

# Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016 No 57

[2016-57]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**  
Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016 No 57



New South Wales

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# Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016 No 57



New South Wales

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; and for other purposes.

## 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

Renumber Parts 5 and 6 and sections 20–24, 27 and 32 as Parts 6 and 7 and sections 49–53, 56 and 57, 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,
  - (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 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 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 of a kind that are not approved by the EPA.

#### 20 Definitions

In this Part:

**beverage**—see section 21.

**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) a person who carries on a business that is or includes the processing for reuse or recycling of domestic waste designated for recycling and collected by that or any other person during the course of domestic waste management services and who:
  - (i) holds an environment protection licence under the [Protection of the Environment Operations Act 1997](#) authorising the processing of the waste (otherwise than by thermal treatment) at specified premises, or
  - (ii) is approved in writing by the EPA as a material recovery facility operator for the purposes of this Part, or
- (b) any other person of a class prescribed by the regulations.

**network arrangement**—see section 25.

**network operator** means a person with whom the Minister enters into a network operator agreement (and, when used 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.

**refund marking**, in relation to a container, means a marking or labelling that

complies with the requirements prescribed by the regulations.

**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.

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

## 23 Refund amount

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

## 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.
- (4) An application for a Scheme administration agreement must be accompanied by the fee prescribed by or determined under the regulations.
- (5) In determining whether to enter into 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).

- (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 the collection point operators are required to pay a refund amount 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 act unfairly, or unreasonably discriminate, against or in favour of any particular Scheme participant in negotiating, entering into, performing obligations under or enforcing any Scheme arrangement.
- (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.



- (5) The regulations may make provision for or with respect to the performance targets (including by reference to any specified network of collection points or area of operation) and any other matters to be included in a Scheme administration agreement.
- (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.

## **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 (**processing refunds**) 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 EPA may, by order published in the Gazette, issue a protocol (a **processing refund protocol**) to be applied in determining the amounts payable to material recovery facility operators as processing refunds under a Scheme Coordinator agreement.
- (3) Without limiting subsection (2), a processing refund protocol may set out the means for determining the estimated number of containers received, processed or dispatched by a material recovery facility operator, including by the use of

audit or monitoring programs.

- (4) A processing refund protocol may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter to be from time to time determined, applied or regulated by any specified person or body.
- (5) A processing refund protocol must comply with any requirements of the regulations.
- (6) A processing refund is not payable to a material recovery facility operator unless a processing refund protocol has been issued under this section.
- (7) The regulations may make provision for or with respect to processing refunds and claims for processing refunds, including for or with respect to the following matters:
  - (a) the manner in which a claim for a processing refund is required to be made by a material recovery facility operator,
  - (b) the assessment of claims for processing refunds,
  - (c) prohibiting the landfill disposal of containers in respect of which claims for the payment of processing refunds have been made by material recovery facility operators,
  - (d) prohibiting the making of claims for the payment of processing refunds in respect of containers that have been disposed of to landfill.
- (8) Without limiting subsection (1), (2) or (7), a Scheme Coordinator agreement or the regulations (or both) may make provision for limiting:
  - (a) the material recovery facility operators or classes of material recovery facility operators who are entitled to claim processing refund amounts, or
  - (b) the classes of containers for which processing refunds are payable, or
  - (c) any other circumstances in which processing refunds are payable.

## **29 Inconsistent provisions void**

- (1) A provision of a Scheme Coordinator agreement is, except as provided by the regulations, void to the extent to which it is inconsistent with:
  - (a) a provision of Division 3, or

- (b) any regulations made under section 25, 27 or 28.
- (2) A provision of a network operator agreement is, except as provided by the regulations, void to the extent to which it is inconsistent with:
  - (a) a provision of Division 3, or
  - (b) any regulations made under section 25 or 27.
- (3) 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 that is applicable to the Scheme Coordinator, or
  - (b) a provision of a network operator agreement that is applicable to a network operator with whom the Scheme Coordinator has entered into a network arrangement, or
  - (c) a provision of Division 3, or
  - (d) any regulations made under section 27.
- (4) 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.
- (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.
- (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 Term of Scheme Coordinator agreement**

- (1) The term of a Scheme Coordinator agreement must not exceed 7 years.
- (2) The Minister may, with the consent of the Scheme Coordinator, extend the agreement for a further period (not exceeding 3 years). The term of the agreement must not be extended more than twice (that is, so that the agreement has effect for a total period not exceeding 13 years).

### **33 Variation and termination of agreement**

- (1) A Scheme administration agreement may be varied or terminated 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 any performance target under the agreement, or
  - (b) in any other circumstances authorised by the agreement.
- (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 subsection (2) (a) or (3).
- (5) A provision of a Scheme administration agreement is void to the extent to which it purports to exclude, limit or modify the operation of this section.
- (6) The regulations may make further provision with respect to the variation or termination of a Scheme administration agreement.
- (7) 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 within 9 months 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 purpose 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 purpose for which the committee is appointed.
- (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 in respect of 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.

## **Division 3 Supply and collection of containers**

### **Subdivision 1 Supply of beverages in containers**

#### **37 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.

#### **38 Requirement for supply arrangement with Scheme Coordinator and container approval**

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

Maximum penalty:

- (a) in the case of a corporation—4,000 penalty units, or
  - (b) in the case of an individual—1,000 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.

### **39 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:

- (a) in the case of a corporation—4,000 penalty units, or
- (b) in the case of an individual—1,000 penalty units.

### **40 Container approvals**

- (1) A supplier may apply to the EPA for a container approval.
- (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 or determined under the regulations.
- (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 28 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.

## **Subdivision 2 Collection of containers**

### **41 Definition**

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

### **42 Refund amounts payable by collection point operators**

- (1) Subject to section 43, 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.
- (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 43, or
- (d) in any other circumstances prescribed by the regulations.
- (3) A refund amount that is payable under this section must be paid:
- (a) in cash or in any other manner prescribed by or determined under 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.
- (4) Subsection (3) (a) does not prevent a collection point arrangement making further provision for limiting the manner in which a collection point operator may pay refund amounts.
- (5) 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.
- (6) 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.

### **43 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 may refuse to pay to a person a refund amount if the operator is not satisfied as to the identity of the person.

- (3) 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,
  - (b) if the operator knows, or ought reasonably to know, that the total number of containers presented to the collection point by the person, and all other persons acting on the person's behalf, within the period prescribed by the regulations for the purpose of claiming a refund has exceeded the number prescribed by the regulations.
- (4) This section does not apply in relation to containers collected, or refund amounts paid, by means of a reverse vending machine.
- (5) 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.

#### **44 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 Scheme participant must not issue to a Scheme administrator an invoice or other statement claiming a refund amount payable to the Scheme participant by the Scheme administrator for a container under a Scheme arrangement if the Scheme participant 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:

- (a) in the case of a corporation—4,000 penalty units, or
- (b) in the case of an individual—1,000 penalty units.

(3) In this section:

***Scheme administrator*** means a network operator or Scheme Coordinator.

***Scheme participant*** means a collection point operator or network operator.

## Division 4 Miscellaneous

### 45 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*.

#### **46 Administrative reviews by NCAT**

- (1) The regulations may provide for an application to be made to the Civil and Administrative Tribunal by a person for an administrative review under the *Administrative Decisions Review Act 1997* of a decision, of a class prescribed by the regulations, that is made under the regulations under this Part.
- (2) The Minister is not to recommend the making of a regulation containing provisions for the purposes of subsection (1) unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.

#### **47 False or misleading information**

A person must not:

- (a) in connection with a claim for payment under a Scheme arrangement or a payment required to be made under a Scheme Coordinator agreement, or
- (b) in purported compliance with any requirement imposed by or under this Part or under regulations made under this Part,

provide any information that the person knows is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—4,000 penalty units, or
- (b) in the case of an individual—1,000 penalty units.

#### **48 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 4 years from the date of assent to the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the review is completed.

#### **[4] Sections 54 and 55**

Insert after section 53 (as renumbered by Schedule 1 [2]):

## 54 Ancillary offences

A person who:

- (a) aids, abets, counsels or procures another person to commit, or
- (b) attempts to commit, or
- (c) conspires to commit,

an offence under another provision of this Act or the regulations is guilty of an offence against that other provision and is liable, on conviction, to the same penalty applicable to an offence against that other provision.

## 55 Evidence as to state of mind of corporation

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the **state of mind** of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### [5] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

### [6] Schedule 4, Part 5

Insert at the end of the Schedule:

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

### 18 Definition

In this Part, **amending Act** means the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016*.

## **19 First principal regulation relating to container deposit scheme**

Section 5 of the *Subordinate Legislation Act 1989* does not apply to the first regulation made under this Act comprising matters relating to the container deposit scheme established by Part 5 of this Act (as inserted by the amending Act).

## **20 References to uncommenced provisions**

A reference in section 29 (as inserted by the amending Act) to a provision of Division 3 of Part 5 of this Act is to be read as if that Division had commenced on the date of assent to the amending Act.

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

### **[1] Whole Act (except Schedule 4, and 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.

**[10] Schedule 4 Savings, transitional and other provisions**

Omit “(Section 31)”.