

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

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

Explanatory note

Overview of Bill

The object of this Bill txt

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.

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NEW SOUTH WALES
DRAFT GOVERNMENT BILL

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

No. , 2016

A Bill for

An Act to amend the *Waste Avoidance and Resource Recovery Act 2001* to establish a container deposit scheme to promote litter reduction and the recovery, reuse and recycling of beverage containers.

public consultation draft

Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016 [NSW]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016*.

2 Commencement

This Act commences 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

[1] Section 26 Proceedings for offences

Omit the section.

[2] Parts 5 and 6

Re-number Parts 5 and 6 and sections 20–32 as Parts 6 and 7 and sections 47–53, respectively.

[3] Part 5

Insert after Part 4:

Part 5 Container deposit scheme

Division 1 Preliminary

19 Objects of Part

- (1) The objects of this Part are as follows:
 - (a) to recognise the responsibility that the beverage industry shares with the community for reducing and dealing with waste generated by beverage product packaging, and
 - (b) to establish a cost effective State-wide container deposit scheme to assist the beverage industry to discharge that responsibility and to promote the recovery, reuse and recycling of empty beverage containers.
- (2) The container deposit scheme established by this Part 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 facilities 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 container deposit 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 unless the containers are of a kind approved by the EPA.

20 Definitions

- (1) In this Part:
beverage—see section 21.

public consultation draft

Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016 [NSW]
Schedule 1 Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58—Container deposit scheme

collection point means:

- (a) 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, or
- (b) a reverse vending machine, or
- (c) any other facility or premises of a kind prescribed by the regulations.

collection point arrangement—see section 25.

collection point operator, in relation to a collection point, means:

- (a) a person who has entered into a collection point arrangement with a network operator in connection with the operation of the collection point, or
- (b) if there is no collection point arrangement in force in respect of the collection point—a network operator who administers and operates the collection point.

container—see section 22.

container approval means a container approval issued and in force under Division 3.

corresponding law—means a law of another State or a Territory that is declared by the regulations to be a corresponding law for the purposes of this Part.

domestic waste management services has the same meaning as in the *Local Government Act 1993*.

material recovery facility operator means a person who has entered into an agreement with a local council to provide services involving the processing for reuse or recycling of:

- (a) domestic waste designated for recycling and collected by that or any other person during the course of domestic waste management services, or
- (b) any other kind of waste prescribed by the regulations.

network arrangement—see section 25.

network operator, in relation to a network operator agreement, means the person with whom the Minister enters into the agreement.

network operator agreement—see section 24.

refund amount means the amount prescribed by the regulations under section 23.

Consultation note. It is proposed that the regulations will initially prescribe 10 cents as the refund amount.

refund marking, in relation to a container, means a marking or labelling that indicates the refund amount for the container in accordance with the requirements prescribed by the regulations, if any.

reverse vending machine means a machine or other device from which refund amounts can be obtained by an operation that involves inserting empty containers into the device, whether or not some other action is required to activate the device.

Scheme means the container deposit scheme established by this Part.

Scheme administration agreement—see section 24.

Scheme arrangement means:

- (a) a supply arrangement, or
- (b) a network arrangement, or

(c) a collection point arrangement.

Scheme Coordinator means the person with whom the Minister enters into a Scheme Coordinator agreement.

Scheme Coordinator agreement—see section 24.

Scheme participant means:

- (a) a Scheme Coordinator, or
- (b) a network operator, or
- (c) a supplier who has entered into a supply arrangement with a Scheme Coordinator, or
- (d) a collection point operator.

supplier means a person who carries on a business that is or includes the supply of beverages in containers, but does not include a person of a class excluded from the operation of this Part by the regulations.

supply means supply, by way of sale or otherwise, in the course of carrying on a business.

supply arrangement—see section 25.

21 Meaning of “beverage”

In this Part, **beverage** means a liquid intended for human consumption by drinking, but does not include a liquid of a kind that is excluded from the operation of this Part by the regulations.

Consultation note. It is proposed that plain milk and milk substitutes, concentrated cordials, concentrated fruit and vegetable juices and registered health tonics will be excluded from the operation of this Part by the regulations.

22 Meaning of “container”

(1) In this Part, **container** means:

- (a) a container that is designed to contain a beverage and to be sealed (when filled with the beverage) for the purposes of transport or storage before its sale, or delivery, for the use or consumption of its contents, or
- (b) any other container of a kind prescribed by the regulations as a container for the purposes of this Act.

(2) However, **container** does not include a container of a kind that is excluded from the operation of this Part by the regulations.

Consultation note. It is proposed that the regulations will exclude the following containers from the operation of this Part:

- (a) any container designed to contain less than 150 ml of beverage,
- (b) any container designed to contain more than 3 L of beverage,
- (c) glass containers designed to contain wine or spirits,
- (d) containers designed to contain 1 L or more of flavoured milk,
- (e) containers designed to contain 1 L or more of pure juice (comprising at least 90% fruit or vegetable juice or a mixture of fruit and vegetable juices),
- (f) containers made of cardboard and plastic, cardboard and foil or cardboard, plastic and foil (commonly known as casks or aseptic packs) designed to contain 1 L or more of wine, wine-based beverage or water (including mineral water and spring water),
- (g) containers made of plastic and foil (commonly known as sachets) designed to contain 250 ml or more of wine.

23 Refund amount

The regulations may prescribe an amount as the refund amount for the purposes of this Part.

Consultation note. It is proposed that the regulations will initially prescribe 10 cents as the refund amount.

Division 2 Administration of Scheme

24 Scheme administration agreements

- (1) The Minister may enter into written agreements (*Scheme administration agreements*) with persons in connection with the management and administration of the Scheme.
- (2) There are the following types of Scheme administration agreement:
 - (a) a Scheme Coordinator agreement,
 - (b) a network operator agreement.
- (3) The Minister may invite applications for Scheme administration agreements in any manner the Minister considers appropriate.

Consultation note. An invitation for applications for a Scheme administration agreement may set out the criteria against which the applicant will be assessed and the information required to address those criteria. The required information may include the following:

- (a) particulars of the applicant's proposal to meet performance targets and governance, transparency and reporting requirements,
 - (b) in relation to a Scheme Coordinator agreement, particulars of the applicant's proposal to maximise the cost-effectiveness of the Scheme,
 - (c) particulars of the expertise of the applicant, having regard to the obligations of a Scheme Coordinator or network operator under the proposed agreement, and the capacity of the applicant to fulfil those obligations,
 - (d) information demonstrating that the applicant is a fit and proper person to enter into, and fulfil the obligations imposed by, a Scheme administration agreement,
 - (e) in relation to a Scheme Coordinator agreement, the amounts proposed to be paid to network operators in consideration of the establishment and administration of a network of collection points and the payment of refund amounts and associated handling costs to collection point operators under network arrangements,
 - (f) in relation to a Scheme Coordinator agreement, the amounts proposed to be charged to suppliers for the purpose of funding the costs of the Scheme and the measures proposed by the applicant to ensure the fair allocation of those costs.
- (4) An application for a Scheme administration agreement must be accompanied by the fee prescribed by the regulations.
 - (5) In determining whether to grant an application for a Scheme administration agreement, the Minister:
 - (a) must consider whether the applicant is a fit and proper person to enter into, and fulfil the obligations imposed by, the agreement, and
 - (b) may consider any other matters the Minister considers relevant.
 - (6) The regulations may provide for the matters that the Minister may consider in determining whether an applicant is a fit and proper person for the purposes of subsection (5).

Consultation note. It is proposed that the regulations will provide for the consideration of the character, technical competence and financial capacity of the applicant, whether the applicant or a related body corporate has contravened this Part, other relevant legislation or any authority issued under relevant legislation, whether the applicant or a related body corporate has committed offences involving fraud or dishonesty or been

subject to bankruptcy, winding up or administration and whether the applicant is in partnership with any other person whom the Minister considers not to be a fit and proper person.

- (7) Subsection (6) does not limit the matters that the Minister may consider in determining whether a person is a fit and proper person for the purposes of subsection (5).

25 Content of Scheme administration agreements

- (1) A Scheme Coordinator agreement must include provisions requiring the Scheme Coordinator to enter into and give effect to the following arrangements:
- (a) arrangements with suppliers (*supply arrangements*) requiring the suppliers to pay to the Scheme Coordinator contributions towards the cost of the management, administration and operation of the Scheme,
 - (b) arrangements with network operators (*network arrangements*) in connection with the establishment, administration and operation of collection points requiring the Scheme Coordinator to pay to the operators refund amounts and associated administration and handling costs for containers that are collected at the collection points (and for which a refund is payable under Division 3).
- (2) A network operator agreement must include provisions requiring the network operator to enter into and give effect to arrangements with persons in connection with the establishment and operation of collection points (*collection point arrangements*) requiring the network operator to pay to those persons refund amounts and associated handling costs for containers that are collected at those collection points (and for which a refund amount is payable under Division 3).
- (3) A Scheme administration agreement must include such provisions as the Minister considers necessary to ensure:
- (a) that each Scheme arrangement required under the agreement specifies a methodology for determining the amounts payable under the arrangement, and
 - (b) that the Scheme Coordinator or network operator to whom the agreement applies does not unreasonably discriminate against or in favour of any particular Scheme participant in negotiating, entering into or enforcing any Scheme arrangement.

Consultation note. It is anticipated that a supply arrangement will be required to specify a method for determining the total amounts payable by and to the Scheme Coordinator in the course of the administration and operation of the Scheme and a method for allocating a proportion of the Scheme Coordinator's administration and operation costs to the supplier.

- (4) A Scheme administration agreement may provide for such other matters as the Minister considers appropriate in relation to the management, administration or operation of the Scheme.

Consultation note. For example, a Scheme Coordinator agreement may require a Scheme arrangement to provide for the circumstances in which the arrangement may be varied or terminated, and may require a supply arrangement to provide for the manner in which costs are to be paid by a supplier to the Scheme Coordinator.

- (5) The regulations may make provision for or with respect to the performance targets and any other matters to be included in a Scheme administration agreement.

Consultation note. It is proposed that the regulations will require the inclusion in Scheme administration agreements of "coverage targets" for Scheme Coordinators and network operators relating to the accessibility (including geographical spread and

opening hours) of collection points generally or in specific regions. These targets will only be satisfied by collection points in relation to which a collection point arrangement is in place.

In addition, a Scheme Coordinator agreement will be required to include “recovery targets” for the Scheme Coordinator setting the rate at which containers that are subject to the scheme are to be collected from collection points (in relation to which Scheme arrangements are in place) or material recovery facilities.

- (6) A Scheme Coordinator agreement may contain provisions relating to the exercise by the Scheme Coordinator of similar functions under the laws of other States and Territories relating to container deposit schemes.
- (7) Nothing in this section or any other provision of this Division (except section 32) limits the matters for which a Scheme administration agreement may provide.

26 Approval of certain Scheme arrangements

- (1) A Scheme Coordinator agreement may require the Scheme Coordinator, before entering into a network arrangement, to apply to the EPA for approval of the arrangement.
- (2) A network operator agreement may require the network operator, before entering into a collection point arrangement, to apply to the EPA for approval of the arrangement.
- (3) The regulations may make provision for or with respect to approvals and applications for approvals, including for or with respect to the payment of application fees and approval fees to the EPA by the Scheme Coordinator and network operators and to the revocation of approvals by the EPA.

Consultation note. It is anticipated that the regulations will provide for the form of, and information required to accompany, applications and the fees payable for applications and approvals. It may also provide for the process for determination of an application for approval (including the matters which the EPA may take into account in making its determination), the conditions that may be imposed on the approval and the circumstances in which the approval may be varied or revoked.

27 Regulations relating to content of Scheme arrangements

The regulations may make provision for or with respect to the content of Scheme arrangements made under a Scheme administration agreement.

28 Payment of refund amounts to material recovery facility operators

- (1) A Scheme Coordinator agreement may require the Scheme Coordinator to pay to material recovery facility operators refund amounts for containers that are collected during the course of waste management services and that are processed by the operators for reuse or recycling.
- (2) The regulations may make provision for or with respect to payments and claims for payments, including for or with respect to the following matters:
 - (a) the material recovery facility operators, or classes of material recovery facility operators, who are eligible for payments,
 - (b) the methodology for determining the amounts payable,
 - (c) the manner in which a claim for a payment is required to be made by a material recovery facility operator,
 - (d) prohibiting the landfill disposal of containers in respect of which payments have been made.

29 Inconsistent provisions void

- (1) A provision of a Scheme administration agreement is, except as provided by the regulations, void to the extent to which it is inconsistent with a provision of Division 3.
- (2) A provision of a Scheme arrangement entered into between a Scheme Coordinator and any other Scheme participant is, except as provided by the regulations, void to the extent to which it is inconsistent with:
 - (a) a provision of the Scheme Coordinator agreement, or
 - (b) a provision of Division 3, or
 - (c) any regulations made under section 27.
- (3) A provision of a collection point arrangement entered into between a network operator and a collection point operator is, except as provided by the regulations, void to the extent to which it is inconsistent with:
 - (a) a provision of the network operator agreement that is applicable to that network operator and that relates to that arrangement, or
 - (b) a provision of Division 3, or
 - (c) any regulations made under section 27.

30 Penalties for contravention

- (1) The provisions of a Scheme administration agreement may be enforced by penalty provisions or in any other manner that the agreement may provide.

Consultation note. It is anticipated that a monetary penalty will be imposed under the agreement for failure to meet the performance targets prescribed by the regulations. A Scheme administration agreement may also provide for monetary penalties in the event of any container for which a refund amount is paid by the Scheme Coordinator or a network operator being disposed of as landfill.
- (2) A Scheme Coordinator or network operator who contravenes a provision of a Scheme administration agreement that is enforceable by a penalty provision is liable to pay, as a debt due to the State, an amount determined in accordance with the agreement as the penalty for the contravention.
- (3) In this section, *penalty provision* means a provision of a Scheme administration agreement that provides for the payment of an amount of penalty for the contravention of a specified provision of the agreement.
- (4) This section (and the provisions of Scheme administration agreements authorised by this section) have effect despite any other law.

31 Monitoring and enforcement of compliance

- (1) A Scheme administration agreement may:
 - (a) specify the monitoring, reporting and audit requirements to be included in a Scheme arrangement, and
 - (b) provide for the exercise of powers and other functions under Chapter 7 of the *Protection of the Environment Operations Act 1997* by the EPA (and authorised officers appointed by the EPA) in connection with the agreement, and
 - (c) require a Scheme arrangement to provide for the exercise of powers and other functions under that Chapter by the EPA (and authorised officers appointed by the EPA) in connection with the arrangement, and

- (d) specify any other measures to be taken by the Scheme Coordinator or network operator to whom the agreement applies to ensure that the parties comply with a Scheme arrangement.

Consultation note. A Scheme arrangement may, for example, be required to specify that the Scheme participant must provide such information to the Scheme Coordinator or network operator as is required for the purposes of applying the methodology for determining amounts payable under the arrangement.

- (2) If a Scheme administration agreement provides, or a Scheme arrangement provides (or is required under a Scheme administration agreement to provide), for the exercise of powers and other functions under Chapter 7 of the *Protection of the Environment Operations Act 1997* in connection with the agreement or arrangement, that Chapter extends to the exercise of powers and other functions by the EPA (and by authorised officers appointed by the EPA) for the following purposes:
 - (a) determining whether there has been compliance with or a contravention of the agreement or arrangement (or any condition of an approval granted by the EPA in relation to the arrangement),
 - (b) obtaining information or records for purposes connected with the monitoring or audit of the activities of parties to the agreement or arrangement in relation to the performance of their obligations under the agreement or arrangement.
- (3) The provisions of Chapter 7 of the *Protection of the Environment Operations Act 1997* apply for any such purpose as if the responsibilities and functions of the EPA under this Act included the matters referred to in subsection (2).
- (4) This section does not affect the exercise of powers or other functions under Chapter 7 of the *Protection of the Environment Operations Act 1997* in connection with this Act that are authorised to be exercised without reliance on this section.

32 Duration of agreements

- (1) A Scheme Coordinator agreement has effect for such period (not exceeding 7 years) as is specified in the agreement.
- (2) A Scheme Coordinator agreement:
 - (a) may be renewed for a period not exceeding 3 years, and
 - (b) must not be renewed more than twice (that is, so that the agreement has effect for a total period not exceeding 13 years).
- (3) A Scheme Coordinator agreement may provide for the Scheme Coordinator to have the first right to negotiate a further agreement, subject to meeting any specified requirements.
- (4) A network operator agreement has effect for such period as is specified in the agreement or, if no period is specified, until it is terminated under section 33.

33 Variation and termination of agreement

- (1) A Scheme administration agreement may be varied by agreement in writing between the Minister and the Scheme participant.

- (2) The Minister may, by notice in writing given to the Scheme participant, vary or terminate a Scheme administration agreement without the consent of the Scheme participant:
 - (a) if satisfied that the Scheme participant has failed to meet the performance standards under the agreement or has failed to comply with any other provision of the agreement, or
 - (b) in any other circumstances authorised by the agreement or by the regulations.
- (3) Without limiting subsection (2), the Minister may vary a Scheme administration agreement without the consent of the Scheme participant to provide for any performance target or other matter required by this Part or the regulations to be included in the agreement.
- (4) The Scheme participant is not entitled to any compensation as a result of the variation or termination of a Scheme administration agreement under this section.
- (5) The regulations may make further provision with respect to the variation or termination of a Scheme administration agreement.
- (6) In this section, *Scheme participant*, in relation to a Scheme administration agreement, means the Scheme Coordinator or network operator who has entered into the agreement.

34 Performance audit

- (1) At the request of the Minister, the EPA is to conduct a performance audit of the activities of any Scheme Coordinator or network operator in relation to the performance of obligations under a Scheme administration agreement.
- (2) At the conclusion of the performance audit, the EPA is to provide the Minister with a report.
- (3) If the EPA is of the opinion that a Scheme Coordinator or network operator is not complying with the Scheme administration agreement, the EPA may make recommendations to the Minister on appropriate remedial actions to be taken.
- (4) The regulations may make provision for or with respect to performance audits under this section.

35 Reports by Scheme Coordinator

- (1) A Scheme Coordinator must, within 90 days after the end of each financial year, prepare and deliver to the Minister a report on the following matters:
 - (a) the performance of the Scheme Coordinator by reference to the performance targets under the Scheme Coordinator agreement,
 - (b) the amounts charged to suppliers under supply arrangements,
 - (c) any other matter prescribed by the regulations.
- (2) The Minister is to cause a copy of the report to be tabled in each House of Parliament as soon as practicable after receiving the report.
- (3) In this section:
financial year means a period of 12 months commencing on 1 July.

36 Advisory committees

- (1) The Minister may appoint such advisory committees as the Minister considers appropriate for the purposes of advising the Minister in the exercise of the Minister's functions under this Part.
- (2) An advisory committee has the functions the Minister may from time to time determine for it.
- (3) The persons appointed as members of an advisory committee must, in the opinion of the Minister, represent a range of interests and expertise appropriate to the functions of the Minister under this Part.
- (4) An advisory committee member holds office for the period specified in the instrument of appointment of the committee member, but the appointment may be terminated by the Minister at any time.
- (5) One of the advisory committee members, in and by the instrument by which the committee member is appointed or another instrument made by the Minister, is to be appointed as chairperson of the committee.
- (6) An advisory committee member is entitled to be paid the fees and allowances (if any) determined from time to time by the Minister as to the committee member.
- (7) Subject to the regulations and any directions of the Minister, the procedure of an advisory committee appointed under this section is to be determined by the advisory committee.
- (8) The Minister may dissolve an advisory committee appointed under this section.

Consultation note. An advisory committee may be formed by the Minister to provide advice to assist in the exercise of the Minister's functions in relation to the Scheme. The purposes for which an advisory committee may be appointed may include, for example, the provision of advice on the evaluation of applications for a Scheme Coordinator agreement. It is also anticipated that an advisory committee will be appointed to review and report to the Minister on the operation of the Scheme generally.

37 Competition exemption

- (1) The following are specifically authorised for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of New South Wales*:
 - (a) a Scheme administration agreement and any Scheme arrangement,
 - (b) the entering into or making of a Scheme administration agreement or Scheme arrangement,
 - (c) conduct of the parties to a Scheme administration agreement or Scheme arrangement in negotiating the agreement or arrangement,
 - (d) the grant or refusal of a container approval,
 - (e) conduct authorised or required by or under the terms or conditions of a Scheme administration agreement, Scheme arrangement or container approval.
- (2) Anything authorised to be done by this section is authorised only to the extent that it would otherwise contravene Part IV of the *Competition and Consumer Act 2010* of the Commonwealth or the *Competition Code of New South Wales*.

Division 3 Supply and collection of containers

Subdivision 1 Supply of beverages in containers

38 Meaning of “supplier” in relation to sale by vending machine

For the purposes of this Subdivision, a person is a *supplier* in relation to the supply of a beverage by vending machine if the person is the lessee or (if there is no lessee) the owner of the vending machine.

39 Requirement for supply arrangement with Scheme Coordinator and container approval

- (1) A supplier must not supply a beverage in a container to any person unless:
 - (a) a supply arrangement is in force between the supplier and a Scheme Coordinator, and
 - (b) a container approval is in force in respect of a class of containers to which the container belongs.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
 - (b) in the case of an individual—100 penalty units.
- (2) This section applies only to the first supply in the State of the beverage in the container.
- (3) In proceedings for an offence against this section, if it is established that the beverage in the container has been supplied in the State, the onus of establishing that the supply is not a first supply in the State lies on the defendant.

40 Requirement for refund markings on containers

A supplier must not supply or offer to supply a beverage in a container to any person unless the container bears a refund marking.

Maximum penalty: 150 penalty units.

41 Container approvals

- (1) A supplier may apply to the EPA for a container approval.

Consultation note. A container approval will relate to a class of container, identified by reference to factors such as the size, material, beverage, label and manufacturer concerned.
- (2) An application for a container approval must:
 - (a) be in a form approved by the EPA, and
 - (b) contain or be accompanied by the information required by the EPA (as indicated in the form or in material accompanying the form), and
 - (c) be accompanied by the fee prescribed by the regulations (if any).
- (3) The EPA may determine an application for a container approval by granting the container approval to the applicant. The approval is subject to any conditions prescribed by the regulations or specified in the approval.
- (4) The EPA may refuse to grant a container approval:
 - (a) if a supply arrangement is not in force between the applicant and a Scheme Coordinator, or

- (b) if the labelling for containers of the class to which the application relates does not include a refund marking, or
 - (c) on any grounds prescribed by the regulations.
- (5) The EPA may suspend or revoke a container approval on any grounds prescribed by the regulations.
- (6) A person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions:
 - (a) the refusal of the EPA to grant a container approval to the person,
 - (b) a condition imposed by the EPA in relation to a container approval granted to the person,
 - (c) the suspension or revocation of a container approval granted to the person.
- (7) For the purposes of such a review, an application for the grant of a container approval is taken to have been refused if the approval is not granted within 20 days after the application is made in accordance with this section.
- (8) The holder of a container approval must not contravene a condition of the approval.
Maximum penalty:
 - (a) in the case of a corporation—200 penalty units, or
 - (b) in the case of an individual—50 penalty units.
- (9) The regulations may make provision for or with respect to container approvals and applications for container approvals (including the payment of fees for approvals). The regulations may limit a container approval to containers supplied by the person to whom the approval is granted.

Consultation note. The regulations may prescribe the fees payable for applications for container approvals, the annual fees payable by holders of approvals and the period within which fees must be paid. The regulations may also specify the conditions and duration of an approval. It is proposed that the regulations will provide for suspension or revocation of an approval if the holder contravenes a condition of the approval, commits an offence under this Part or fails to pay the annual approval fee.

Subdivision 2 Collection of containers

42 Definition

In this Subdivision, **refund declaration** means a declaration containing the information prescribed by the regulations.

Consultation note. It is proposed that a refund declaration will require the person claiming the refund to provide his or her name and address and declare that the container was not acquired outside New South Wales or before the commencement of the Scheme and that the person has not already claimed a refund amount for the container.

43 Refund amounts payable by collection point operators

- (1) Subject to section 44, if a person presents an empty container to a collection point for the purpose of claiming a refund amount, the collection point operator must accept delivery of the container and pay to the person the refund amount for the container.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in the case of an individual—50 penalty units.

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Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016 [NSW]
Schedule 1 Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58—Container deposit scheme

- (2) Subsection (1) does not apply:
- (a) if the container for which the refund amount is claimed does not bear a refund marking, or
 - (b) if the collection point operator reasonably believes:
 - (i) that the container was not acquired in the State or in a jurisdiction in which a corresponding law is in force, or
 - (ii) that the container was acquired before the commencement of this Part, or
 - (iii) that a refund amount has previously been paid for the container at any collection point, or
 - (iv) that the container has previously been processed by a material recovery facility operator for reuse or recycling and a Scheme Coordinator has made, or is required to make, a payment in respect of the container to that operator under a Scheme Coordinator agreement, or
 - (c) if the person has refused to comply with a requirement of the operator under section 44, or
 - (d) in any other circumstances prescribed by the regulations.
Consultation note. It is proposed that the regulations will provide that a refund amount is not required to be paid if the container is contaminated, if the refund marking cannot be read or scanned, if it is not a container of a type approved by the EPA, if the container is crushed or if the person claiming the refund amount has refused to complete a declaration relating to the purchase of the container.
- (3) A refund amount that is payable under this section must be paid:
- (a) in cash or in any other manner prescribed by the regulations, and
 - (b) at the time the collection point operator accepts delivery of the container, or at any later time in accordance with the regulations.
Consultation note. It is proposed that the regulations will provide for additional payment methods, including credit card, electronic funds transfer, contactless payment and coupons redeemable for cash or services.
- (4) For the purposes of subsection (1), the collection point operator in relation to a reverse vending machine is taken not to accept the delivery of a container if the container is inserted into, and rejected by, the machine.
- (5) For the purposes of subsection (3) (b), the collection point operator in relation to a reverse vending machine is taken not to have paid a refund amount at the time the operator accepts delivery of the container if:
- (a) the container is inserted into, and not rejected by, the machine, and
 - (b) the machine fails to dispense payment of a refund amount for the container.

44 Refund declarations and proof of identity

- (1) A collection point operator may require any person who presents a container to the collection point for the purpose of claiming a refund amount to provide to the operator a refund declaration.
- (2) A collection point operator must not pay to a person a refund amount in either of the following circumstances unless the person has provided to the operator a refund declaration and proof of the person's identity:
 - (a) if the number of containers for which the person is claiming a refund amount at the collection point exceeds the number prescribed by the regulations,

public consultation draft

Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016 [NSW]
Schedule 1 Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58—Container deposit scheme

- (b) if, within the period prescribed by the regulations, the total number of containers presented to the collection point by the person, and all other persons acting on the person's behalf, for the purpose of claiming a refund exceeds the number prescribed by the regulations.

Consultation note. It is proposed that, during the first 6 months of the Scheme's operation, a refund declaration and proof of identity will be required for claims involving more than 500 containers. After the expiry of that 6-month period, the declaration and proof of identity will be required for claims involving more than 1,500 containers at any time, or more than 3,000 within any 48-hour period.

- (3) This section does not apply in relation to containers collected, or refund amounts paid, by means of a reverse vending machine.
- (4) A collection point operator must keep such records relating to refunds paid by, and proof of identity documentation provided to, the operator as are prescribed by the regulations and retain a copy of those records and the refund declaration for at least 3 years.

Maximum penalty: 40 penalty units.

45 Offence to claim refund for containers not subject to Scheme

- (1) A person must not present a container to a collection point for the purpose of claiming a refund amount if the person knows, or ought reasonably to know:
 - (a) that the container was not acquired in the State or in a jurisdiction in which a corresponding law is in force, or
 - (b) that the container was acquired before the commencement of this Part, or
 - (c) that a refund amount has previously been paid for the container at any collection point, or
 - (d) that the container has previously been processed by a material recovery facility operator for reuse or recycling and a Scheme Coordinator has made, or is required to make, a payment in respect of the container to that operator under a Scheme Coordinator agreement.
- (2) A collection point operator must not issue to a network operator an invoice or other statement claiming a refund amount payable to the operator by the network operator for a container under a collection point arrangement if the operator knows, or ought reasonably to know:
 - (a) that the container was not acquired in the State or in a jurisdiction in which a corresponding law is in force, or
 - (b) that the container was acquired before the commencement of this Part, or
 - (c) that a refund amount has been paid for the container on more than one occasion at any one or more collection points, or
 - (d) that the container has previously been processed by a material recovery facility operator for reuse or recycling and a Scheme Coordinator has made, or is required to make, a payment in respect of the container to that operator under a Scheme Coordinator agreement.

Maximum penalty: 400 penalty units.

Division 4 Miscellaneous

46 Review of Part

- (1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Part.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as practicable after the review is completed.

[4] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act.

[5] Schedule 4, Part 5

Insert at the end of the Schedule:

**Part 5 Provision consequent on enactment of
Waste Avoidance and Resource Recovery
Amendment (Container Deposit Scheme) Act
2016**

First principal regulation relating to container deposit scheme

Section 5 of the *Subordinate Legislation Act 1989* is taken not to apply to the first regulation made under this Act comprising matters relating to the container deposit scheme established by Part 5 of this Act.

Schedule 2 Amendment of other legislation consequent on establishment of container deposit scheme

2.1 Mutual Recognition (New South Wales) Temporary Exemptions Regulation 2011

Clause 5

Insert after clause 4:

5 Temporary exemption relating to container deposit legislation

- (1) In accordance with section 6 of the Act and for the purposes of section 15 of the Commonwealth Act, the following are declared to be laws to which section 15 of the Commonwealth Act applies:
 - (a) Part 5 of the *Waste Avoidance and Resource Recovery Act 2001*,
 - (b) all other provisions of that Act, to the extent that they relate to the container deposit scheme established by that Part,
 - (c) regulations made under that Act, to the extent that they relate to that scheme.
- (2) This clause operates only for the period of 12 months commencing at the beginning of the day on which this clause commences.

2.2 Trans-Tasman Mutual Recognition (New South Wales) Temporary Exemptions Regulation 2011

Clause 5

Insert after clause 4:

5 Temporary exemption relating to container deposit legislation

- (1) In accordance with section 5 of the Act and for the purposes of section 46 of the Commonwealth Act, the following are declared to be laws to which section 46 of the Commonwealth Act applies:
 - (a) Part 5 of the *Waste Avoidance and Resource Recovery Act 2001*,
 - (b) all other provisions of that Act, to the extent that they relate to the container deposit scheme established by that Part,
 - (c) regulations made under that Act, to the extent that they relate to that scheme.
- (2) This clause operates only for the period of 12 months commencing at the beginning of the day on which this clause commences.

Schedule 3 Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58—functions of Environment Protection Authority

[1] Whole Act (except where otherwise amended by this Schedule)

Omit “Director-General” and “Director-General’s” wherever occurring.
Insert instead “EPA” and “EPA’s”, respectively.

[2] Section 4 Definitions

Omit the definitions of *Department* and *Director-General*.
Insert in alphabetical order:

EPA means the Environment Protection Authority constituted by the
Protection of the Environment Administration Act 1991.

[3] Section 6 Functions of EPA

Omit “functions of the Director-General are as follows” from section 6 (1).
Insert instead “EPA has the following functions under this Act”.

[4] Section 6 (1) (i)

Omit “or any other Act or law”. Insert instead “Act”.

[5] Section 6 (3)

Insert “under this Act” after “functions”.

[6] Section 11 Delegation

Omit the section.

[7] Section 12 Development of waste strategies

Omit “Department” from section 12 (7) (b). Insert instead “EPA”.

[8] Section 28 Repeal of Waste Minimisation and Management Act 1995 No 102

Omit the section.

[9] Section 31 Savings, transitional and other provisions

Omit the section.

Consultation Note. Other consequential changes may be made to the Act eg the removal of any provisions of Part 5 of the existing Act that are duplicated in other legislation related to the EPA.