, it will be assumed that any new kerbside recycling contracts that are entered into between councils and their service providers will take into consideration the value of eligible containers and bins and therefore will not require a separate agreement in order for a material recovery facility to claim the refund from the scheme coordinator.

As part of consultation on the bill the Government also sought feedback on the regulatory framework that underpins the scheme. Given the extensive consultation on the scheme to date, the bill exempts the requirement to prepare and consult on a regulatory impact statement for the first principal regulation that will be made in the scheme. However, the Government will consult with key stakeholders on the performance targets and the mechanism for material recovery facilities and commercial bottle recyclers that service the hospitality sector to participate in the scheme. The Government, in particular, will consult with small businesses to ensure that implementation of the container deposit scheme for small retailers and small manufacturers will be as seamless and as cost-effective as possible.

The Government has and will continue to engage with businesses, councils and the community on the implementation of the scheme and will continue to engage particularly with small businesses such as cafes, pubs and restaurants and their respective associations, to ensure that they can successfully participate in the scheme. As part of these efforts, the Government has been engaging and will continue actively to engage with the office of the Small Business Commissioner to ensure that small businesses are fully informed and engaged and to facilitate the smooth introduction of the scheme. The EPA will work with small beverage manufacturers and suppliers to ensure that their concerns and issues are addressed.

The implementation of the scheme will be critical to minimise the burden on these smaller players in the industry—for example, by ensuring that application processes are simple and streamlined and that sufficient information is available for these businesses to understand what they need to do. To help ensure that these issues are taken into consideration, the New South Wales Environment Protection Authority will establish a small business working group to provide an opportunity to bring forward and work through issues of particular importance to these businesses.

In addition, the Government will continue to move forward on the implementation of the scheme. This will involve making new principal regulation to support the bill and commencing the selection process for both the scheme coordinator and network operators. The New South Wales container deposit scheme will commence from 1 July 2017. This time frame is ambitious but achievable. To achieve this, the selection process of the scheme coordinator and network operators will proceed concurrently, and will be finalised with sufficient time to enable the roll-out of the collection network across New South Wales.

In conclusion, the amendment establishes a framework for the delivery of a container deposit scheme in New South Wales. It sets specific obligations on beverage suppliers that will require them to participate in the scheme and to finance the refunds for containers that are returned to collection points. It also establishes the power for the Minister for the Environment to enter into contracts with a scheme coordinator and network operators, who will be tasked with delivering the scheme. The Minister will also have the power to set performance targets in regulation that will provide clear guidance to the scheme coordinator and the network operators of the level and type of performance required. The bill also sets enforceable obligations on collection point operators and individuals returning containers for the refund to ensure the integrity of the scheme and to minimise the risk of fraud. Together, these measures are designed to deliver a significant reduction in the number of beverage containers that are currently ending up in litter across New South Wales, and help deliver on the Premier's priority to reduce the volume of litter in New South Wales by 40 per cent by 2020. I commend the bill to the House.

Debate adjourned.