



New South Wales

Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008

Explanatory note

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

Overview of Bill

The object of this Bill is to ensure that, if the targets for recycling of certain packaging established by the National Packaging Covenant (2005) are not met, a beverage container deposit scheme that provides for the payment of refunds on certain beverage containers will come into force. The Bill sets out the details of that scheme, which is funded by a proposed beverage container tax (see the *Beverage Container Tax Bill 2008*).

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 the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendment to the *Waste Avoidance and Resource Recovery Act 2001* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after the amendment made by the proposed Act has commenced. Once the amendment has commenced the

proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment

Schedule 1 inserts a new Part establishing a beverage container deposit scheme, as follows:

Part 4A Beverage container deposit scheme

Division 1 Definitions

Proposed section 18A defines words and expressions used in the proposed Part.

Division 2 Introduction of beverage container deposit scheme

Proposed section 18B provides that the proposed Part applies to beverage containers made wholly or mainly of a relevant material (namely paper or cardboard, glass, steel, aluminium or plastic) only if the Minister has declared under proposed section 18C or 18D that the Part applies to containers made wholly or partly of that material.

Proposed section 18C sets out the circumstances in which the Minister, following the 2008 review required by the National Packaging Covenant, must make a declaration that the proposed Part applies to beverage containers made of a relevant material. The Minister must make the declaration if the target for recycling of the particular relevant material has not been substantially achieved (that is, at least 75% of the additional quantity of the material scheduled to be recycled under new targets is being recycled) or it appears to the Minister that the target will not be met by 2010.

Proposed section 18D sets out the circumstances in which, after the National Packaging Covenant expires on 30 June 2010, the Minister must make a declaration that the proposed Part applies to beverage containers made wholly or partly of a particular material. This will be the case if the target for recycling packaging of the particular material has not been met.

Division 3 Labelling of beverage containers

Proposed section 18E requires every beverage container to be labelled as refundable.

Proposed section 18F provides that the regulations may impose further requirements relating to the labelling of beverage containers.

Division 4 Establishment or approval of collection depots

Proposed section 18G provides that the Minister may establish, or approve the establishment of, collection depots for the collection of empty beverage containers, including council depots and community centres or community based facilities.

Division 5 Refund scheme

Proposed section 18H provides that a person who accepts the return of an unbroken empty beverage container at a collection depot must pay the person who returns it the amount of the refund value.

Proposed section 18I requires collection depots to report to the Minister on refunds paid.

Division 6 Reimbursement of collection depots

Proposed section 18J requires the Scheme Administrator to pay to each collection depot each month, from the Central Account, the sum of the total amount of refund value paid by the collection depot over the previous calendar month and the processing fee prescribed by the regulations.

Division 7 Distribution of unredeemed deposits

Proposed section 18K provides for the distribution and use of unredeemed deposits (that is, of beverage container tax that has not been paid out to reimburse collection depots for refunds paid).

Division 8 Administration and management of scheme

Proposed section 18L provides for the appointment of a Scheme Administrator to oversee the operation of the proposed Part and exercise other functions.

Proposed section 18M constitutes a Container Deposit Management Committee, the functions of which include the provision of advice to the Minister on the operation of the proposed Part.

Division 9 Central Account

Proposed section 18N establishes a fund to be known as the Beverage Container Deposit Scheme Central Account.

Proposed section 18O provides for the administration and management of that account.

Proposed section 18P provides for the making of payments into that account.

Proposed section 18Q provides for the making of payments from that account.

Proposed section 18R provides for the investment of money in that account.

Division 10 Barcoding of beverage containers

Proposed section 18S requires a person who imports or produces a beverage container to supply the Management Committee with details of any barcode affixed to the beverage container.

Division 11 Review of refund value

Proposed section 18T requires the Minister to review the amount of the refund value at least once every 5 years.

Division 12 Regulations

Proposed section 18U provides for the making of regulations concerning the beverage container deposit scheme established by the proposed Part.

Division 13 Exemptions from application of Part

Proposed section 18V provides that the regulations may exempt beverage containers from some or all of the provisions of the proposed Part.

Proposed section 18W provides that the proposed Part does not apply to beverage containers produced before it takes effect.



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Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008

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New South Wales

Waste Avoidance and Resource Recovery (Container Recovery) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Waste Avoidance and Resource Recovery Act 2001* 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; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Waste Avoidance and Resource Recovery (Container Recovery) Act 2008</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58	7
The <i>Waste Avoidance and Resource Recovery Act 2001</i> is amended as set out in Schedule 1.	8 9
4 Repeal of Act	10
(1) This Act is repealed on the day following the day on which this Act commences.	11 12
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	13 14

Schedule 1	Amendment	1
	(Section 3)	2
Part 4A		3
Insert after section 18:		4
Part 4A	Beverage container deposit scheme	5
Division 1	Definitions	6
18A	Definitions	7
	In this Part:	8
	<i>beverage</i> means:	9
	(a) any carbonated or non-carbonated soft drink, fruit juice or water, or	10 11
	(b) any alcoholic drink, including brandy, gin, rum, whisky, cordials containing spirits, wine, cider, perry, mead, ale, porter, beer or any other spirituous, malt, vinous or fermented liquor, or	12 13 14 15
	(c) milk, including animal milk, soy milk and flavoured or processed milk, or	16 17
	(d) any other liquid intended for human consumption by drinking that is declared by the regulations to be a beverage for the purposes of this Part.	18 19 20
	<i>beverage container</i> means a sealed container, containing a beverage, that is produced for sale to the consumer of the beverage, being a container of any of the following types:	21 22 23
	(a) a plastic or glass bottle,	24
	(b) an aluminium or steel can,	25
	(c) a liquid paperboard or composite carton.	26
	<i>beverage container tax</i> means the tax imposed by the <i>Beverage Container Tax Act 2008</i> .	27 28
	<i>Central Account</i> means the account established by section 18N.	29
	<i>collection depot</i> means a depot established or approved by the Minister under Division 4 for the collection of empty beverage containers.	30 31 32
	<i>labelled</i> includes embossed, painted or stamped.	33
	<i>Management Committee</i> means the Container Deposit Management Committee constituted by section 18M.	34 35

National Packaging Covenant means the covenant entitled “The National Packaging Covenant: a commitment to the sustainable manufacture, use and recovery of packaging” agreed to by the Environment Protection and Heritage Council and other signatories on 1 July 2005 and dated 15 July 2005. 1
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post-consumer packaging means material (including empty used beverage containers) generated by householders or by commercial, industrial and institutional facilities in their role as end users of products that were packaged, being material that can no longer be used for its intended purpose. 6
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refund value means 10 cents, or any higher amount prescribed by the regulations following a review conducted in accordance with section 18T. 11
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relevant material means paper (including cardboard), glass, steel, aluminium or plastic. 14
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Scheme Administrator means the Beverage Container Deposit Scheme Administrator appointed under section 18L. 16
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sell means sell, or offer to sell, to a person in this State or for delivery in this State. 18
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Division 2 Introduction of beverage container deposit scheme 20
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Note. This Division requires a beverage container deposit scheme to be introduced if the targets set by the National Packaging Covenant are not being met at the time that progress of the Covenant is evaluated (at the end of 2008) or when the Covenant expires (at the end of June 2010). 22
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The main target set by the National Packaging Covenant is that signatories will work together to increase the amount of post-consumer packaging recycled from its current rate of 48% (determined using 2003 baseline data) to 65% by 2010. The Covenant provides that packaging made from relevant materials will make a contribution to that main target as follows: 26
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- (a) it is targeted that 70–80% of post-consumer packaging that is made of paper or cardboard will be recycled by 2010 (the current figure is 64%), 31
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- (b) it is targeted that 50–60% of post-consumer packaging that is made of glass will be recycled by 2010 (the current figure is 35%), 33
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- (c) it is targeted that 60–65% of post-consumer packaging that is made of steel will be recycled by 2010 (the current figure is 44%), 35
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- (d) it is targeted that 70–75% of post-consumer packaging that is made of aluminium will be recycled by 2010 (the current figure is 64%), and this target has been met, 37
38
39
- (e) it is targeted that 30–35% of post-consumer packaging that is made of plastic will be recycled by 2010 (the current figure is 20%). 40
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18B	Part applies only if Minister so declares	1
	This Part applies to beverage containers made wholly or mainly	2
	of a relevant material only if the Minister has declared, by notice	3
	in the Gazette under section 18C or 18D, that the Part applies to	4
	containers made wholly or mainly of that material.	5
18C	Introduction of beverage container deposit scheme following 2008	6
	evaluation of progress of National Packaging Covenant	7
(1)	The object of this section is to set out the circumstances in which	8
	the Minister, following the 2008 review required by the National	9
	Packaging Covenant (<i>the 2008 review</i>), must declare that this	10
	Part applies to beverage containers made wholly or mainly of a	11
	relevant material.	12
(2)	The Minister must declare that this Part applies:	13
(a)	to beverage containers made wholly or mainly of paper or	14
	cardboard if, following the 2008 review, it appears to the	15
	Minister that:	16
(i)	less than 68.5% of post-consumer packaging that is	17
	made wholly or mainly of paper or cardboard is	18
	being recycled, or	19
(ii)	the target of achieving 70–80% of post-consumer	20
	packaging that is made wholly or mainly of paper or	21
	cardboard being recycled by July 2010 will not be	22
	met, or	23
(b)	to beverage containers made wholly or mainly of glass if,	24
	following the 2008 review, it appears to the Minister that:	25
(i)	less than 46.25% of post-consumer packaging that is	26
	made wholly or mainly of glass is being recycled, or	27
(ii)	the target of achieving 50–60% of post-consumer	28
	packaging that is made wholly or mainly of glass	29
	being recycled by July 2010 will not be met, or	30
(c)	to beverage containers made wholly or mainly of steel if,	31
	following the 2008 review, it appears to the Minister that:	32
(i)	less than 56% of post-consumer packaging that is	33
	made wholly or mainly of steel is being recycled, or	34
(ii)	the target of achieving 60–65% of post-consumer	35
	packaging that is made wholly or mainly of steel	36
	being recycled by July 2010 will not be met, or	37

(d)	to beverage containers made wholly or mainly of aluminium if, following the 2008 review, it appears to the Minister that:	1
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		3
(i)	less than 68.5% of post-consumer packaging that is made wholly or mainly of aluminium is being recycled, or	4
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		6
(ii)	the revised target of achieving 80–85% of post-consumer packaging that is made wholly or mainly of aluminium being recycled by July 2010 will not be met, or	7
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(e)	to beverage containers made wholly or mainly of plastic if, following the 2008 review, it appears to the Minister that:	11
		12
(i)	less than 27.5% of post-consumer packaging that is made wholly or mainly of plastic is being recycled, or	13
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		15
(ii)	the target of achieving 30–35% of post-consumer packaging that is made wholly or mainly of plastic being recycled by July 2010 will not be met.	16
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(3)	This Part does not apply to such beverage containers until 6 months after the date on which the notice is published in the Gazette, or until a later date specified in the notice.	19
		20
		21
18D	Introduction of beverage container deposit scheme if National Packaging Covenant targets are not met when Covenant expires in 2010	22
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		24
(1)	The object of this section is to set out the circumstances in which, following the expiry of the National Packaging Covenant on 30 June 2010 (<i>the expiry date</i>), the Minister must declare that this Part applies to beverage containers made wholly or mainly of a relevant material.	25
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(2)	The Minister must, before 1 October 2010, declare that this Part applies, on and from 1 January 2011:	30
		31
(a)	to beverage containers made wholly or mainly of paper or cardboard if it appears to the Minister that, by the expiry date, less than 70% of post-consumer packaging that is made wholly or mainly of paper or cardboard is being recycled, or	32
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(b)	to beverage containers made wholly or mainly of glass if it appears to the Minister that, by the expiry date, less than 50% of post-consumer packaging that is made wholly or mainly of glass is being recycled, or	37
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(c)	to beverage containers made wholly or mainly of steel if it appears to the Minister that, by the expiry date, less than 60% of post-consumer packaging that is made wholly or mainly of steel is being recycled, or	1 2 3 4
(d)	to beverage containers made wholly or mainly of aluminium if it appears to the Minister that, by the expiry date, less than 80% of post-consumer packaging that is made wholly or mainly of aluminium is being recycled, or	5 6 7 8
(e)	to beverage containers made wholly or mainly of plastic if it appears to the Minister that, by the expiry date, less than 30% of post-consumer packaging that is made wholly or mainly of plastic is being recycled.	9 10 11 12
 Division 3 Labelling of beverage containers		13
18E	Beverage containers must be labelled as refundable	14
	A person must not sell a beverage container unless the container is labelled “10 cent refund payable at any authorised NSW collection depot”.	15 16 17
	Maximum penalty: 100 penalty units.	18
18F	Regulations may impose further labelling requirements	19
(1)	The regulations may impose further requirements relating to the labelling of beverage containers in connection with the operation of this Act.	20 21 22
(2)	A person must not sell a beverage in a beverage container unless the container is labelled in accordance with any such regulations.	23 24
	Maximum penalty: 100 penalty units.	25
 Division 4 Establishment or approval of collection depots		26 27
18G	Establishment or approval of collection depots	28
(1)	The Minister may establish, or approve the establishment of, collection depots for the collection of empty beverage containers for the purposes of this Part.	29 30 31
(2)	Without limiting the types of collection depots that may be established or approved:	32 33
(a)	such collection depots may involve manual or mechanised handling facilities (including reverse vending machines), and	34 35 36

(b)	any of the following types of collection depots may be approved:	1
(i)	council depots,	2
(ii)	community centres and community based facilities,	3
(iii)	depots at shopping centres and centre car parks,	4
(iv)	“drive through” recycling centres,	5
(v)	depots at service stations or other retailers.	6
(3)	The regulations may make provision for or with respect to the following:	7
(a)	the establishment or approval of the establishment of collection depots,	8
(b)	collection depot design,	9
(c)	the operation and location of collection depots.	10
Division 5	Refund scheme	11
18H	Collection depot to pay refund	12
(1)	A person who accepts the return of an unbroken empty beverage container to which this Part applies at a collection depot must pay the person who returns it the amount of the refund value.	13
	Maximum penalty: 50 penalty units.	14
(2)	The operator of a collection depot must not refuse to accept any unbroken empty beverage container to which this Part applies that is returned to the collection depot.	15
	Maximum penalty: 50 penalty units.	16
18I	Collection depots to report on refunds paid	17
(1)	A person in charge of a collection depot must report to the Minister on the number of empty beverage containers accepted at the collection depot in each month.	18
(2)	That report must be made within the time, and in the manner, prescribed by the regulations.	19

Division 6	Reimbursement of collection depots	1
18J	Reimbursement of collection depots	2
	The Scheme Administrator is to pay to each collection depot each month, from the Central Account, the sum of the following:	3 4
	(a) the total amount of refund value paid by the collection depot over the previous calendar month, and	5 6
	(b) the processing fee prescribed by the regulations.	7
Division 7	Distribution of unredeemed deposits	8
18K	Use of unredeemed deposits	9
(1)	This section applies if, at the end of any calendar year, there is a credit in the Central Account (that is, more beverage container tax was collected than refunds or processing fees were paid out).	10 11 12
(2)	If this section applies, the Management Committee may direct the Scheme Administrator to use all or any part of that credit amount for any of the following, or to distribute all or any part of that credit amount to any person or body approved by the Scheme Administrator for use for any of the following:	13 14 15 16 17
	(a) market creation and support for collected beverage containers and materials,	18 19
	(b) financial support for kerbside recycling services (that is, services involving the collection by or on behalf of local councils of containers that have been separated for recycling by occupants of residences or businesses),	20 21 22 23
	(c) further offsetting the collection industry costs for the operation of the beverage container deposit scheme created by this Part,	24 25 26
	(d) product development to improve the recyclability and reusability of beverage containers,	27 28
	(e) other activities and programs connected with recycling that are approved by the Management Committee.	29 30
(3)	The regulations may make provision for or with respect to the calculation and distribution of the credit amount under this section.	31 32 33

Division 8	Administration and management of scheme	1
18L	Scheme Administrator to be appointed by Minister	2
(1)	The Minister is to appoint a person, to be known as the Beverage Container Deposit Scheme Administrator to act as the administrator of the scheme established by this Part.	3 4 5
(2)	The functions of the Scheme Administrator are as follows:	6
(a)	to oversee the operation of this Part,	7
(b)	to make payments under section 18J (Reimbursement of collection depots),	8 9
(c)	to report to the Management Committee on the following:	10
(i)	the administration and management of the Central Account,	11 12
(ii)	scheme operations,	13
(iii)	data about recycling rates and individual collection depots,	14 15
(iv)	such other matter as the Minister or the Management Committee may refer to the Scheme Administrator.	16 17 18
(3)	The regulations may make provision for or with respect to the keeping of accounts by the Scheme Administrator.	19 20
18M	Container Deposit Management Committee	21
(1)	There is constituted by this Act a Container Deposit Management Committee.	22 23
(2)	The functions of the Management Committee are as follows:	24
(a)	to provide advice to the Minister on any matter on which the Minister requests advice and on any other matter concerning the operation of this Part that the Management Committee thinks fit,	25 26 27 28
(b)	to oversee the expenditure of the Central Account,	29
(c)	such other functions relating to the operation of this Part as may be determined by the Minister.	30 31
(3)	The Management Committee is to consist of 4 members appointed by the Minister.	32 33

(4)	Of the members:	1
(a)	one is to be appointed as a representative of local government, and	2 3
(b)	one is to be appointed as a representative of community groups or environmental groups, and	4 5
(c)	one is to be appointed as a representative of the Department of Environment and Climate Change, and	6 7
(d)	one is to be appointed as a representative of the beverage packaging industry.	8 9
(5)	Administrative support for the Management Committee is to be provided by the Department of Environment and Climate Change.	10 11 12
(6)	The regulations may make provision for or with respect to the constitution and procedure of the Management Committee.	13 14
Division 9	Central Account	15
18N	Establishment of Central Account	16
	The Minister is to establish and maintain a fund to be known as the Beverage Container Deposit Scheme Central Account (the <i>Central Account</i>).	17 18 19
18O	Administration and management of Central Account	20
(1)	The Central Account is to be administered and managed by the Scheme Administrator.	21 22
(2)	The Scheme Administrator is to report to the Management Committee on the administration and management of the Central Account as often as, and in the terms that, the Management Committee requires.	23 24 25 26
(3)	The regulations may make provision for or with respect to the management of the Central Account.	27 28
18P	Payments into Central Account	29
	There is payable into the Central Account such funds as are required to be paid into the Account by or under any other Act.	30 31
18Q	Payments from the Central Account	32
	The following are to be paid from the Central Account:	33
(a)	payments required to be made under section 18J (Reimbursement of collection depots),	34 35

(b)	payments authorised by section 18K (Use of unredeemed deposits),	1 2
(c)	any other payments authorised by the regulations or under this or any other Act.	3 4
18R	Investment of money in the Central Account	5
	Money to the credit of the Central Account may be invested in any manner authorised by the regulations.	6 7
	Division 10 Barcoding of beverage containers	8
18S	Supply of barcode	9
	A person who imports or produces a beverage container must supply to the Management Committee, in accordance with the regulations, details of any barcode affixed to the beverage container.	10 11 12 13
	Maximum penalty: 20 penalty units.	14
	Division 11 Review of refund value	15
18T	Review of refund value	16
(1)	The Minister must review the amount of the refund value at least once every 5 years after the commencement of this Part.	17 18
(2)	In conducting that review, the Minister must have regard to the minimum refund value necessary to maintain the appropriate level of incentive:	19 20 21
(a)	for manufacturers, distributors and consumers of beverages in beverage containers to reuse or recycle beverage containers, and	22 23 24
(b)	to ensure high rates of recovery of the beverage containers to which this Part applies or may apply, and	25 26
(c)	to reduce litter and litter-related costs, and	27
(d)	to reduce waste, disposal and recycling costs, and	28
(e)	to conserve resources.	29
	Division 12 Regulations	30
18U	Regulations concerning beverage container deposit scheme	31
	The regulations may make provision for or with respect to any matters relevant to the beverage container deposit scheme established by this Part.	32 33 34

Division 13	Exemptions from application of Part	1
18V	Exemption of certain beverage containers by regulation	2
(1)	The regulations may exempt beverage containers of a specified class from the application of this Part, or specified provisions of this Part, either unconditionally or subject to conditions specified in the regulations.	3 4 5 6
(2)	A regulation made for the purposes of this section must not be made unless:	7 8
(a)	the Minister has given notice of the proposal to make the regulation by publishing a notice:	9 10
(i)	in the Gazette, and	11
(ii)	in a daily newspaper circulating throughout New South Wales, and	12 13
(iii)	in any relevant trade, professional, business or public interest journal, and	14 15
(b)	that notice invited comments and submissions on the proposed exemption within a specified time, but not less than 21 days from the last publication of the notice, and	16 17 18
(c)	the Minister has taken into account all comments and submissions received by the Minister within the time specified in the notice, and	19 20 21
(d)	the Minister has tabled in both Houses of Parliament a statement of the Minister's reasons for recommending the making of the regulation.	22 23 24
18W	Part does not apply to existing beverage containers	25
	This Part does not apply to beverage containers produced before the date on which a declaration under section 18C or 18D took effect in relation to beverage containers of that material.	26 27 28