



New South Wales

# Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Waste Avoidance and Resource Recovery Act 2001* (the *principal Act*) to:

- (a) recognise the responsibility that the beverage industry shares with the community for reducing and dealing with waste generated by beverage product packaging, and
- (b) establish a cost effective State-wide container deposit scheme (the *Scheme*) to assist the beverage industry to discharge that responsibility and to promote the recovery, reuse and recycling of empty beverage containers, and
- (c) confer on the Environment Protection Authority (the *EPA*) functions under the principal Act that are currently conferred on the Chief Executive of the Office of Environment and Heritage, and
- (d) make other minor and consequential amendments and amendments of a savings and transitional nature.

The Scheme includes the following features:

- (a) it provides for the establishment of a Scheme Coordinator and network operators with responsibility for the administration of the Scheme,
- (b) it provides for the payment of refund amounts to persons depositing at collection points empty beverage containers that are subject to the Scheme,
- (c) it provides for the establishment by the Scheme Coordinator of a cost recovery scheme under which beverage suppliers agree to make contributions towards the cost of paying those refund amounts,

- (d) it prohibits the supply of beverages in containers that are subject to the Scheme by beverage suppliers who have not agreed with the Scheme Coordinator to make those contributions,
- (e) it prohibits the supply of beverages in containers of a kind that are not approved by the EPA.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## Schedule 1      **Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58—Container deposit scheme**

**Schedule 1 [3]** inserts proposed Part 5 into the principal Act which deals with arrangements for the establishment, administration and operation of the container deposit scheme (the *Scheme*).

**Proposed Division 1** sets out the objects of the proposed Part and defines words and expressions used in the proposed Part, including the following:

*beverage*, which is defined to mean a liquid intended for human consumption by drinking (excluding any liquid prescribed by regulations made under the proposed Part).

*collection point*, which is defined to mean any facility or premises for the collection and handling of containers delivered to the facility or premises in consideration of the payment of refund amounts, a reverse vending machine or any other facility or premises of a kind prescribed by the regulations.

*container*, which is broadly defined to mean a container that is designed to contain a beverage and to be sealed for the purposes of transport or storage before its sale or delivery for the use of consumption of its contents. The regulations may prescribe other containers for the purposes of that definition, or may exclude containers from the operation of the Part.

*material recovery facility operator*, which is broadly defined to mean a person who carries on a business that is or includes processing domestic waste for reuse or recycling, and who holds an environment protection licence authorising the processing of the waste or is approved by the EPA for the purposes of the definition. The regulations may prescribe other classes of material recovery facility operator.

*refund amount*, which is defined to mean the amount prescribed as the refund amount by the regulations.

*supplier*, which is defined to mean a person who carries on a business that is or includes the supply of beverages in containers (excluding any person of a class prescribed by the regulations).

*supply*, which is defined to mean supply, by way of sale or otherwise, in the course of carrying on a business.

**Proposed Division 2** contains the following provisions dealing with arrangements for the administration of the Scheme:

- (a) **Proposed section 24** authorises the Minister to enter into agreements with a Scheme Coordinator and network operators in connection with the management and administration of the Scheme.
- (b) **Proposed section 25** provides for the content of the agreements. An agreement with a Scheme Coordinator (a *Scheme Coordinator agreement*) must require the Scheme Coordinator to make arrangements with suppliers (*supply arrangements*) under which suppliers pay contributions towards the cost of the Scheme. The agreement must also require the Scheme Coordinator to make arrangements with network operators for the establishment, administration and operation of a network of collection points under which the Scheme Coordinator pays to the network operators refund amounts and associated

administration and handling costs for containers collected at those collection points. A Scheme Coordinator agreement may also contain provisions relating to the exercise by the Scheme Coordinator of similar functions under the container deposit schemes of other States and Territories. An agreement with a network operator (a **network operator agreement**) must require the operator to make arrangements with other persons for the establishment and operation of collection points under which the network operator pays to the collection point operators refund amounts and associated handling costs for containers collected at those collection points. The regulations may provide for the performance targets to be included in the agreements.

- (c) **Proposed section 26** provides that a Scheme Coordinator agreement or network operator agreement may require the Scheme Coordinator or network operator to apply to the EPA for approval before entering into certain arrangements. The regulations may provide for matters relating to approvals.
- (d) **Proposed section 27** enables the regulations to provide for the content of arrangements entered into for the purposes of the Scheme.
- (e) **Proposed section 28** provides that the Scheme Coordinator may be required under a Scheme Coordinator agreement to pay to material recovery facility operators refund amounts for containers processed by the operators. The EPA may issue a protocol for determining the amounts payable, and no amounts will be payable unless a protocol has been issued. The regulations may make further provision with respect to the payments and claims for payments. The Scheme Coordinator agreement or the regulations may limit the circumstances in which the amounts are payable.
- (f) **Proposed section 29** provides that provisions of agreements and arrangements entered into for the purposes of the Scheme are void to the extent to which they are inconsistent with certain proposed provisions, regulations and agreements.
- (g) **Proposed section 30** provides that a Scheme Coordinator agreement or network operator agreement may impose a monetary penalty for the contravention of a provision of the agreement.
- (h) **Proposed section 31** provides that, if an arrangement or agreement entered into for the purposes of the Scheme so provides, the EPA may exercise enforcement powers and other functions under the *Protection of the Environment Operations Act 1997* for the purposes of ensuring compliance with the agreement or arrangement.
- (i) **Proposed section 32** provides for the duration of Scheme Coordinator agreements. **Proposed section 33** provides for the variation and termination of Scheme Coordinator and network operator agreements.
- (j) **Proposed sections 34 and 35** contain provisions relating to performance audits and reports.
- (k) **Proposed section 36** enables the Minister to appoint advisory committees in connection with the exercise of the Minister's functions under the proposed Part.

**Proposed Division 3** contains the following provisions dealing with the regulation of the supply and collection of containers:

- (a) **Proposed sections 37 and 41** define certain words and expressions used in the proposed Division.
- (b) **Proposed section 38** makes it an offence for a supplier to supply or offer to supply a beverage in a container to any person unless the supplier has entered into an arrangement with the Scheme Coordinator to pay contributions towards the cost of the Scheme and the EPA has granted a container approval under the proposed Division in respect of the class of containers to which the container belongs. The offence is limited to the first supply in the State of the beverage in the container. **Proposed section 40** contains provisions relating to container approvals.

- (c) **Proposed section 39** makes it an offence for a supplier to supply or offer to supply a beverage in a container to any person without a marking or labelling that complies with the requirements of the regulations.
- (d) **Proposed section 42** makes it an offence for a collection point operator to fail to pay a refund amount to a person presenting an empty container to a collection point, or to fail to accept delivery of the container. The offence is subject to **proposed section 43**, which provides that a collection point operator may refuse to pay a refund amount to a person if the operator is not satisfied as to the person's identity, and that the operator must not pay a refund amount to a person in certain circumstances without first obtaining from the person a refund declaration and proof of identity. The offence in proposed section 42 does not apply if:
  - (i) the container does not bear a refund marking, or
  - (ii) the collection point operator reasonably believes that the container was not acquired in the State or was acquired before the commencement of the proposed Part or that a refund amount has previously been paid for the container, or
  - (iii) the person refuses to comply with a requirement of the operator to provide a refund declaration.
- (e) **Proposed section 44** makes it an offence for a person to claim a refund amount in certain circumstances, including where a refund amount is not payable for the container under the Scheme.

**Proposed Division 4** deals with miscellaneous matters in connection with the proposed Part, including exemptions for the purposes of the *Competition Code of New South Wales* and the Commonwealth *Competition and Consumer Act 2010*, the administrative review of decisions made under the regulations, the provision of false and misleading information and the review of the proposed Part.

**Schedule 1 [1]** removes a provision requiring proceedings for offences under the Act to be dealt with by the Local Court. The *Protection of the Environment Operations Act 1997* extends to proceedings under the principal Act (and provides that proceedings may be dealt with by either the Local Court or the Land and Environment Court in its summary jurisdiction).

**Schedule 1 [5]** contains a provision relating to the liability of accessories for offences and an evidentiary provision relating to the state of mind of a corporation.

**Schedule 1 [6]** permits regulations to be made under the principal Act containing savings and transitional provisions consequent on the enactment of any Act that amends that Act, including the proposed Act.

**Schedule 1 [7]** makes amendments of a savings and transitional nature, including an amendment providing that a regulatory impact statement under the *Subordinate Legislation Act 1989* will not be required for the first regulation made under the principal Act relating to the Scheme.

**Schedule 1 [2]** and **[4]** make consequential amendments to renumber provisions.

## **Schedule 2      Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58—functions of Environment Protection Authority**

**Schedule 2** confers functions on the EPA that are currently conferred on the Chief Executive of the Office of Environment and Heritage, makes other consequential amendments and repeals redundant provisions.