

Waste Avoidance and Resource Recovery Act 2001 No 58

[2001-58]



New South Wales

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Waste Avoidance and Resource Recovery Act 2001 No 58



New South Wales

An Act to promote waste avoidance and resource recovery; to repeal the *Waste Minimisation and Management Act 1995*; to amend the *Protection of the Environment Operations Act 1997*; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Waste Avoidance and Resource Recovery Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act

The objects of this Act are as follows—

- (a) to encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecologically sustainable development,
- (b) to ensure resource management options are considered against a hierarchy in the following order—
 - (i) avoidance and reduction of waste,
 - (ii) re-use of waste,
 - (iii) recycling, processing or reprocessing waste,
 - (iv) recovery of energy,
 - (v) disposal,
- (c) to provide for the continual reduction in waste generation,
- (d) to minimise the consumption of natural resources and the final disposal of waste by

encouraging the avoidance of waste and the reuse and recycling of waste,

- (e) to ensure that industry shares with the community the responsibility for reducing and dealing with waste,
- (f) to ensure the efficient funding of waste and resource management planning, programs and service delivery,
- (g) to achieve integrated waste and resource management planning, programs and service delivery on a State-wide basis,
- (h) to assist in the achievement of the objectives of the *Protection of the Environment Operations Act 1997*.

4 Definitions

- (1) In this Act—

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

exercise a function includes perform a duty.

function includes a power, authority or duty.

principles of ecologically sustainable development means the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991*.

waste has the same meaning as in the *Protection of the Environment Operations Act 1997*.

Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Notes included in this Act do not form part of this Act.

Part 2 Functions of EPA

5 (Repealed)

6 Functions of EPA

- (1) The EPA has the following functions under this Act—
- (a) to develop, implement or co-ordinate the implementation of (and evaluate strategies and programs for State-wide achievement of) government policy objectives in respect of—

- (i) resource efficiency and waste reduction and management in relation to regions, industry sectors or material types, and
 - (ii) community education and awareness in relation to resource efficiency and waste reduction and management, and
 - (iii) programs for the prevention of litter and illegal dumping, and
 - (iv) market development for recovered resources and recycled material, and
 - (v) information dissemination,
- (b) to develop, co-ordinate and monitor the implementation of event and public space waste management codes,
 - (c) to assist local communities to enter into arrangements for regionally-based secondary resource recovery from waste,
 - (d) to assist in developing co-ordinated waste management services, including system and contract reform (such as contracts for waste and recycling services and system co-ordination),
 - (e) to research and develop waste reduction and resource efficiency infrastructure, technologies and systems,
 - (f) to develop and support training and education programs for resource efficiency, waste reduction and waste and litter management,
 - (g) to monitor, report on and evaluate the regional implementation of State-wide policies and strategies with respect to waste,
 - (h) to advise the Minister as to the kinds of articles, materials and substances that should be prohibited from being used for landfill or from being used in connection with other treatment processes, and the resource recovery options for those articles, materials and substances,
 - (i) such other functions as may be conferred or imposed on the EPA by or under this Act.
- (2) The EPA may provide advice to the Minister on matters relating to waste policy.
 - (3) The EPA is, in the exercise of the EPA's functions under this Act, to have regard to the principles of ecologically sustainable development.

7-11 (Repealed)

Part 3 Waste strategies

12 Waste strategies

- (1) The EPA must develop and approve a waste strategy for the State (the **State waste strategy**).
- (2) The State waste strategy must contain the information prescribed by the regulations.
- (3) The EPA must review the State waste strategy at least once every 5 years.
- (4) After reviewing the State waste strategy, the EPA must—
 - (a) approve the continuation of the strategy, with or without variations, or
 - (b) develop and approve a new strategy in accordance with this section.
- (5) The EPA may revoke or vary the State waste strategy at any time.
- (6) The *NSW Waste and Sustainable Materials Strategy 2041—Stage 1: 2021–2027*, published by the Department of Planning, Industry and Environment in June 2021, is taken to be the State waste strategy for the purposes of subsection (1).

13 (Repealed)

14 Power to request councils to report on waste strategy compliance

- (1) The EPA may request a local council to provide the reasons for any specified non-compliance by the local council with the objectives of the current waste strategy.
- (2) Such a request must be in writing and must specify the date by which the local council is requested to provide the reasons to the EPA.

Part 4 Responsibilities with respect to industry waste reduction

15 Extended producer responsibility schemes

- (1) For the purposes of this Part, an **extended producer responsibility scheme** is a scheme for giving effect to an environmental policy in which the producer's responsibility for a product (including physical or financial responsibility) is extended to the post-consumer stage of the product's life-cycle.
- (2) Any such scheme includes a scheme for product stewardship (that is, shared responsibility for the life-cycle of products including the environmental impact of the product from the extraction of virgin materials, to manufacturing, to consumption and through to and including ultimate disposal and post-disposal consequences).
- (3) In this Part—

producer of a product includes a supplier of the product in this State or person

having a proprietary interest in the name under which the product is supplied in this State.

product includes any substance.

16 Regulations for implementation and operation of schemes

The regulations may make provision for or with respect to the implementation and operation of extended producer responsibility schemes in connection with a product, group of products or an industry in New South Wales.

17 Circumstances in which schemes may be implemented

- (1) The Minister is not to recommend the making of a regulation for or with respect to the implementation of an extended producer responsibility scheme unless the Minister is satisfied that it is necessary to do so having regard to the following matters—
 - (a) the volume of waste requiring ultimate disposal or the toxicity of the waste generated,
 - (b) whether there is a national scheme in place that adequately addresses waste issues in New South Wales,
 - (c) whether there is an effective voluntary scheme in place (nationally or State based) that is able to achieve the desired outcomes and is being actively implemented, monitored and reported on,
 - (d) whether economic analysis supports the implementation of the scheme,
 - (e) whether there are any constitutional or other impediments to New South Wales acting unilaterally in implementing the scheme.
- (2) A regulation with respect to the implementation or operation of a scheme cannot be challenged or invalidated because of this section.

18 Priorities with respect to the implementation of schemes

- (1) The EPA is required to publicly advertise each year a priority statement with respect to the extended producer responsibility schemes the EPA proposes to recommend for implementation under this Part.
- (2) The advertisement is to be published in a manner that the EPA is satisfied is likely to bring the advertisement to the attention of members of the public.
- (3) The advertisement is to invite written submissions to the EPA on any relevant matter relating to the priority statement and state the period (being not less than 1 month after the advertisement is last published) within which submissions may be made.
- (4) The EPA is, not later than 3 months after the closing date for submissions, to publish a

report on any submissions received by the EPA and to make the report available to the public.

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 1 December 2017, 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 1 December 2017, 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.

- (3) In this section—

Scheme administrator means a network operator or Scheme Coordinator.

Scheme participant means a collection point operator or network operator.

Maximum penalty for subsections (1) and (2)—

- (a) for a corporation—4,000 penalty units, or
- (b) for an individual—1,000 penalty units.

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.

Part 6 Financial provisions

49 Provision by EPA of financial assistance and guarantees

- (1) The EPA may, for the purposes of exercising the EPA's functions under this Act—
 - (a) provide loans, grants, subsidies and other financial assistance, and
 - (b) subject to subsection (2), provide financial guarantees.
- (2) The EPA may provide a financial guarantee only with the approval of the Minister and the concurrence of the Treasurer.

50 Fees

- (1) The purpose of this section is to enable the EPA to recover the administrative costs of services provided under this Act or the regulations.
- (2) The EPA may charge fees for services provided under this Act or the regulations.
- (3) The fee charged must be—
 - (a) prescribed by the regulations, or
 - (b) if the fee is not prescribed—a reasonable fee determined by the EPA.
- (4) A fee or other charge payable to the EPA under this Act or the regulations may be recovered by the EPA as a debt due to the Crown in a court of competent jurisdiction.
- (5) The EPA may—
 - (a) extend the time for payment of a fee or other charge payable to the EPA under this Act or the regulations, or

(b) refund or waive the whole or a part of a fee or other charge payable to the EPA under this Act or the regulations.

(6) In this section—

fee for service includes—

(a) the administrative costs of providing a service under this Act or the regulations, and

(b) the costs associated with the functions of the EPA under this Act or the regulations.

51 Acquisitions by EPA

(1) The EPA may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise.

(2) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the EPA has agreed.

Part 7 Miscellaneous

52 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

53 Reports by EPA

(1) The EPA must prepare and deliver to the Minister a report every 2 years on the following matters—

(a) the volumes of waste avoided, produced, recycled or reused in New South Wales during the reporting period,

(b) how those volumes compare with target volumes established by any current waste strategy,

(c) a description of the strategies and programs being implemented by the EPA and the degree of success achieved by them.

(2) The Minister is to cause a copy of the report to be tabled in each House of Parliament no later than the fifth sitting day of that House in the Parliamentary session next following the end of the reporting period.

53A (Repealed)

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.

56 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding—
 - (a) 200 penalty units in the case of an individual, or
 - (b) 400 penalty units in the case of a corporation.
- (3) The regulations may adopt any document as in force from time to time.

57 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act 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 date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament

within 12 months after the end of the period of 5 years.

Schedules 1-3 (Repealed)

Schedule 4 Savings, transitional and other provisions

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—

this Act

Statute Law (Miscellaneous Provisions) Act (No 2) 2003, but only to the extent that it amends this Act

Brigalow and Nandewar Community Conservation Area Act 2005, but only to the extent that it amends this Act

any other Act that amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

1A Definitions

In this Schedule—

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

rights means any rights, powers, privileges or immunities (whether present or future and

whether vested or contingent).

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part—

former Act means the *Waste Minimisation and Management Act 1995*.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

State Waste Advisory Council means the State Waste Advisory Council established by the former Act as in force immediately before the repeal of that Act by this Act.

Waste Board means a Waste Planning and Management Board constituted under Part 3 of the former Act as in force immediately before the repeal of that Act by this Act.

3 Dissolution of Waste Boards

- (1) Each Waste Board is dissolved.
- (2) A person who, immediately before the dissolution of a Waste Board, held office as a director of the Waste Board—
 - (a) ceases to hold that office, and
 - (b) is not entitled to any compensation because of the loss of that office.

4 General managers and other declared officers of Waste Boards

- (1) This clause applies to a person employed by a Waste Board immediately before the day on which the Waste Board is dissolved by this Act as—
 - (a) the general manager, or
 - (b) an officer declared by the Minister by order in writing to be an officer to whom this clause applies.
- (2) A person to whom this clause applies—
 - (a) ceases to hold the position held by the person immediately before the Waste Board is dissolved, and
 - (b) except as provided by subclause (3), is not entitled to any compensation because of the loss of that position, and
 - (c) is eligible to be employed by Resource NSW.

- (3) Any such person (if not employed by Resource NSW on ceasing to hold that position) is entitled to be paid by Resource NSW—
- (a) the compensation (if any) that would have been payable under Part 2A of the *Public Sector Management Act 1988* on termination of employment if the person had been an executive officer to whom that Part applied, or
 - (b) the compensation (if any) provided by the person's contract of employment with the dissolved Waste Board on termination of employment with that Board,
- whichever is the lesser.

5 Staff of Waste Boards (other than General Manager or other declared officer)

- (1) This clause applies to a person employed by a Waste Board immediately before the day on which the Waste Board is dissolved by this Act, other than the general manager or other officer to whom clause 4 applies.
- (2) A person to whom this clause applies becomes, on the dissolution of the Waste Board, an employee of Resource NSW.
- (3) The person is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person remained in the employ of the Waste Board.

6 Construction of references to Waste Boards

On the dissolution of a Waste Board by this Act, a reference in any Act (other than this Act), in an instrument made under any Act or in a document of any kind—

- (a) to the Waste Board is taken to be a reference to Resource NSW, and
- (b) to a director of the Waste Board is taken to be a reference to a member of the Board of Resource NSW, and
- (c) to the general manager of the Waste Board is taken to be a reference to the Chief Executive of Resource NSW.

7 Transfer of assets, rights and liabilities to new Authority

- (1) On the day on which a Waste Board is dissolved by this Act, the following provisions have effect—
 - (a) the assets of the Waste Board vest in Resource NSW by virtue of this clause without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities of the Waste Board become the rights and liabilities of Resource NSW,

- (c) all proceedings commenced before that day by or against the Waste Board and pending immediately before that day are taken to be proceedings pending by or against Resource NSW,
 - (d) any act, matter or thing done or omitted to be done before that day by, to or in respect of the Waste Board is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of Resource NSW.
- (2) The Minister may, by order in writing, direct that any specified asset, right or liability of a Waste Board is transferred to a body representing the Crown (but only if the body consents to the transfer). Subclause (1) applies to any such direction as if a reference to Resource NSW were a reference to that body.
- (3) The operation of this clause is not to be regarded—
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (4) The operation of this clause is not to be regarded as an event of default under any contract or other agreement.
- (5) No attornment to the transferee by a lessee from a Waste Board is required.

8 Transfer duty

Duty under the *Duties Act 1997* is not chargeable for or in respect of—

- (a) a transfer effected by or under this Schedule, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

9 First annual report of Resource NSW

- (1) This clause applies with respect to any period before the dissolution of a Waste Board for which the affairs of the Waste Board have not been the subject of an annual financial report of the Waste Board.
- (2) The first annual report of Resource NSW is to include the financial affairs of a dissolved Waste Board with respect to any such period.

10 Abolition of State Waste Advisory Council

- (1) The State Waste Advisory Council is abolished.
- (2) A person who, immediately before the abolition of State Waste Advisory Council, held office as a member of the Council—
 - (a) ceases to hold that office, and
 - (b) is not entitled to any compensation because of the loss of that office.

11 (Repealed)

12 Existing industry waste reduction plans

- (1) In this clause—

IWRP means an industry waste reduction plan in force under Part 4 of the former Act immediately before its repeal.

used packaging materials IWRP means the IWRP notified in the Gazette of 29 September 2000.
- (2) On the repeal of the former Act, each IWRP (other than the used packaging materials IWRP) is revoked and ceases to have effect.
- (3) The used packaging materials IWRP continues to have effect until—
 - (a) 1 July 2006, or
 - (b) a date appointed by proclamation for the purposes of this clause,whichever first occurs.
- (3A) Paragraph 5.1 of the used packaging materials IWRP is to be construed as if it read as follows—

This Plan comes into force on the commencement date and will continue in force until 1 July 2006, or until a date appointed by proclamation for the purposes of clause 12 of Schedule 4 to the *Waste Avoidance and Resource Recovery Act 2001*, whichever occurs first.

- (4) The provisions of the former Act relating to an IWRP (and related provisions of the *Protection of the Environment Operations Act 1997*) continue to have effect (despite their repeal) with respect to the used packaging materials IWRP while it continues to have effect under subclauses (3) and (3A).

Part 3 Provisions consequent on enactment of the **Statute Law**

(Miscellaneous Provisions) Act (No 2) 2003

13 Definitions

In this Part—

Board means the Board of Resource NSW referred to in section 8 as in force immediately before the repeal of that section by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003*.

Resource NSW means the corporation constituted under section 5 as in force immediately before the repeal of that section by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2003*.

14 Dissolution of Resource NSW

- (1) Resource NSW is dissolved.
- (2) A reference in any document (other than this Act) to Resource NSW is taken to be a reference to the Director-General.
- (3) A person who, immediately before the dissolution of Resource NSW, held office as a member of the Board—
 - (a) ceases to hold that office, and
 - (b) is not entitled to any compensation because of the loss of that office.

15 Transfer of assets, rights and liabilities to the Crown

- (1) On the day on which Resource NSW is dissolved by this Act, the following provisions have effect—
 - (a) the assets of Resource NSW vest in the Crown by virtue of this clause without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities of Resource NSW become the rights and liabilities of the Crown,
 - (c) all proceedings commenced before that day by or against Resource NSW and pending immediately before that day are taken to be proceedings pending by or against the Crown,
 - (d) any act, matter or thing done or omitted to be done before that day by, to or in respect of Resource NSW is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Crown.
- (2) The operation of this clause is not to be regarded—

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) The operation of this clause is not to be regarded as an event of default under any contract or other agreement.
- (4) No attornment to the transferee by a lessee from Resource NSW is required.
- (5) Duty under the *Duties Act 1997* is not chargeable for or in respect of—
- (a) a transfer effected by this clause, or
 - (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

16 Financial statements and annual report of Resource NSW

- (1) The annual report of Resource NSW required under the *Annual Reports (Statutory Bodies) Act 1984* in respect of the portion of the financial year ending on the date of dissolution of Resource NSW is to be included in the annual report of the Department of Environment and Conservation for the relevant financial year.
- (2) In this clause, **financial year** has the same meaning as it has in the *Public Finance and Audit Act 1983*.

Note—

An annual report referred to in clause 16(1) must contain financial statements, prepared in accordance with Division 3 of Part 3 of the *Public Finance and Audit Act 1983* and audited under that Division.

Part 4 Provisions consequent on enactment of *Brigalow and Nandewar Community Conservation Area Act 2005*

17 Abolition of Waste Fund

- (1) The Waste Fund established under former section 19 is abolished.
- (2) All money that is in the Waste Fund, as at the date of its abolition by this clause, is to be paid into the Environmental Trust Fund.
- (3) In this clause—
- Environmental Trust Fund** means the fund of that name established by the *Environmental Trust Act 1998*.

former section 19 means section 19 of this Act as in force immediately before the commencement of Schedule 12.6 to the *Brigalow and Nandewar Community Conservation Area Act 2005*.

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.