

# Waste Avoidance and Resource Recovery Amendment (Container Deposit) Bill 2018

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Western Australia

LEGISLATIVE ASSEMBLY

**Waste Avoidance and Resource Recovery  
Amendment (Container Deposit) Bill 2018**

**A Bill for**

**An Act to amend the *Waste Avoidance and Resource Recovery Act 2007*.**

The Parliament of Western Australia enacts as follows:

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1   **1.     Short title**

2           This is the *Waste Avoidance and Resource Recovery*  
3           *Amendment (Container Deposit) Act 2018*.

4   **2.     Commencement**

5           This Act comes into operation as follows —

- 6           (a)   sections 1 and 2 — on the day on which this Act  
7                receives the Royal Assent;  
8           (b)   the rest of the Act — on a day fixed by proclamation.

9   **3.     Act amended**

10          This Act amends the *Waste Avoidance and Resource Recovery*  
11          *Act 2007*.

12   **4.     Long title amended**

13          In the long title after the 2<sup>nd</sup> bullet point insert:

- 14  
15          •   **establish a container deposit scheme; and**  
16

17   **5.     Section 19 amended**

18          After section 19(1) insert:

- 19  
20          (1A)  A reference to “this Act” in Schedule 2 does not  
21               include a reference to Part 5A.  
22

1 **6. Part 5A inserted**

2 After section 47 insert:  
3

4 **Part 5A — Container deposit scheme**

5 **Division 1 — Preliminary**

6 **47A. Objects of Part**

7 The main objects of this Part are to —

- 8 (a) increase the recovery and recycling of empty  
9 beverage containers; and  
10 (b) reduce the number of empty beverage  
11 containers that are disposed of as litter or to  
12 landfill; and  
13 (c) ensure that first responsible suppliers of  
14 beverage products take product stewardship  
15 responsibility in relation to their beverage  
16 products; and  
17 (d) provide opportunities for social enterprise, and  
18 benefits for community organisations, through  
19 participation in the container deposit scheme;  
20 and  
21 (e) create opportunities for employment; and  
22 (f) complement existing collection and recycling  
23 activities for recyclable waste.

24 **47B. Overview of container deposit scheme**

25 This Part establishes a container deposit scheme that  
26 includes the following general features —

- 27 (a) a company will be appointed to the office of  
28 Coordinator of the scheme with responsibility  
29 for administering the scheme;

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- 1 (b) if a beverage is to be supplied in a container,  
2 various conditions must be met, including a  
3 supply agreement being in force that requires a  
4 contribution to the costs of the scheme  
5 (including the costs of refund amounts paid  
6 under the scheme);
- 7 (c) a refund amount will be paid to a person who  
8 returns an empty container to a refund point;
- 9 (d) containers that have been returned to a refund  
10 point must not be disposed of in a prohibited  
11 manner.

12 **47C. Terms used**

- 13 (1) In this Part —

14 ***appointed day***, for a section, has the meaning given in  
15 subsection (2);

16 ***beverage*** means —

- 17 (a) a substance that is a liquid at room temperature  
18 and intended for human consumption by  
19 drinking; or
- 20 (b) a thing or class of things prescribed by the  
21 regulations to be a beverage,

22 but does not include a thing or class of things  
23 prescribed by the regulations not to be a beverage;

24 ***beverage product*** means a product that consists of a  
25 particular beverage packaged in a container of a  
26 particular type;

27 ***civil penalty*** has the meaning given in section 47ZZ(1);

28 ***company*** means a company registered under the  
29 Corporations Act;

30 ***container*** means —

- 31 (a) a vessel that is made to be —  
32 (i) filled with a beverage; and



- 1 (ii) sealed for storage, transport and  
2 handling before being supplied for the  
3 use or consumption of the beverage;
- 4 or
- 5 (b) a thing or class of things prescribed by the  
6 regulations to be a container,  
7 but does not include a thing or class of things  
8 prescribed by the regulations not to be a container;
- 9 **container approval** has the meaning given in  
10 section 47F(1);
- 11 **Coordinator** means the company for the time being  
12 occupying the office of Coordinator of the scheme  
13 under section 47X;
- 14 **Corporations Act** means the *Corporations Act 2001*  
15 (Commonwealth);
- 16 **corresponding law** means a law of the Commonwealth  
17 or another State or a Territory that is prescribed by the  
18 regulations to be a law corresponding to this Act;
- 19 **disposal premises** means premises —
- 20 (a) which are used for the purpose of receiving  
21 waste; and
- 22 (b) in respect of which the occupier is required to  
23 hold a licence under the *Environmental*  
24 *Protection Act 1986*, whether or not the licence  
25 is in force;
- 26 **eligible company** has the meaning given in  
27 section 47V(1);
- 28 **eligible individual** means an individual who —
- 29 (a) is not an insolvent under administration within  
30 the meaning of the Corporations Act section 9;  
31 and
- 32 (b) is not disqualified from managing corporations,  
33 under the Corporations Act Part 2D.6; and

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- 1 (c) has not been convicted of —  
2 (i) an offence against this Act, the  
3 *Environmental Protection Act 1986* or a  
4 corresponding law; or  
5 (ii) an indictable offence, or an offence that,  
6 if committed in Western Australia,  
7 would be an indictable offence, against  
8 another written law or another law of  
9 the Commonwealth or another State or a  
10 Territory;
- 11 ***exporter*** means a person who, within the meaning  
12 given in section 47P(2), exports a beverage product;
- 13 ***export rebate agreement*** has the meaning given in  
14 section 47P(3);
- 15 ***first responsible supplier*** has the meaning given in  
16 section 47D;
- 17 ***Interim Coordinator*** has the meaning given in  
18 section 47ZT(1);
- 19 ***material recovery agreement*** has the meaning given in  
20 section 47R(2);
- 21 ***material recovery facility*** means —  
22 (a) a facility or other place at which recyclable  
23 waste is sorted and prepared for recycling,  
24 whether or not the waste is also recycled at the  
25 facility or place; or  
26 (b) a facility or other place or class of facilities or  
27 places prescribed by the regulations to be a  
28 material recovery facility,
- 29 but does not include a facility or other place or class of  
30 facilities or places prescribed by the regulations not to  
31 be a material recovery facility;
- 32 ***MRF operator*** means the operator of a material  
33 recovery facility;

- 1                    **prohibited manner**, in relation to the disposal of a  
2                    container, means disposing of the container —
- 3                    (a) at disposal premises; or  
4                    (b) by burial; or  
5                    (c) in contravention of the *Environmental*  
6                    *Protection Act 1986* Part V Division 1; or  
7                    (d) in any other manner prescribed by the  
8                    regulations to be a prohibited manner,
- 9                    but does not include any manner of disposing of the  
10                    container that is prescribed by the regulations not to be  
11                    a prohibited manner;
- 12                    **refund amount** means the amount prescribed for the  
13                    purposes of section 47J;
- 14                    **refund mark** means marking or labelling on a  
15                    container that shows the refund amount and complies  
16                    with the requirements prescribed by the regulations;
- 17                    **refund point** means —
- 18                    (a) a facility or other place for the return of empty  
19                    containers in exchange for the payment of  
20                    refund amounts; or  
21                    (b) a facility or other place or class of facilities or  
22                    places prescribed by the regulations to be a  
23                    refund point,
- 24                    but does not include a facility or other place or class of  
25                    facilities or places prescribed by the regulations not to  
26                    be a refund point;
- 27                    **refund point agreement** has the meaning given in  
28                    section 47Q(1);
- 29                    **refund point operator** means —
- 30                    (a) the operator of a refund point; or

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- 1 (b) a person or class of persons prescribed by the  
2 regulations to be a refund point operator,  
3 but does not include a person or class of persons  
4 prescribed by the regulations not to be a refund point  
5 operator;
- 6 **scheme** means the container deposit scheme  
7 established by this Part;
- 8 **Scheme Account** has the meaning given in  
9 section 47ZN(1);
- 10 **scheme agreement** means each of the following —
- 11 (a) an export rebate agreement;  
12 (b) a material recovery agreement;  
13 (c) a refund point agreement;  
14 (d) a supply agreement;
- 15 **supply** means —
- 16 (a) to supply, by way of sale or otherwise, in the  
17 course of carrying on a business; or  
18 (b) to supply free of charge for a commercial or  
19 promotional purpose,
- 20 but does not include a transaction or class of  
21 transactions prescribed by the regulations not to be a  
22 supply;
- 23 **supply agreement** has the meaning given in  
24 section 47O(1);
- 25 **supply amounts** has the meaning given in  
26 section 47O(1);
- 27 **type**, in relation to a container, is the combination of —
- 28 (a) the volume of a beverage the container is made  
29 to hold; and  
30 (b) the material the container is made of.
- 31 (2) A reference in a section in this Part to the **appointed**  
32 **day** for the section is a reference to the day fixed by the

- 1 Minister by order published in the *Gazette* to be the  
2 appointed day for the purposes of that section.
- 3 (3) Subject to subsection (4), for the purposes of this Part,  
4 a supply of a beverage product is *in the State* if —  
5 (a) the beverage product is received in the State  
6 (whether or not the supplier is located in the  
7 State); or  
8 (b) under the regulations, it is taken to be in the  
9 State.
- 10 (4) A supply of a beverage product is not in the State if,  
11 under the regulations, it is taken not to be in the State.
- 12 (5) In sections 47ZE, 47ZF, 47ZM, 47ZN(1) and (2) and  
13 47ZP a reference to a Coordinator includes a company  
14 that has been notified of its appointment to the office of  
15 Coordinator of the scheme under section 47X but has  
16 not yet commenced occupying the office.
- 17 **47D. First responsible supplier**
- 18 (1) Subject to subsection (2), the *first responsible supplier*  
19 of a beverage product is —  
20 (a) the person who first supplies the beverage  
21 product in the State; or  
22 (b) the person who, under the regulations, is taken  
23 to be the first responsible supplier of the  
24 beverage product.
- 25 (2) A person is not the first responsible supplier of a  
26 beverage product if, under the regulations, the person is  
27 taken not to be the first responsible supplier of the  
28 beverage product.
- 29 (3) Unless the regulations provide otherwise, if a person  
30 (the *transporter*) only transports a beverage product  
31 between the supplier of the beverage product and the

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- 1 recipient of the beverage product, each of the following  
2 is not a supply of the beverage product —
- 3 (a) the transfer of the beverage product from the  
4 supplier to the transporter;
- 5 (b) the transfer of the beverage product from the  
6 transporter to the recipient.
- 7 (4) Unless the regulations provide otherwise, if a person  
8 (the *contract bottler*) is engaged under a contract to  
9 make a beverage product or fill containers with a  
10 beverage for another person (the *contract*  
11 *counterparty*), in circumstances where the beverage  
12 product is manufactured solely for the contract  
13 counterparty, the transfer of the beverage product from  
14 the contract bottler to the contract counterparty  
15 following completion of the manufacturing process is  
16 not a supply.
- 17 (5) For the purposes of subsections (1)(b) and (2), the  
18 regulations may provide for circumstances in which a  
19 person, or a person who belongs to a prescribed class  
20 or who meets prescribed criteria —
- 21 (a) is taken to be the first responsible supplier of a  
22 beverage product or class of beverage products;  
23 or
- 24 (b) is taken not to be the first responsible supplier  
25 of a beverage product or class of beverage  
26 products.
- 27 (6) Without limiting subsection (5), the circumstances  
28 referred to in that subsection may include  
29 circumstances where a person has entered into an  
30 agreement with another person as to who is to be the  
31 first responsible supplier of a beverage product.

**Division 2 — Supply of beverage products**

**47E. Requirement for supply agreement, container approval, refund mark and barcode**

- (1) Subsection (2) applies on and after the appointed day for this section.
- (2) A person who is the first responsible supplier of a beverage product commits an offence when the beverage product is first supplied in the State unless, at that time —
  - (a) a supply agreement is in force between the person and the Coordinator in relation to the beverage product; and
  - (b) a container approval that applies to the beverage product is in force (whether or not it is held by the person); and
  - (c) the container used for the beverage product bears a refund mark and a barcode that complies with the requirements prescribed by the regulations.

Penalty for this subsection: a fine of \$75 000.

- (3) If a person charged with an offence against subsection (2) supplied the beverage product in the State, the person is taken, in any proceedings for the offence, to be the first responsible supplier of the beverage product unless the contrary is shown.
- (4) Regulations may deal with any matter in relation to the supply of beverage products or a person who supplies beverage products.

**47F. Container approval**

- (1) On and after the appointed day for this section, a person may apply to the CEO for an approval (a

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- 1                    *container approval*) that applies to a beverage product  
2                    or class of beverage products.
- 3                    (2) The CEO may, subject to the regulations, grant or  
4                    refuse to grant the container approval.
- 5                    (3) A container approval is subject to —  
6                            (a) any conditions prescribed by the regulations;  
7    and  
8                            (b) any further conditions the CEO —  
9    (i) considers necessary or desirable to  
10    impose; and  
11    (ii) specifies in the approval.
- 12                    (4) The first responsible supplier of a beverage product  
13                    must not contravene a condition of a container  
14                    approval that applies to the beverage product.  
15                    Penalty for this subsection: a fine of \$10 000.

16                    **47G. Regulations relating to container approvals**

- 17                    Regulations may deal with any matter in relation to  
18                    container approvals or applications for container  
19                    approvals, and may (without limitation) —  
20                            (a) deal with, or with any matter in relation to, any  
21    of the following —  
22    (i) the manner and form in which an  
23    application for a container approval is to  
24    be made and the process for applying;  
25    (ii) the information that must accompany an  
26    application for a container approval or  
27    otherwise be provided to the CEO;  
28    (iii) the payment of fees in relation to  
29    container approvals or applications for  
30    container approvals;



- 1 (iv) the matters to be considered in deciding  
2 whether to grant a container approval  
3 and the criteria that must be met before  
4 a container approval is granted;
- 5 (v) the grounds on which a container  
6 approval may be refused or taken to be  
7 refused;
- 8 (vi) the way in which the grant of, or refusal  
9 to grant, a container approval is to be  
10 communicated;
- 11 (vii) the conditions to be imposed on a  
12 container approval, including the term  
13 of a container approval;
- 14 (viii) the amendment of a container approval  
15 by the CEO (including the amendment  
16 or revocation of conditions on the  
17 approval or the imposition of new  
18 conditions);
- 19 (ix) the transfer of a container approval by  
20 the holder;
- 21 (x) the suspension or cancellation of a  
22 container approval by the CEO;
- 23 (xi) the maintenance by the Coordinator of a  
24 public database of container approvals,  
25 including the information to be  
26 included, the information required to be  
27 provided to the Coordinator, the  
28 payment of fees or charges and the  
29 requirements the database must comply  
30 with;
- 31 and
- 32 (b) require the verification of information or  
33 documents by statutory declaration; and

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- 1 (c) prescribe offences in relation to the supply by a  
2 person or class of persons of beverage products  
3 that do not have a container approval; and
- 4 (d) provide for any of the following —
- 5 (i) circumstances in which an approval  
6 (however described) under a  
7 corresponding law is taken to be a  
8 container approval;
- 9 (ii) circumstances in which a container  
10 approval is taken to be held, including  
11 where an approval (however described)  
12 is held under a corresponding law, or  
13 where a person has complied with  
14 prescribed requirements of a  
15 corresponding law;
- 16 (iii) the conditions that apply to a container  
17 approval referred to in subparagraphs (i)  
18 and (ii).

19 **47H. Review by State Administrative Tribunal**

20 A person who is, or intends to be, the first responsible  
21 supplier of a beverage product may apply to the State  
22 Administrative Tribunal for a review of —

- 23 (a) a decision of the CEO to refuse to grant a  
24 container approval that applies to the beverage  
25 product; or
- 26 (b) a decision of the CEO to refuse to transfer a  
27 container approval that applies to the beverage  
28 product to or from the person (but only if, in the  
29 case of a transfer of a container approval to the  
30 person, the current holder of the container  
31 approval has consented to the application for  
32 review); or

- 1 (c) a decision of the CEO to amend, suspend or  
2 cancel a container approval that applies to the  
3 beverage product.

4 **Division 3 — Return of containers**

5 **47I. Requirements for refund point operators**

- 6 (1) A person (other than the Coordinator) must not act as a  
7 refund point operator in respect of a refund point unless  
8 a refund point agreement is in force between the person  
9 and the Coordinator in respect of the refund point.

10 Penalty for this subsection: a fine of \$75 000.

- 11 (2) Regulations may prescribe eligibility criteria that must  
12 be met before a person may act as a refund point  
13 operator.

14 **47J. Refund amount**

15 Regulations may prescribe an amount as the refund  
16 amount for the purposes of this Part.

17 **47K. Regulations relating to refund points and refund  
18 amounts**

19 Regulations may deal with any matter in relation to  
20 refund points, refund amounts or the acceptance of  
21 empty containers at refund points, and may (without  
22 limitation) —

- 23 (a) prescribe the circumstances in which a refund  
24 point operator —  
25 (i) is or is not required to accept delivery of  
26 an empty container presented by a  
27 person to a refund point; and  
28 (ii) is or is not required to pay to the person  
29 the refund amount;

30 and

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- 1 (b) deal with, or with any matter in relation to, the  
2 manner in which refund amounts are to be paid;  
3 and  
4 (c) prescribe any conditions that must be met  
5 before a person may receive a refund amount  
6 (including any information that a person must  
7 give); and  
8 (d) prohibit a person or class of persons from  
9 claiming, or attempting to claim, payment of a  
10 refund amount —  
11 (i) to which they are not entitled under this  
12 Act; or  
13 (ii) in prescribed circumstances;  
14 and  
15 (e) require information or documents given by a  
16 person to be verified by statutory declaration.

17 **47L. Coordinator as refund point operator**

- 18 (1) The Coordinator must not act as a refund point operator  
19 unless directed to do so by the Minister.  
20 (2) The Minister may direct the Coordinator to act as a  
21 refund point operator if —  
22 (a) persons in the community do not have  
23 reasonable access to a refund point; and  
24 (b) the Coordinator has not identified another  
25 person with whom to enter into a refund point  
26 agreement to operate a refund point in the  
27 community.  
28 (3) Subsection (2) does not limit the circumstances in  
29 which the Minister may direct the Coordinator to act as  
30 a refund point operator.

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**47M. Collected or returned containers must not be disposed of in a prohibited manner**

- (1) In this section, an empty container is a *collected container* if —
- (a) a container approval is in force that applies to the beverage product for which the container was used; and
  - (b) the container has been collected or received by an MRF operator (other than where the container was returned to a refund point).
- (2) In this section, an empty container is a *returned container* if —
- (a) a container approval is in force that applies to the beverage product for which the container was used; and
  - (b) the container has been returned to a refund point.
- (3) On and after the appointed day for this section, the Coordinator must not dispose of, or allow the disposal of, a collected container or a returned container in a prohibited manner.  
Penalty for this subsection: a fine of \$250 000.
- (4) On and after the appointed day for this section, an MRF operator must not dispose of, or allow the disposal of, a collected container or a returned container in a prohibited manner.  
Penalty for this subsection: a fine of \$50 000.

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- 1           (5) On and after the appointed day for this section, a  
2           person (other than the Coordinator or an MRF  
3           operator) must not dispose of, or allow the disposal of,  
4           a container in a prohibited manner if —
- 5                   (a) the container is a collected container or a  
6                   returned container; and
- 7                   (b) the person knows, or ought reasonably to know,  
8                   that the container is a collected container or a  
9                   returned container.
- 10           Penalty for this subsection: a fine of \$50 000.
- 11           (6) If an exemption has been granted in respect of a  
12           container under section 47N, subsections (3), (4) and  
13           (5) do not apply to the container.
- 14           (7) For the purposes of subsections (3), (4) and (5), a  
15           person has allowed the disposal of a container in a  
16           prohibited manner if —
- 17                   (a) the person arranged for the container to be  
18                   disposed of; and
- 19                   (b) when the person made the arrangement, or at  
20                   any later time prior to the disposal, the person  
21                   knew, or ought reasonably to have known, that  
22                   the container was likely to be disposed of in a  
23                   prohibited manner; and
- 24                   (c) the container was disposed of in a prohibited  
25                   manner.
- 26           (8) A person has not disposed of, or allowed the disposal  
27           of, a container in a prohibited manner if —
- 28                   (a) the person took the container, or arranged for  
29                   the container to be taken, to a facility at which  
30                   containers of that type can be recycled; and
- 31                   (b) part of the container could not be recycled at  
32                   the facility; and

- 1                   (c) only that part of the container was disposed of  
2                   in a prohibited manner.
- 3           (9) Nothing in this section or section 47N affects the  
4           liability of a person for disposing of a container in a  
5           manner that contravenes the *Environmental Protection*  
6           *Act 1986* or any other written law.
- 7           **47N. Extraordinary circumstances exemption**
- 8           (1) This section applies if a container has become  
9           unsuitable to be recycled because of extraordinary  
10           circumstances.
- 11           (2) On and after the appointed day for this section, a  
12           person may apply to the CEO for an exemption from  
13           the requirements of section 47M in respect of the  
14           container.
- 15           (3) The CEO may grant the exemption, subject to any  
16           conditions that the CEO specifies in the exemption, if  
17           satisfied that —
- 18                   (a) the container has become unsuitable to be  
19                   recycled; and
- 20                   (b) the circumstances that caused the container to  
21                   become unsuitable to be recycled were  
22                   extraordinary and either —
- 23                           (i) could not have reasonably been foreseen  
24                           by the person; or
- 25                           (ii) were beyond the person's control.
- 26           (4) A person who has been granted an exemption must  
27           comply with any condition specified in the exemption.  
28           Penalty for this subsection: a fine of \$50 000.

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**Division 4 — Scheme agreements and scheme participants**

**470. Supply agreement**

(1) The Coordinator may enter into a written agreement (a ***supply agreement***) with a person in relation to one or more beverage products that includes provisions about —

(a) unless the regulations provide otherwise, the person’s obligation to pay to the Coordinator amounts (***supply amounts***) to contribute to the costs of —

(i) paying refund amounts in relation to containers used for the beverage products that are returned to refund points; and

(ii) paying amounts to MRF operators in relation to containers used for the beverage products that are collected or received by the MRF operators; and

(iii) administering the scheme, including the costs of paying other amounts to refund point operators and any other costs reasonably incurred by the Coordinator in carrying out its functions;

and

(b) any other matter prescribed by the regulations.

(2) On and after the appointed day for this section, if a supply agreement requires a person to pay supply amounts, the person must pay the supply amounts to the Coordinator in accordance with this Act and the terms of the supply agreement.

Civil penalty: \$50 000.



- 1 (3) The Coordinator must not claim, or attempt to claim,  
2 payment from a person under a supply agreement —  
3 (a) if the Coordinator is not entitled to the payment  
4 under this Act or the supply agreement; or  
5 (b) in any other circumstances prescribed by the  
6 regulations.

7 Civil penalty: \$50 000.

8 **47P. Export rebate agreement**

- 9 (1) In this section —  
10 *scheme container* means a container in relation to  
11 which a supply amount has been paid under a supply  
12 agreement.  
13 (2) A person *exports* a beverage product —  
14 (a) if the person supplies the beverage product  
15 from the State to a place outside of the State,  
16 unless under the regulations the supply of the  
17 beverage product is taken not to be an export;  
18 or  
19 (b) if under the regulations, the person is taken to  
20 export the beverage product.  
21 (3) The Coordinator may enter into a written agreement  
22 (an *export rebate agreement*) with an exporter that  
23 includes provisions about —  
24 (a) the Coordinator's obligation to make payments  
25 to the exporter in relation to scheme containers  
26 used for beverage products that the person  
27 exports; and  
28 (b) any other matter prescribed by the regulations.

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- 1           (4) An exporter must not claim, or attempt to claim,  
2           payment from the Coordinator under an export rebate  
3           agreement —
- 4               (a) if the exporter is not entitled to the payment  
5               under this Act or the export rebate agreement;  
6               or  
7               (b) in any other circumstances prescribed by the  
8               regulations.
- 9           Civil penalty: \$50 000.
- 10       **47Q. Refund point agreement**
- 11       (1) The Coordinator may enter into a written agreement (a  
12       *refund point agreement*) with a person that includes  
13       provisions about —
- 14               (a) the Coordinator’s obligation to make payments  
15               to the person for certain costs incurred by the  
16               person in operating a refund point; and  
17               (b) any other matter prescribed by the regulations.
- 18       (2) A refund point operator must not claim, or attempt to  
19       claim, payment from the Coordinator under a refund  
20       point agreement —
- 21               (a) if the refund point operator is not entitled to the  
22               payment under this Act or the refund point  
23               agreement; or  
24               (b) in any other circumstances prescribed by the  
25               regulations.
- 26       Civil penalty: \$50 000.
- 27       **47R. Material recovery agreement**
- 28       (1) In this section, a container is an *approved container* if  
29       a container approval is in force that applies to the  
30       beverage product for which the container was used.

- 1 (2) The Coordinator may enter into a written agreement (a  
2 **material recovery agreement**) with an MRF operator  
3 that includes provisions about —
- 4 (a) the Coordinator’s obligation to make payments  
5 to the MRF operator in relation to empty  
6 approved containers the MRF operator collects  
7 or receives (other than containers that have  
8 been returned to a refund point); and
- 9 (b) any other matter prescribed by the regulations.
- 10 (3) An MRF operator must not claim, or attempt to claim,  
11 payment from the Coordinator under a material  
12 recovery agreement —
- 13 (a) if the MRF operator is not entitled to the  
14 payment under this Act or the material recovery  
15 agreement; or
- 16 (b) in any other circumstances prescribed by the  
17 regulations.

18 Civil penalty: \$50 000.

19 **47S. Regulations relating to scheme agreements and**  
20 **scheme participants**

- 21 (1) In this section —
- 22 **scheme participant** means each of the following —
- 23 (a) a party to a scheme agreement (other than the  
24 Coordinator);
- 25 (b) any other person who is —
- 26 (i) the first responsible supplier of a  
27 beverage product; or
- 28 (ii) an exporter; or
- 29 (iii) a refund point operator; or
- 30 (iv) an MRF operator.

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- 1           (2) Regulations may deal with any matter in relation to a  
2           scheme participant, a scheme agreement or payments  
3           under a scheme agreement.
- 4           (3) Without limiting subsection (2), regulations may do  
5           any of the following —
- 6               (a) deal with the content of a scheme agreement,  
7               including the matters or terms that must be  
8               included in a scheme agreement;
- 9               (b) require a scheme agreement to be approved by  
10              the Minister or CEO or be in a form or format  
11              approved by the Minister or CEO;
- 12              (c) deal with, or with any matter in relation to, the  
13              review, amendment, assignment, novation,  
14              termination or term of a scheme agreement;
- 15              (d) deal with, or with any matter in relation to, the  
16              following —
- 17                      (i) the cases or classes of cases in which a  
18                      supply agreement is not to require a  
19                      person to pay supply amounts, or is to  
20                      require a person to pay reduced supply  
21                      amounts;
- 22                      (ii) the circumstances in which a  
23                      requirement in a supply agreement to  
24                      pay supply amounts has effect  
25                      (including any conditions that must be  
26                      met before payment is required);
- 27                      (iii) the scheme participants or classes of  
28                      scheme participants that may be entitled  
29                      to payment under a scheme agreement;
- 30                      (iv) the circumstances in which a scheme  
31                      participant is entitled to payment under  
32                      a scheme agreement (including any  
33                      conditions that must be met before a

- 1 scheme participant is entitled to  
2 payment);
- 3 (v) how the amounts to be paid under a  
4 scheme agreement are to be calculated;
- 5 (vi) without limiting subparagraph (v), how  
6 supply amounts under a supply  
7 agreement are to be calculated,  
8 including the means for estimating the  
9 number of containers that will be  
10 returned to refund points that were used  
11 for beverage products to which the  
12 supply agreement relates;
- 13 (vii) without limiting subparagraph (v), how  
14 payments under an MRF agreement are  
15 to be calculated, including the means for  
16 estimating the number of containers  
17 collected or received by an MRF  
18 operator;
- 19 (viii) the terms and conditions of payment  
20 under a scheme agreement;
- 21 (ix) the manner in which the Coordinator or  
22 a scheme participant is required to make  
23 claims for payment under a scheme  
24 agreement;
- 25 (x) the assessment of claims for payment  
26 under a scheme agreement;
- 27 (e) impose obligations on a scheme participant,  
28 including in relation to complying with a  
29 scheme agreement, supplying beverage  
30 products, exporting beverage products,  
31 operating refund points, collecting or receiving  
32 beverage products, record keeping and  
33 reporting;

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- 1 (f) require information or documents given by a  
2 scheme participant or the Coordinator to be  
3 verified by statutory declaration;
- 4 (g) deal with, or with any matter in relation to, an  
5 MRF operator sharing, with a local government  
6 operating a waste collection service, payments  
7 received by the MRF operator from the  
8 Coordinator, including —
- 9 (i) agreements between MRF operators and  
10 the local governments in respect of the  
11 sharing of payments, including the  
12 period within which an agreement must  
13 be reached, and the consequences of  
14 failing to reach an agreement; and
- 15 (ii) how payments are to be shared in the  
16 absence of any agreement.

17 **47T. Content of scheme agreements not limited**

18 Subject to the regulations, nothing in this Division  
19 limits the matters for which a scheme agreement may  
20 provide.

21 **Division 5 — Coordinator of the scheme**

22 **Subdivision 1 — Preliminary**

23 **47U. Terms used**

- 24 (1) In this Division —
- 25 ***beverage supplier*** means —
- 26 (a) a person who supplies beverage products; or
- 27 (b) a person who does not supply beverage  
28 products, but who is taken under this Act to be  
29 the first responsible supplier of a beverage  
30 product;

- 1                    **business associate**, of a corporation means —
- 2                    (a) a member or shareholder of the corporation; or
- 3                    (b) a person who otherwise holds a beneficial
- 4                    interest in the corporation; or
- 5                    (c) another person whom the Minister is satisfied is
- 6                    associated with the ownership or management
- 7                    of the corporation or is in a position to control
- 8                    or influence the affairs of the corporation,
- 9                    but does not include an executive officer of the
- 10                    corporation;
- 11                    **corporation** has the meaning given in the Corporations
- 12                    Act section 57A;
- 13                    **executive officer**, of a corporation, means a person
- 14                    (whatever the person’s position is called and whether
- 15                    or not the person is a director of the corporation)
- 16                    who —
- 17                    (a) is a member of the governing body of the
- 18                    corporation; or
- 19                    (b) is concerned with, or takes part in, the
- 20                    corporation’s management;
- 21                    **independent of the beverage industry**, in relation to a
- 22                    person, means that the person is not a beverage
- 23                    supplier or an executive officer, employee or business
- 24                    associate of a beverage supplier;
- 25                    **independent of the waste industry**, in relation to a
- 26                    person, means that the person is not a provider of a
- 27                    waste service, or an executive officer, employee or
- 28                    business associate of a provider of a waste service;
- 29                    **major beverage supplier** means a beverage supplier
- 30                    other than a minor beverage supplier;
- 31                    **minor beverage supplier** means a beverage supplier or
- 32                    class of beverage suppliers that is prescribed by the
- 33                    regulations to be a minor beverage supplier.

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- 1           **47V. Eligible company**
- 2           (1) An *eligible company* is a company that —
- 3               (a) is carried on other than for the profit or gain of
- 4               its individual members; and
- 5               (b) has a constitution that complies with
- 6               subsection (2).
- 7           (2) The constitution of a company complies with this
- 8           subsection if it, at all times —
- 9               (a) requires the company to maintain a board,
- 10              constituted by 9 directors, that has the
- 11              composition required under subsection (3); and
- 12              (b) prohibits dividends being paid to, or the
- 13              income, profits or assets of the company being
- 14              distributed among, its members; and
- 15              (c) requires the persons appointed or employed as
- 16              executive officers of the company to be eligible
- 17              individuals; and
- 18              (d) includes provisions about —
- 19                   (i) the way the chair and directors are
- 20                   appointed and removed; and
- 21                   (ii) the way the chair and directors vote on
- 22                   and decide matters; and
- 23                   (iii) the remuneration and other entitlements
- 24                   of the chair and directors; and
- 25                   (iv) the way the constitution is amended;
- 26                   and
- 27                   (v) any other matter prescribed by the
- 28                   regulations.
- 29           (3) The required composition of the board is the
- 30           following —
- 31               (a) a chair who is —
- 32                   (i) a director; and



- 1 (ii) independent of the beverage industry;  
2 and
- 3 (iii) independent of the waste industry; and  
4 (iv) approved by the Minister;
- 5 (b) at least 1 director who is an executive officer,  
6 employee or business associate of a minor  
7 beverage supplier or an association that  
8 represents minor beverage suppliers;
- 9 (c) at least 1 director who is an executive officer,  
10 employee or business associate of a major  
11 beverage supplier;
- 12 (d) at least 1 director who —
- 13 (i) is independent of the beverage industry;  
14 and
- 15 (ii) has experience in the recycling and  
16 waste industry (including, but not  
17 limited to, experience in waste recovery,  
18 processing, transport or logistics);
- 19 (e) in addition to the chair, at least 1 other director  
20 who —
- 21 (i) represents the interests of the  
22 community; and
- 23 (ii) is independent of the beverage industry;  
24 and
- 25 (iii) is independent of the waste industry;  
26 and
- 27 (iv) is approved by the Minister;
- 28 (f) at least 2 other directors who —
- 29 (i) have legal or financial qualifications  
30 and experience; and
- 31 (ii) are independent of the beverage  
32 industry; and

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1 (iii) are independent of the waste industry.

2 **Subdivision 2 — Appointment of Coordinator of the scheme**

3 **47W. Office of Coordinator of the scheme**

4 (1) An office of Coordinator of the scheme is established.

5 (2) The office of Coordinator of the scheme is not —

6 (a) an office in the Public Service; or

7 (b) an organisation for the purposes of the *Public*  
8 *Sector Management Act 1994*; or

9 (c) an office established for a public purpose.

10 (3) The *Public Sector Management Act 1994* does not  
11 apply to, or in relation to, the appointment of the  
12 Coordinator and the Coordinator is not subject to that  
13 Act.

14 (4) The Coordinator is not an agent of the State and does  
15 not have the status, immunities and privileges of the  
16 State.

17 **47X. Appointment of Coordinator**

18 (1) The Minister may appoint an eligible company to the  
19 office of Coordinator of the scheme.

20 (2) The Minister may invite eligible companies to apply  
21 for appointment to the office of Coordinator of the  
22 scheme, and may assess any applications received, in  
23 any manner the Minister considers appropriate.

24 (3) The appointment of an eligible company to the office  
25 of Coordinator of the scheme must be by notice in  
26 writing given to the eligible company.

27 (4) The notice must specify —

28 (a) the day on which the eligible company is to  
29 commence occupying the office; and

- 1 (b) whether the appointment is indefinite or for a  
2 period specified in the notice; and  
3 (c) any other matter prescribed by the regulations.

4 **47Y. Conditions of appointment**

- 5 (1) The Minister may attach conditions to an appointment  
6 under section 47X(1).  
7 (2) The conditions must be specified in the notice of  
8 appointment.

9 **47Z. Functions of Coordinator**

- 10 (1) The Coordinator's main function is to administer and  
11 provide governance for the scheme.  
12 (2) Without limiting subsection (1), the Coordinator has  
13 the following functions —  
14 (a) to enter into, and manage, supply agreements in  
15 order to ensure contributions are made to the  
16 costs of the scheme;  
17 (b) to establish and maintain databases of container  
18 approvals and scheme agreements;  
19 (c) to enter into, and manage, export rebate  
20 agreements;  
21 (d) to establish a network of refund points by  
22 entering into refund point agreements and, if  
23 directed to do so by the Minister, by acting as a  
24 refund point operator;  
25 (e) to enter into, and manage, refund point  
26 agreements;  
27 (f) to enter into, and manage, material recovery  
28 agreements;  
29 (g) to ensure arrangements are in place for —  
30 (i) returning and collecting containers; and

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- 1 (ii) handling, sorting, processing, verifying,  
2 transporting and recycling containers  
3 that have been returned to a refund point  
4 or collected or received by an MRF  
5 operator;
- 6 (h) to determine the amounts payable under the  
7 scheme to and by the Coordinator under  
8 scheme agreements;
- 9 (i) to make and receive the payments referred to in  
10 paragraph (h);
- 11 (j) to ensure arrangements are in place for  
12 verifying the validity of payments claimed and  
13 made under the scheme;
- 14 (k) to raise and maintain public awareness of the  
15 scheme, including how the scheme operates and  
16 the location of refund points;
- 17 (l) to receive and deal with complaints relating to  
18 the scheme from members of the public and  
19 entities participating in the scheme;
- 20 (m) to obtain data on recycling rates for containers  
21 prior to the commencement of the scheme and  
22 throughout its operation in order to measure the  
23 outcomes of the scheme;
- 24 (n) any other functions given under this Act or  
25 another Act.
- 26 (3) Regulations may deal with any matter in relation to the  
27 Coordinator's functions, and may (without  
28 limitation) —
- 29 (a) give the Coordinator additional functions; and  
30 (b) deal with any matter in relation to the  
31 Coordinator's performance of its functions.

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- 1           **47ZA. Powers of Coordinator**
- 2                   The Coordinator has all the powers it needs to perform
- 3                   its functions.
- 4           **47ZB. Delegation by Coordinator**
- 5           (1) The Coordinator may delegate any function of the
- 6                   Coordinator under another provision of this Act or
- 7                   another written law to —
- 8                       (a) a director of the Coordinator; or
- 9                       (b) the chief executive officer of the Coordinator
- 10                      (however described); or
- 11                      (c) an appropriately qualified employee of the
- 12                      Coordinator.
- 13           (2) The delegation must be in writing executed by the
- 14                   Coordinator.
- 15           (3) Except as provided in subsection (4), a person to whom
- 16                   a function is delegated under this section cannot
- 17                   delegate that function.
- 18           (4) A delegation under subsection (1)(b) to the chief
- 19                   executive officer of the Coordinator (however
- 20                   described) may expressly authorise the chief executive
- 21                   officer to further delegate the function to an
- 22                   appropriately qualified employee of the Coordinator.
- 23           (5) A person performing a function that has been delegated
- 24                   to the person under this section is taken to do so in
- 25                   accordance with the terms of the delegation, unless the
- 26                   contrary is shown.
- 27           (6) Nothing in this section limits the ability of the
- 28                   Coordinator to perform a function through an officer or
- 29                   agent.

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**Subdivision 3 — Operations of Coordinator**

**47ZC. Coordinator must not act unfairly**

- (1) In negotiating, entering into, performing obligations under or enforcing a scheme agreement, the Coordinator must not act unfairly, or unreasonably discriminate, against or in favour of any person.
- (2) The Coordinator must not enter into an agreement that is, or contains a provision that is, inconsistent with this Act.

**47ZD. Coordinator performance targets**

Regulations may deal with any matter in relation to performance targets for the Coordinator, and may (without limitation) deal with, or with any matter in relation to —

- (a) the performance targets and other measures by which the performance of the Coordinator is to be judged, which may include targets in relation to —
  - (i) the number, location and accessibility to the public of refund points; and
  - (ii) the rate of return or collection of containers (including by reference to any particular area of operation);
- and
- (b) the period for which a performance target is to be judged; and
- (c) how the Coordinator is to report on its performance against a performance target; and
- (d) the consequences of the Coordinator failing to achieve a performance target, which may include the Minister giving a written direction, appointing an administrator to the Coordinator,

1 or amending or revoking the appointment of the  
2 Coordinator.

3 **47ZE. Business plan of Coordinator**

- 4 (1) The Coordinator must prepare a draft business plan and  
5 give it to the Minister at each of the following times —  
6 (a) in the case of the first draft business plan given  
7 by a particular Coordinator — at a time  
8 directed by the Minister;  
9 (b) in the case of subsequent plans — no later than  
10 3 months before the start of each financial year  
11 that has not been covered by a business plan  
12 given to the Minister.
- 13 (2) A draft business plan given under subsection (1) must  
14 cover the following period (the *relevant period*) —  
15 (a) in the case of a plan given under  
16 subsection (1)(a) — the period directed by the  
17 Minister; and  
18 (b) in any other case — the financial year  
19 following the day on which the plan is given.
- 20 (3) A draft business plan must be prepared and given in  
21 accordance with any requirements prescribed by the  
22 regulations and must include —  
23 (a) a budget of estimated costs of the scheme for  
24 the relevant period, including the estimated  
25 costs of —  
26 (i) the Coordinator; and  
27 (ii) refund amounts to be paid under the  
28 scheme; and  
29 (iii) the operation of refund points, including  
30 handling, sorting, processing, verifying,  
31 transporting and recycling containers;  
32 and

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- 1 (b) in the case of —  
2 (i) a plan given under subsection (1)(a) —  
3 a strategic plan for the duration of the  
4 Coordinator’s term of appointment or  
5 any other period directed by the  
6 Minister; and  
7 (ii) any subsequent plan — an update of the  
8 original strategic plan for the duration of  
9 the Coordinator’s term of appointment  
10 or any other period directed by the  
11 Minister;  
12 and  
13 (c) an operational plan for the relevant period.

14 **47ZF. Approval of business plan**

- 15 (1) In this section —  
16 *relevant period* means a financial year or another  
17 period referred to in section 47ZE(2)(a).  
18 (2) If the Coordinator gives the Minister a draft business  
19 plan in relation to a relevant period under section 47ZE  
20 or subsection (3), the Minister may, by written  
21 notice —  
22 (a) approve the draft business plan; or  
23 (b) direct the Coordinator to, within the period  
24 specified in the notice —  
25 (i) take specified steps in relation to the  
26 draft business plan or make specified  
27 modifications to the draft business plan;  
28 and  
29 (ii) submit a revised draft business plan.  
30 (3) The Coordinator must comply with a direction under  
31 subsection (2)(b) as soon as is practicable and in any  
32 event within the period specified in the notice.



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- 1 (4) A draft business plan in relation to a relevant period  
2 that has been approved under subsection (2)(a) is the  
3 business plan for that period.
- 4 (5) If the Minister has not approved a draft business plan  
5 in relation to a relevant period before the start of that  
6 period, the business plan for that period is, until a  
7 business plan is approved for the period, the business  
8 plan for the previous relevant period with any  
9 modifications determined by the Minister.

10 **47ZG. Amendment to business plan**

- 11 (1) The Coordinator may amend a business plan during the  
12 period covered by the plan.
- 13 (2) The Coordinator must give the amended business plan  
14 to the Minister within 10 business days after making  
15 the amendment.
- 16 (3) The Minister may, by written notice, approve the  
17 amended business plan.
- 18 (4) An amendment to a business plan, other than a minor  
19 amendment that does not materially change the plan,  
20 has no effect until the amended business plan has been  
21 approved by the Minister.

22 **47ZH. Compliance with business plan**

- 23 (1) In this section —  
24 *business plan*, for a period, means the business plan  
25 that is the business plan for that period under  
26 section 47ZF(4) or (5), as amended by any  
27 amendments that have effect under section 47ZG.
- 28 (2) The Coordinator must have regard to the business plan  
29 for the current period in carrying out its functions.

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- 1           (3) The Coordinator must not depart significantly from the  
2           business plan for the current period without first  
3           obtaining the approval of the Minister.
- 4           (4) The Coordinator must ensure that a copy of the  
5           business plan for the current period is —
- 6                 (a) available for inspection by members of the  
7                 public at its principal place of business  
8                 whenever that place is open to the public; and  
9                 (b) published on the internet.

10           **47ZI. Reporting by Coordinator**

11           Regulations may deal with any matter in relation to the  
12           provision or publication of information by the  
13           Coordinator or the reporting and notification  
14           obligations of the Coordinator, and may (without  
15           limitation) —

- 16                 (a) require the Coordinator to provide or publish  
17                 prescribed information or a prescribed class of  
18                 information; and
- 19                 (b) prescribe the format of information to be  
20                 provided or published; and
- 21                 (c) require the Coordinator to notify the Minister  
22                 about a prescribed matter or event.

23           **47ZJ. Notification of events**

- 24           (1) In this section —
- 25                 *criminal record check*, in relation to a person, means a  
26                 document issued by the Police Force of Western  
27                 Australia, the Australian Federal Police or the police  
28                 force of another State or a Territory that sets out the  
29                 criminal convictions (if any) of the person for offences  
30                 under the law of the State, the Commonwealth or the  
31                 other State or Territory.

- 1           (2) The Coordinator must notify the CEO within 10  
2           business days after any of the following events  
3           happens —
- 4               (a) the Coordinator ceases to be an eligible  
5               company;
- 6               (b) an executive officer of the Coordinator ceases  
7               to be an eligible individual;
- 8               (c) the appointment or employment of an executive  
9               officer of the Coordinator ends;
- 10              (d) a person is appointed or employed as an  
11              executive officer of the Coordinator;
- 12              (e) a shareholder or member of the Coordinator  
13              ceases to be a shareholder or member of the  
14              Coordinator;
- 15              (f) a person becomes a shareholder or member of  
16              the Coordinator;
- 17              (g) the Coordinator becomes aware that a business  
18              associate of the Coordinator is not an eligible  
19              individual.
- 20           (3) A notice about an event mentioned in subsection (2)(a)  
21           must include the Coordinator's plan and timetable for  
22           making the Coordinator an eligible company.
- 23           (4) A notice about an event mentioned in subsection (2)(d)  
24           or (f) must be accompanied by the signed consent of  
25           the person who is the subject of the notice to —
- 26               (a) the collection of personal or background  
27               information about the person by the CEO; and  
28               (b) a criminal record check.

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- 1           **47ZK. CEO to have access to information, agreements and**  
2           **databases**
- 3           (1) In this section —
- 4                 *document* includes any tape, disk or other device or  
5                 medium on which information is recorded or stored;  
6                 *information* means information specified, or of a  
7                 description specified, by the CEO that relates to the  
8                 functions of the Coordinator.
- 9           (2) The CEO is entitled —
- 10                 (a) to have information in the possession of the  
11                 Coordinator and, if the information is in or on a  
12                 document, to have, and make and retain copies  
13                 of, that document; and
- 14                 (b) without limiting paragraph (a) —
- 15                         (i) to have, and make and retain copies of,  
16                         any scheme agreement; and
- 17                         (ii) to have access to, and extract and retain  
18                         data from, any database established by  
19                         the Coordinator under this Act.
- 20           (3) For the purposes of subsection (2) the CEO may  
21                 request the Coordinator to —
- 22                 (a) provide information, agreements or data to the  
23                 CEO; and
- 24                 (b) give the CEO access to information,  
25                 agreements or a database.
- 26           (4) The Coordinator must comply with a request under  
27                 subsection (3).

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**Subdivision 4 — Scheme Account**

**47ZL. Terms used**

In this Subdivision —  
*approved governance plan*, for a Scheme Account, means the plan most recently approved by the CEO for that Scheme Account under section 47ZM(4), as amended by any amendments that have effect under section 47ZM;  
*bank account* means an account held at a bank as defined in the *Financial Management Act 2006* section 3;  
*scheme funds* means any moneys prescribed by the regulations.

**47ZM. Governance plan for Scheme Account**

- (1) The Coordinator must prepare a draft governance plan for a Scheme Account and give it to the CEO at each time directed by the CEO.
- (2) A draft governance plan must be prepared and given in accordance with any requirements prescribed by the regulations and must —
  - (a) in the case of the first draft governance plan given by a particular Coordinator — set out the Coordinator’s proposed governance arrangements for a Scheme Account, including details of —
    - (i) how the funds in the Scheme Account will be controlled and accounted for during the Coordinator’s appointment; and
    - (ii) how the funds in the Scheme Account will be transferred to the person who replaces the Coordinator as Coordinator following any expiry, revocation or

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- 1 other termination of the Coordinator's  
2 appointment;
- 3 and
- 4 (b) in the case of any subsequent plan — consist of  
5 an update of the original governance plan.
- 6 (3) Subsection (1) does not apply to an Interim  
7 Coordinator.
- 8 (4) If the Coordinator gives the CEO a draft governance  
9 plan under subsection (1) or (5), the CEO may, by  
10 written notice —
- 11 (a) approve the draft governance plan; or
- 12 (b) direct the Coordinator to, within the period  
13 specified in the notice —
- 14 (i) take specified steps in relation to the  
15 draft governance plan or make specified  
16 modifications to the draft governance  
17 plan; and
- 18 (ii) submit a revised draft governance plan.
- 19 (5) The Coordinator must comply with a direction under  
20 subsection (4)(b) as soon as is practicable and in any  
21 event within the period specified in the notice.
- 22 (6) If the Coordinator wishes to amend the governance  
23 plan, the Coordinator must give the amended  
24 governance plan to the CEO within 10 business days  
25 after making the amendment.
- 26 (7) The CEO may, by written notice, approve the amended  
27 governance plan.
- 28 (8) An amendment to a governance plan, other than a  
29 minor amendment that does not materially change the  
30 plan, has no effect until the amended governance plan  
31 has been approved by the CEO.

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**47ZN. Scheme Account**

(1) The Coordinator must establish a bank account (the *Scheme Account*) in accordance with subsection (2).

Penalty for this subsection:

- (a) a fine of \$250 000;
- (b) a daily penalty of a fine of \$2 500 for each day or part of a day during which the offence continues.

(2) The Scheme Account must be established by the Coordinator —

- (a) after the first occasion on which the CEO approves a draft governance plan given to the CEO under section 47ZM by that Coordinator; and
- (b) before the earlier of —
  - (i) 10 business days after the approval; or
  - (ii) the day on which the Coordinator commences occupying the office of Coordinator of the scheme.

(3) The Coordinator must maintain the Scheme Account in accordance with this Act and the approved governance plan for the Scheme Account.

Penalty for this subsection: a fine of \$250 000.

(4) The Coordinator —

- (a) must credit all scheme funds to the Scheme Account; and
- (b) must not credit any moneys other than scheme funds to the Scheme Account.

Penalty for this subsection: a fine of \$250 000.

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1           **47ZO. Regulations relating to Scheme Account and**  
2                           **governance plans**

3                           Regulations may deal with any matter in relation to the  
4                           Scheme Account, the use of moneys in the Scheme  
5                           Account, draft governance plans or approved  
6                           governance plans for the Scheme Account.

7                           **Subdivision 5 — Appointment of administrator or Interim**  
8   **Coordinator and other Ministerial powers**

9           **47ZP. Ministerial directions**

10                   (1) The Minister may give written directions to the  
11                   Coordinator with respect to the performance of its  
12                   functions under this or any other Act, either generally  
13                   or in relation to a particular matter.

14                   (2) Regulations may deal with any matter in relation to  
15                   directions under subsection (1) and may (without  
16                   limitation) deal with procedural requirements for the  
17                   giving of a direction or the format of a direction.

18                   (3) The Coordinator must comply with a direction given  
19                   under subsection (1).  
20                   Civil penalty: \$125 000.

21           **47ZQ. Amendment, administration and revocation**

22                   (1) The Minister may, if the Minister considers it  
23                   appropriate, do any one or more of the following —

24                           (a) amend or revoke the conditions that apply to  
25                           the appointment of the Coordinator or attach  
26                           new conditions to the appointment;

27                           (b) appoint an administrator to the Coordinator or  
28                           remove an administrator that has been  
29                           appointed;

30                           (c) revoke the appointment of the Coordinator.



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- 1           (2) Without limiting the grounds on which the Minister  
2           may exercise a power under subsection (1), the  
3           Minister may exercise the power if the Coordinator has  
4           contravened a provision of this Part or a regulation  
5           made for the purposes of this Part.
- 6           (3) Regulations may deal with any matter in relation to a  
7           power of the Minister under subsection (1) and may  
8           (without limitation) deal with —
- 9               (a) the grounds on which the Minister may exercise  
10              a power under subsection (1); and
- 11              (b) the process that must be followed in relation to  
12              the Minister’s exercise of a power under  
13              subsection (1).
- 14           (4) Nothing in this Subdivision is intended to exclude or  
15           limit the operation of the Corporations Act Chapter 5.

16           **47ZR. Appointment of administrator**

- 17           (1) This section applies if the Minister appoints an  
18           administrator to the Coordinator under  
19           section 47ZQ(1)(b).
- 20           (2) The Minister may, in the notice of appointment —
- 21               (a) limit the functions or powers of the  
22              administrator; or
- 23               (b) attach conditions to the appointment of the  
24              administrator.
- 25           (3) Subject to any limits and conditions in its notice of  
26           appointment, an administrator, during the  
27           administrator’s term of appointment and to the  
28           exclusion of any other person —
- 29               (a) has control of the Coordinator’s business,  
30              property and affairs; and
- 31               (b) may carry on that business and manage that  
32              property and those affairs; and

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- 1 (c) may terminate or dispose of all or part of that  
2 business, and may dispose of any of that  
3 property; and
- 4 (d) may perform any function that the Coordinator  
5 or any of its officers could perform if the  
6 administrator had not been appointed; and
- 7 (e) has the other functions stated in the  
8 administrator's notice of appointment.
- 9 (4) Nothing in subsection (3) limits the generality of  
10 anything else in it.
- 11 (5) Subject to any limits and conditions in its notice of  
12 appointment, the administrator has all the powers it  
13 needs to perform its functions.
- 14 (6) When performing a function the administrator is taken  
15 to be acting as the Coordinator's agent.
- 16 (7) The appointment of an administrator under  
17 section 47ZQ(1)(b) ends by force of this subsection if  
18 an administrator is appointed to the Coordinator under  
19 the Corporations Act Part 5.3A.
- 20 (8) Regulations may deal with any matter in relation to an  
21 administrator appointed under section 47ZQ(1)(b).
- 22 **47ZS. Only the administrator can deal with the**  
23 **Coordinator's property**
- 24 (1) In this section —  
25 *Australian ADI* has the meaning given in the  
26 Corporations Act section 9;  
27 *Court* means the Supreme Court of Western Australia.
- 28 (2) This section applies if —  
29 (a) an administrator is appointed to the Coordinator  
30 under section 47ZQ(1)(b); and

- 
- 1 (b) during the term of the administrator's  
2 appointment, the Coordinator purports to enter  
3 into, or a person purports to enter into on behalf  
4 of the Coordinator, a transaction or dealing  
5 affecting property of the Coordinator.
- 6 (3) The transaction or dealing is void unless —
- 7 (a) the administrator entered into it on the  
8 Coordinator's behalf; or
- 9 (b) the administrator consented to it in writing  
10 before it was entered into; or
- 11 (c) it was entered into under an order of the Court.
- 12 (4) Subsection (3) does not apply to a payment made —
- 13 (a) by an Australian ADI out of an account kept by  
14 the Coordinator with the ADI; and
- 15 (b) in good faith and in the ordinary course of the  
16 ADI's banking business; and
- 17 (c) on or before the day on which the administrator  
18 gives to the Australian ADI written notice of  
19 the administrator's appointment.
- 20 (5) Subsection (3) has effect subject to an order that the  
21 Court makes after the purported transaction or dealing.
- 22 (6) If, because of subsection (3), the transaction or dealing  
23 is void, or would be void apart from subsection (5), an  
24 officer or employee of the Coordinator commits an  
25 offence if the officer or employee —
- 26 (a) purported to enter into the transaction or  
27 dealing on the Coordinator's behalf; or
- 28 (b) was in any other way, by act or omission,  
29 directly or indirectly, knowingly concerned in,  
30 or party to, the transaction or dealing.
- 31 Penalty for this subsection: a fine of \$10 000.

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- 1           **47ZT. Interim Coordinator**
- 2           (1) If the appointment of a company to the office of
- 3           Coordinator of the scheme is revoked or otherwise
- 4           terminated, the Minister may appoint a person (the
- 5           ***Interim Coordinator***) to perform the functions of the
- 6           Coordinator for a specified period or until the Minister
- 7           appoints an eligible company to the office of
- 8           Coordinator of the scheme under section 47X.
- 9           (2) The Minister may, in the notice of appointment —
- 10           (a) limit the functions or powers of the Interim
- 11           Coordinator; or
- 12           (b) attach conditions to the appointment of the
- 13           Interim Coordinator.
- 14           (3) Subject to any limits and conditions in its notice of
- 15           appointment, the Interim Coordinator, during its term
- 16           of appointment and to the exclusion of any other
- 17           person —
- 18           (a) has the functions of the Coordinator under this
- 19           Act; and
- 20           (b) has any other functions stated in the notice of
- 21           appointment.
- 22           (4) Subject to any limits and conditions in its notice of
- 23           appointment, the Interim Coordinator has all the
- 24           powers it needs to perform its functions.
- 25           (5) Unless this Act expressly provides otherwise, or the
- 26           context otherwise requires, during the term of an
- 27           Interim Coordinator’s appointment, this Act applies to
- 28           the Interim Coordinator as if a reference in this Act to
- 29           the Coordinator were a reference to the Interim
- 30           Coordinator.

1           (6) The application of this Act to the Interim Coordinator  
2           under subsection (5) is subject to any modifications  
3           that are necessary or are prescribed by the regulations.

4           (7) Regulations may deal with any matter in relation to the  
5           Interim Coordinator.

6           **47ZU. Remuneration and costs**

7           (1) If a person appointed as an administrator under  
8           section 47ZQ(1)(b) or as an Interim Coordinator under  
9           section 47ZT(1) is not employed in the Public Sector  
10          (as defined in the *Public Sector Management*  
11          *Act 1994*), the person is entitled to be paid the  
12          remuneration determined by the CEO.

13          (2) The costs of and incidental to the performance of the  
14          functions of an administrator appointed under  
15          section 47ZQ(1)(b) are payable by the company to  
16          which the administrator is appointed.

17          (3) Unless the CEO directs otherwise, the costs of and  
18          incidental to the performance of the functions of an  
19          Interim Coordinator are payable by the company (not  
20          itself also being an Interim Coordinator) that was the  
21          Coordinator most recently before the Interim  
22          Coordinator.

23          **47ZV. Providing assistance**

24          (1) An administrator appointed under section 47ZQ(1)(b)  
25          may, for the purpose of performing its functions, by a  
26          notice given to an officer or employee or former officer  
27          or employee of the Coordinator, require the person  
28          to —

29                  (a) produce documents in the person's possession  
30                  that the administrator reasonably requires to  
31                  perform the functions; or

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- 1 (b) provide other information or assistance the  
2 administrator reasonably requires to perform  
3 the functions.
- 4 (2) An Interim Coordinator may, for the purpose of  
5 performing its functions, by a notice given to an officer  
6 or employee or former officer or employee of a person  
7 who was previously the Coordinator, require the officer  
8 or employee or former officer or employee to —
- 9 (a) produce documents in the possession of the  
10 officer or employee or former officer or  
11 employee that the Interim Coordinator  
12 reasonably requires to perform the functions; or
- 13 (b) provide other information or assistance the  
14 Interim Coordinator reasonably requires to  
15 perform the functions.
- 16 (3) A person must comply with a requirement under  
17 subsection (1) or (2) unless the person has a reasonable  
18 excuse.
- 19 Penalty for this subsection:
- 20 (a) a fine of \$10 000;
- 21 (b) a daily penalty of a fine of \$1 000 for each  
22 day or part of a day during which the offence  
23 continues.
- 24 (4) It is a reasonable excuse for an individual not to  
25 comply with the requirement if doing so might tend to  
26 incriminate the individual.

27 **47ZW. Review by State Administrative Tribunal**

- 28 (1) In this section —
- 29 *affected person* means —
- 30 (a) a company that has been appointed to the office  
31 of Coordinator of the scheme; or

- 1 (b) a person who has been appointed to perform the  
2 functions of the Coordinator under  
3 section 47ZT(1).
- 4 (2) An affected person may apply to the State  
5 Administrative Tribunal for a review of —
- 6 (a) the Minister’s decision to amend or revoke the  
7 conditions that apply to the appointment of the  
8 affected person, or to attach new conditions to  
9 the appointment (except where the amendment,  
10 revocation or attachment was made or done at  
11 the request of, or with the agreement of, the  
12 affected person); or
- 13 (b) the Minister’s decision to appoint an  
14 administrator to the affected person; or
- 15 (c) the Minister’s decision to revoke the  
16 appointment of the affected person; or
- 17 (d) the Minister’s decision to give the affected  
18 person a direction under section 47ZP.

19 **Subdivision 6 — Transitional arrangements**

20 **47ZX. Transitional arrangements between Coordinators**

21 Regulations may deal with any matter in relation to the  
22 transition from a person who is, or has been, the  
23 Coordinator or an Interim Coordinator (the *previous*  
24 *Coordinator*) to a person who subsequently is to, or  
25 has, become the Coordinator or an Interim Coordinator  
26 (the *subsequent Coordinator*) and may (without  
27 limitation), deal with, or with any matter in relation to  
28 the following —

- 29 (a) the transfer of funds from the Scheme Account  
30 established by the previous Coordinator, or the  
31 subsequent Coordinator’s access to that Scheme  
32 Account or funds in that Scheme Account;

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- 1 (b) the novation, from the previous Coordinator to  
2 the subsequent Coordinator, of any agreement  
3 or class of agreements the previous Coordinator  
4 has entered into in relation to the scheme  
5 (despite anything in the agreements to the  
6 contrary);
- 7 (c) the amendment, modification, assignment or  
8 termination of any agreement or class of  
9 agreements the previous Coordinator has  
10 entered into in relation to the scheme (despite  
11 anything in the agreements to the contrary);
- 12 (d) the production of documents in the previous  
13 Coordinator's possession to the subsequent  
14 Coordinator;
- 15 (e) the provision of information, databases, assets  
16 or assistance by the previous Coordinator to the  
17 subsequent Coordinator.

18 **Division 6 — Miscellaneous**

19 **47ZY. Penalties for Coordinator, Interim Coordinator and**  
20 **directors of Coordinator**

- 21 (1) If an offence under this Part expressly applies to the  
22 Coordinator, the penalty that is expressed to apply to  
23 that offence is, for the purposes of the *Sentencing*  
24 *Act 1995* section 40, a statutory penalty expressly  
25 provided for a body corporate.
- 26 (2) If the Coordinator commits an offence under this Act  
27 and, by virtue of section 93 and the *Environmental*  
28 *Protection Act 1986* section 118, a person who is a  
29 director or who is concerned in the management of the  
30 Coordinator is convicted of the same offence, the  
31 person is liable to a fine that is one-fifth of the  
32 maximum fine that could be imposed on a company



1 occupying the office of Coordinator of the scheme  
2 convicted of the offence under this Act.

3 (3) If the Interim Coordinator is an individual and is  
4 convicted of an offence that expressly applies to the  
5 Coordinator, the Interim Coordinator is liable to a fine  
6 that is one-fifth of the maximum fine that could be  
7 imposed on a company occupying the office of  
8 Coordinator of the scheme convicted of the offence  
9 under this Act.

10 **47ZZ. Civil penalty provisions**

11 (1) In this section —

12 *civil penalty*, for a civil penalty provision, means —

- 13 (a) in the case of a provision referred to in  
14 paragraph (a) of the definition of civil penalty  
15 provision, the amount following the expression  
16 “Civil penalty:” below that provision; or  
17 (b) in the case of a provision referred to in  
18 paragraph (b) of the definition of civil penalty  
19 provision, the amount prescribed under  
20 regulations referred to in subsection (2)(b).

21 *civil penalty provision* means —

- 22 (a) a provision of this Act below which the  
23 expression “Civil penalty:” followed by an  
24 amount, expressed in dollars, appears; or  
25 (b) a provision of the regulations prescribed as a  
26 civil penalty provision under regulations  
27 referred to in subsection (2)(a).

28 (2) Regulations may —

- 29 (a) provide that a provision of the regulations that  
30 imposes an obligation on a person (including an  
31 obligation in relation to compliance with  
32 prescribed provisions of a scheme agreement)  
33 is a civil penalty provision; and

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- 1 (b) prescribe, for a contravention of a provision  
2 referred to in paragraph (a), the amount that  
3 may, in accordance with the regulations, be  
4 demanded from or imposed on a person who  
5 contravenes the civil penalty provision, being  
6 an amount not exceeding \$25 000; and
- 7 (c) provide for and regulate the taking of  
8 proceedings in respect of an alleged  
9 contravention of a civil penalty provision (*civil*  
10 *penalty proceedings*); and
- 11 (d) provide for the making of an order that a person  
12 found in civil penalty proceedings to have  
13 contravened the civil penalty provision is to pay  
14 an amount not exceeding the civil penalty for  
15 the civil penalty provision; and
- 16 (e) provide for other orders that can be made in  
17 civil penalty proceedings; and
- 18 (f) provide for the enforcement of orders made in  
19 civil penalty proceedings generally, and in  
20 particular, provide for the demand for payment  
21 of the civil penalty and the enforcement of that  
22 demand; and
- 23 (g) provide for the manner in which amounts  
24 received by way of civil penalties are to be  
25 dealt with and applied.

26 **47ZZA. Inconsistent provision has no effect**

27 Unless the regulations provide otherwise, a provision  
28 of any of the following agreements has no effect to the  
29 extent the provision is inconsistent with this Act —

- 30 (a) a scheme agreement;
- 31 (b) any other agreement entered into by the  
32 Coordinator, a first responsible supplier of a  
33 beverage product, an exporter, a refund point  
34 operator or an MRF operator, in each case in

1 order to carry out its functions under this Act or  
2 to implement the scheme.

3 **47ZZB. Beverages consumed on interstate or international**  
4 **journeys**

5 Regulations may deal with, or with any matter in  
6 relation to, beverage products supplied, used or  
7 consumed on interstate or international journeys that  
8 begin or end in, or pass through, the State and may  
9 (without limitation) provide for payment obligations  
10 and the payment of refund amounts.

11 **47ZZC. Power to require information or material**

12 (1) In this section —

13 **authorised person** means the CEO or a person  
14 authorised, for the purposes of this section, in writing  
15 by the CEO;

16 **relevant matter** means the following —

- 17 (a) the scheme, including its administration and  
18 proper operation;  
19 (b) the performance of the Coordinator;  
20 (c) compliance with this Act or any contractual  
21 arrangements relating to the scheme.

22 (2) An authorised person may require a person —

- 23 (a) to provide oral or written answers to specified  
24 questions in relation to a relevant matter; or  
25 (b) to produce to the authorised person specified  
26 material or material of a specified class that  
27 is —  
28 (i) in relation to a relevant matter; and  
29 (ii) in the person's possession or control.

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- 1           (3) The authorised person may make the requirement —  
2                 (a) if an oral response is required — orally; or  
3                 (b) in any other case — by notice given to the  
4                     person to whom the requirement is addressed.
- 5           (4) The authorised person must —  
6                 (a) allow a person a reasonable time within which  
7                     to comply with the requirement; and  
8                 (b) if the requirement is made by notice given to  
9                     the person, specify the time allowed in the  
10                    notice.
- 11          (5) The authorised person may require a person to verify  
12             information or documents by statutory declaration.
- 13          (6) A person must comply with a requirement under this  
14             section within the time allowed under subsection (4) or  
15             within any further time allowed by the authorised  
16             person.
- 17             Penalty for this subsection:  
18                 (a) a fine of \$20 000;  
19                 (b) a daily penalty of a fine of \$2 000 for each  
20                     day or part of a day during which the offence  
21                     continues.
- 22          (7) The CEO must ensure that each authorised person  
23             (other than the CEO) is issued with an authority in  
24             writing signed by the CEO and bearing a photograph of  
25             that authorised person.
- 26          (8) The authorised person must carry the authority when  
27             performing functions under this section and, if it is  
28             practicable to do so, produce the authority before  
29             making a requirement under this section.

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**47ZZD. Disclosure of information**

- 1
- 2 (1) Regulations may allow the Minister or CEO to publish,  
3 or require another person to publish, in the manner  
4 prescribed by the regulations, any prescribed  
5 information or class of information relating to the  
6 scheme.
- 7 (2) Any person who publishes information in accordance  
8 with this Act is taken, for the purposes of section 93  
9 and the *Environmental Protection Act 1986*  
10 section 120, to have disclosed the information with the  
11 prior permission in writing of the Minister.

12 **47ZZE. Performance audit**

- 13 (1) The CEO may —
- 14 (a) carry out an audit of the Coordinator's activities  
15 under this Act; or
- 16 (b) direct the Coordinator to engage and pay for an  
17 auditor, approved by the CEO, to conduct an  
18 audit of, and report to the CEO about, the  
19 Coordinator's activities under this Act.
- 20 (2) A direction given under subsection (1)(b) must  
21 specify —
- 22 (a) the matters to be audited; and  
23 (b) a day on or before which the report must be  
24 given to the CEO.
- 25 (3) The CEO may at any time amend or cancel a direction  
26 given under subsection (1)(b).
- 27 (4) For the purposes of this section the CEO may approve  
28 a person as an auditor if the CEO is satisfied the  
29 person —
- 30 (a) has qualifications and experience that are  
31 appropriate to the audit; and

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- 1                   (b) is independent of the Coordinator and any  
2                   business conducted by it; and
- 3                   (c) is able to conduct the audit and to prepare a  
4                   report in accordance with the directions given.
- 5           (5) The Coordinator must cooperate with the CEO in the  
6           CEO's conduct of an audit under subsection (1)(a) and  
7           provide any information and documents that the CEO  
8           requests.
- 9           (6) The Coordinator must comply with a direction given  
10           by the CEO under subsection (1)(b).  
11           Civil penalty: \$250 000.
- 12           (7) Regulations may deal with any matter in relation to  
13           audits under this section and may (without limitation)  
14           deal with any matter in relation to the recovery of  
15           expenses incurred by the CEO.

16           **47ZZF. False or misleading information**

- 17           (1) A person must not do anything set out in  
18           subsection (2) —
- 19                   (a) in connection with an application for a  
20                   container approval; or
- 21                   (b) in connection with a claim for payment under a  
22                   scheme agreement or any other agreement  
23                   between a person and the Coordinator; or
- 24                   (c) in, or in connection with, a notice or document  
25                   given under this Part or regulations made for  
26                   the purposes of this Part; or
- 27                   (d) in compliance, or purported compliance, with a  
28                   requirement under this Part or regulations made  
29                   for the purposes of this Part.
- 30           Penalty for this subsection: a fine of \$50 000.

- 1 (2) The things to which subsection (1) applies are making  
2 a statement or giving information that —  
3 (a) the person knows is false or misleading in a  
4 material particular; or  
5 (b) omits anything without which the statement or  
6 information is, to the person’s knowledge,  
7 misleading in a material particular.

8 **47ZZG. Authorisations for competition legislation**

- 9 (1) The following are specifically authorised for the  
10 purposes of the *Competition and Consumer Act 2010*  
11 (Commonwealth) and the Competition Code of  
12 Western Australia —  
13 (a) appointing, under Division 5, a company to the  
14 office of Coordinator of the scheme;  
15 (b) granting, refusing, amending, transferring,  
16 suspending or cancelling a container approval;  
17 (c) an export rebate agreement;  
18 (d) a material recovery agreement;  
19 (e) a refund point agreement;  
20 (f) a supply agreement;  
21 (g) the conduct of a person negotiating, entering  
22 into or performing an agreement mentioned in  
23 paragraph (c), (d), (e) or (f);  
24 (h) the conduct of a person that is authorised or  
25 required by or under the conditions of a  
26 container approval.
- 27 (2) Anything authorised to be done by subsection (1) is  
28 authorised only to the extent that it would otherwise  
29 contravene the *Competition and Consumer Act 2010*  
30 (Commonwealth) Part IV or the Competition Code of  
31 Western Australia.

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1           **47ZZH. Corporations Act displacement**

- 2           (1) In this section —
- 3                 **Corporations legislation** means the Corporations  
4                 legislation to which the Corporations Act Part 1.1A  
5                 applies.
- 6           (2) A provision of this Part, to the extent the provision is  
7                 incapable of concurrent operation with a provision of  
8                 the Corporations Act, is declared to be a Corporations  
9                 legislation displacement provision for the purposes of  
10                section 5G of that Act in relation to the Corporations  
11                legislation generally.

12           **47ZZI. Powers in relation to transitional matters**

- 13           (1) In this section —
- 14                 **specified** means specified or described in transitional  
15                 regulations;
- 16                 **transitional matter** —
- 17                     (a) means a matter or issue of a transitional nature  
18                     that arises as a result of the enactment of the  
19                     *Waste Avoidance and Resource Recovery*  
20                     *Amendment (Container Deposit) Act 2018* or  
21                     the coming into operation of provisions of that  
22                     Act or regulations under this Act; and
- 23                     (b) includes a saving or application matter or issue;
- 24                 **transitional regulations** means regulations referred to  
25                 in subsection (2).
- 26           (2) If there is not sufficient provision in this Part for  
27                 dealing with a transitional matter, regulations may  
28                 prescribe anything required, necessary or convenient to  
29                 be prescribed in relation to that matter.



- 1 (3) Transitional regulations may provide that specified  
2 provisions of this Act —  
3 (a) do not apply to or in relation to any matter; or  
4 (b) apply with specified modifications to or in  
5 relation to any matter.
- 6 (4) If transitional regulations provide that a specified state  
7 of affairs is taken to have existed, or not to have  
8 existed, on and from a day that is earlier than the day  
9 on which the regulations are published in the *Gazette*  
10 but not earlier than the day on which the *Waste*  
11 *Avoidance and Resource Recovery Amendment*  
12 *(Container Deposit) Act 2018* section 6 comes into  
13 operation, the regulations have effect according to their  
14 terms.
- 15 (5) If transitional regulations contain a provision referred  
16 to in subsection (4), the provision does not operate so  
17 as to —  
18 (a) affect in a manner prejudicial to any person  
19 (other than the State or an authority of the  
20 State), the rights of that person existing before  
21 the day of publication of those regulations; or  
22 (b) impose liabilities on any person (other than the  
23 State or an authority of the State) in respect of  
24 anything done or omitted to be done before the  
25 day of publication of those regulations.
- 26 (6) Transitional regulations made in relation to a matter  
27 referred to in subsection (3) must be made within  
28 whatever period is reasonably and practicably  
29 necessary to deal with a transitional matter.  
30

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1    **7.       Section 69 amended**

2       (1)   In section 69 delete “A person other than” and insert:

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4           (1)   A person other than

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6       (2)   In section 69 in the Penalty delete “Penalty:” and insert:

7

8                   Penalty for this subsection:

9

10      (3)   At the end of section 69 insert:

11

12           (2)   Subsection (1) does not apply to a person who collects  
13                   local government waste in the course of acting as a  
14                   refund point operator (as defined in section 47C).

15

16    **8.       Section 94 amended**

17      (1)   In section 94(1) delete “An action” and insert:

18

19           Subject to subsection (3A), an action

20

21      (2)   After section 94(3) insert:

22

23           (3A)   Subsection (1) does not apply to anything that a person  
24                   has done in the performance or purported performance  
25                   of the functions of the Coordinator of the container  
26                   deposit scheme established by Part 5A.

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