

Environment Protection Amendment (Container Deposit Scheme) Bill 2018

Introduction Print

EXPLANATORY MEMORANDUM

Clause Notes

Part 1—Preliminary

- Clause 1 provides that the main purpose of the Environment Protection Amendment (Container Deposit Scheme) Bill 2018 is to promote the recovery, reuse and recycling of empty beverage containers by establishing a cost effective State-wide container deposit scheme by amending the **Environment Protection Act 1970** (referred to as the "Principal Act" in this explanatory memorandum).
- Clause 2 is the commencement provision. The provisions of the Bill will come into operation on 1 September 2019, providing in excess of 12 months to enter into contractual arrangements and develop the Scheme infrastructure. This provides more lead-time compared with the NSW scheme, where legislation passed in October 2016 with a start date of 1 December 2017 for the scheme.
- Clause 3 provides that in this Bill the **Environment Protection Act 1970** is referred to as the Principal Act.

Part 2—Amendments to the Environment Protection Act 1970

- Clause 4 The Principal Act currently contains a general principle relating to product stewardship. Clause 4 adds a new principle establishing how this general principle applies specifically to the beverage industry and consumers.
- Clause 5 inserts a new Part IIIA into the Principal Act.

New section 31F provides definitions for the key terms used in the Bill, including the following key definitions:

- **collection point** means 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;
- **container** means 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 content. Types and

sizes of container that will be included and excluded from the scheme will be prescribed by the regulations.

- **material recovery facility** means 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 is approved in writing by the Authority as a material recovery facility operator for the purposes of this Part
- **refund marking** means a marking or labelling that complies with the prescribed requirements;
- **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;
- **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 prescribed as an exempt class;
- **supply** means supply, by way of sale or otherwise, in the course of carrying on a business;

New section 31I authorises the Minister to enter into agreements with a Scheme Coordinator and network operators in connection with the management and administration of a container deposit scheme (**scheme**). It also establishes that scheme coordinator and network operator agreements cannot be held by the same person at the same time.

New section 31J provides for the content of the agreements. A Scheme Coordinator agreement must require the Scheme Coordinator to make arrangements with suppliers (**supply arrangements**). Supply arrangements will establish the amount of contributions by Suppliers towards the cost of the Scheme. The Scheme Coordinator agreement must also require the Scheme Coordinator to make arrangements with network operators for the establishment, administration and operation of a network of collection points under which the Scheme Coordinator pays to the network operators refund amounts and administration and handling costs for containers collected at those collection points.

An agreement with a network operator must require the operator to make arrangements with other persons for the establishment and operation of collection points under which the network operator pays to the collection point operators refund amounts and associated handling costs for containers collected at those collection points.

New section 31M provides that refunds may be paid to material recovery facility operators. In order to determine the mechanism and amounts to be paid to material recovery facility operators, a protocol (**processing refund protocol**) would be developed by the Minister and published in the Government Gazette.

New section 31O provides that penalties for contravention may be written into Scheme administration agreements with the scheme coordinator and the network operator. It provides that any penalties for contravention of scheme administration agreements would be paid to the State.

New section 31P provides that monitoring and enforcement provisions may be set out in Scheme administration agreements. The Environment Protection Authority (the Authority) may delegate powers and functions through scheme administration agreements and where delegation occurs, the provisions of the Principal Act would apply to the Scheme administrator in relation to determining compliance or contravention with the Scheme, and obtaining information or records for monitoring purposes.

New section 31Q provides that the term of a Scheme Coordinator agreement must not exceed 7 years. An extension period of a further 3 years may be approved but only twice, meaning that the total term of a scheme coordinator can be no more than 13 years in total. At this point procurement for a Scheme Coordinator must occur.

New section 31R enables the Minister to vary the terms of a scheme administration in writing, and to terminate the agreement in the event of failure to meet performance targets or contravention of any part of a Scheme administration agreement. This section enables the Minister to make changes to Scheme administration agreements to amend performance targets and reflect changes to regulations. Consent to these amendments is not required from the Scheme participant, and the participant is not entitled to compensation for variation of terms or termination of an agreement.

New section 31S requires the Authority to undertake a performance audit of a scheme participant on request from the Minister. The Authority must provide the Minister with a report on the audit and if the Authority is of the view that a Scheme participant has contravened the terms of an agreement with the Minister, the report may recommend options for remedial actions that could be taken.

New section 31T outlines reporting requirements for the Scheme. The Scheme Coordinator must report annually on performance against targets contained in the agreement, the amounts charged to suppliers and other matters required by the regulations. Reports must be made to the Minister no later than 90 days after the end of the financial year, and the Minister is required to table the annual report within 9 months of receiving the report. Quarterly data on performance of the Scheme must be published online by the Scheme Coordinator. This data must be available on the Authority's website no later than 14 days from the end of this quarter. This will support transparency of the Scheme's operation and enable ongoing monitoring and engagement by environmental stakeholders.

New section 31U states that the Minister may establish an Advisory Committee representing a range of interests and expertise considered appropriate by the Minister.

New section 31V clarifies who is the supplier in relation to drinks purchased from a vending machine. The supplier is the owner or lessee of the vending machine.

New section 31W creates an offence for a supplier to supply a beverage if they have not entered into a scheme agreement and if the container in question is an approved container. The penalty for the offence is 700 penalty units in the case of a natural person or 2500 penalty units in the case of a body corporate.

New section 31X creates an offence for a supplier to supply or offer to supply a beverage in a container without a refund marking. The penalty for the offence is 700 penalty units in the case of a natural person or 2500 penalty units in the case of a body corporate.

New section 31Y provides that suppliers may apply to the Authority for a container to be approved, and that applications must be in a set format and accompanied by a prescribed fee.

In order to approve a container the Authority must undertake due diligence in relation to ensuring that the supplier has the required agreements in place and that the label of containers includes a refund marking. A supplier can apply to VCAT for a review of a decision not to grant an approval. This section creates an offence to contravene a condition of the approval. The penalty is 40 penalty units in the case of a natural person or 150 penalty units in the case of a body corporate.

New section 31ZA requires collection point operators to accept the return of any approved container and pay a refund to the person, organisation or company returning the containers. Refusal or failure to pay is an offence incurring a penalty of 20 penalty units in the case of a natural person or 40 penalty units in the case of a body corporate. This section also sets out reasonable grounds for refusal to pay a refund. Refunds must be paid on return of containers (or at a time prescribed by regulations) and they may be paid in cash or another prescribed manner. For example, reverse vending machines that accept approved containers may offer an option to refund in cash or electronically (for example, to a card or PayPal account).

New section 31ZAB enables a collection point operator to require a person presenting a container for refund to prove their identity and/or complete a refund declaration. Collection point operators must maintain identity and refund declaration documentation for 3 years. Failure to do so is an offence incurring a penalty of 40 penalty units.

New section 31ZC creates an offence to claim refund for containers that are not subject to the Scheme. The penalty is 700 penalty units in the case of a natural person or 2500 penalty units in the case of a body corporate.

New section 31ZD enables regulations to be made that provide for a review function by VCAT.

New section 31ZE creates an offence for providing false or misleading information in relation to compliance and payments by any person. The penalty for the offence is 700 penalty units in the case of a natural person or 2500 penalty units in the case of a body corporate.

New section 31ZF enables the Authority to require retailers to display information about a scheme on retail premises. These requirements should be set out in writing to retailers. Where these requirements have been established it is an offence for a retailer to fail to comply with these requirements. The penalty for failure to comply with a notice is 20 penalty points.

New section 31ZG requires the Minister to review the scheme after 4 years and table a report on the review in both houses of Parliament within 12 months from completion of the review.

New section 31ZH enables the Governor in Council to make regulations relating to the Scheme. Regulations may provide for:

- The approval of facilities or premises as collection points;
- Prescription of containers that are subject to the scheme;
- Exemption of certain types of containers;
- Scheme administration fees;
- Performance targets (for example collection and recycling rates);
- The content of administration agreements;
- The process for issuing refunds and the refund amount;

- The process for variation or termination of scheme administration agreements;
and
- Monitoring and auditing processes.