

**WASTE AVOIDANCE AND RESOURCE RECOVERY AMENDMENT
(CONTAINER DEPOSIT) BILL 2018**

EXPLANATORY MEMORANDUM

Introduction

The *Waste Avoidance and Resource Recovery Bill (Container Deposit) 2018* (Bill) amends the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) to facilitate the implementation and operation of a container deposit scheme (CDS) in Western Australia. The CDS is an extended producer responsibility scheme which allows consumers to return empty containers used for beverage products to a refund point and receive a ten cent refund in exchange.

The Bill amends the WARR Act to require the first responsible supplier of a beverage product to pay the coordinator of the scheme (scheme coordinator) the cost of the refund paid to the consumer and other costs required to deliver a CDS in Western Australia. Details of the payment obligations and how the amount is calculated and invoiced will be set in contracts (supply agreements) between the scheme coordinator and each first responsible supplier. The required content of supply agreements will be prescribed in the regulations.

The Bill provides for a collection network established by a not-for-profit scheme coordinator through contracts with refund point operators, transporters and processors, who will operate various elements of the network on a for-profit basis. These contracts will provide for the refund point operators to be reimbursed for the costs of refunds paid, as well as other agreed handling costs incurred in operating the refund point.

The Bill gives primary responsibility to the scheme coordinator for ensuring that containers used for beverage products collected from refund points are recycled or reused and are not disposed of to landfill. It will be a condition of payment of a claim by the scheme coordinator (under supply agreements) and material recovery facilities (under material recovery agreements) that all containers used for beverage products for which a claim or payment is made are sent for recycling or reuse and are not disposed of to landfill.

The Bill also sets out how containers used for a beverage product will be approved for supply, the functions and powers of the administrator, the appointment, functions and powers of the scheme coordinator, offences, enforcement powers and penalties, rights of review to the State Administrative Tribunal and new head powers that enable the scheme to be prescribed in regulations.

Part 1 – Preliminary

Clause 1: Short title

This clause provides the short title of the Bill.

Clause 2: Commencement

The clause provides for the commencement of the Bill and specifies when the *Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2018* (Act) will come into operation. Different parts of the Act come into operation on different dates set by Royal Assent or fixed by proclamation.

Part 2 – Waste Avoidance and Resource Recovery Act 2007 amended

Clause 3: Act amended

This clause specifies that the amendments relate to the WARR Act.

Clause 4: Long title amended

This clause amends the long title of the WARR Act to specify that the WARR Act establishes a container deposit scheme.

Clause 5: Section 19 amended

This clause inserts section 19(1A) of the WARR Act to specify that a reference to “this Act” in Schedule 2 of the WARR Act, which lists the functions of the Waste Authority, does not include a reference to the new Part 5A of the WARR Act implementing the operation of the CDS.

Clause 6: Part 5A – Container Deposit Scheme Division 1 inserted

This clause inserts a new part, which will enable the implementation and operation of a CDS in Western Australia.

Division 1 – Preliminary

The following provisions are inserted.

- Section 47A sets out the main objects of the CDS as set out in Part 5A, including the underlying objects to reduce empty beverage container litter, maximise recovery and recycling rates of empty beverage containers and complement existing recovery and recycling of them, provide for the costs of collecting and recycling beverage containers to be incorporated into the costs of producing beverage products, and provide opportunities for social enterprise, employment and benefits for community organisations.
- Section 47B provides an overview of the CDS, setting out the general features of the CDS. This includes the appointment of a company as scheme coordinator with responsibility of administering the CDS, the requirement for various conditions to be met for supply of beverages in a container, refund amounts for return of empty containers and the requirement to not dispose of containers returned to a refund point in a prohibited manner.

- Section 47C sets out the meaning of important terms used in the new Part 5A of the WARR Act for the purposes of implementing the CDS. Section 47C(3) provides, for the purposes of Part 5A of the WARR Act, that supply of a beverage product is in the State of Western Australia if a beverage product is received in the State (whether or not the supplier is located in the State), or prescribed under regulations as taken to be who first supplies the beverage product in the State. The regulations can also prescribe what is not considered supply of a beverage product in the State.

In addition, section 47C(5) provides that in sections 47ZE, 47ZF, 47ZM, 47ZN(1) and 47ZP a reference to a 'Coordinator' includes a company that has been notified of its appointment to the office of coordinator of the scheme under section 47X but has not yet commenced occupying the office.

- Section 47D sets out the meaning of a particular term. The "**first responsible supplier**" of a beverage product is the person to supply the beverage product in Western Australia, or the person under the regulations who is taken to be the first responsible supplier of the beverage product.

Section 47D also provides that a person is not a first responsible supplier of a beverage product if they are not deemed to be under the regulations. Further, unless the regulations provide otherwise, if a person (the transporter) only transports a beverage product between the supplier and the recipient, it is not deemed supply of that beverage product on the transfer of it between the supplier and transporter, or between the transporter to the recipient.

In addition, unless provided for in regulations, it is not deemed to be supply of a beverage product under Part 5A of the WARR Act if a person (the contract bottler) is engaged under contract to make a beverage product or fill containers with a beverage for another person (the contract counterparty) where the beverage is manufactured solely for the contract counterparty, on transfer of the beverage product from the contract bottler to the contract counterparty following completion of manufacture.

Regulations may provide for circumstances in which a person can and cannot be the first responsible supplier of a beverage product, which may include where a person has entered into an agreement with another person as to who is to be first supplier of a beverage product

Division 2 – Supply of beverage products

The following provisions are inserted.

- Section 47E provides that it is an offence for a first responsible supplier of a beverage product to make a first supply of a beverage product in Western Australia unless a supply agreement and a container approval is in force for the beverage product and a container used for the beverage product bears

a refund mark and barcode in accordance with requirements prescribed by regulations.

Head powers are created in section 47E(4) for regulations to deal with any matter in relation to the supply of beverage person or a person who supplies beverage products.

- Section 47F provides that a person may apply to the Chief Executive Officer of the Department administering the WARR Act (CEO) for approval of a container that applies to a particular beverage product or class of beverage products. The CEO may, subject to regulations, grant or refuse to grant the container approval.

The section provides that container approval is subject to any conditions imposed on and specified in the approval by the CEO or prescribed by regulation. It creates an offence if the first responsible supplier of a beverage product contravenes a condition of the approval that applies to the beverage product. This allows oversight of the administration of the CDS by the Department administering the WARR Act.

- Section 47G provides for head powers for regulations dealing with any matter in relation to a container approval and applications for container approvals, including the manner, form and information that must accompany the application, fees for approval or applications for approval, matters considered and criteria to be met before granting an approval, grounds for refusal, conditions imposed on approvals, amendment, transfer, suspension or cancellation of a container approval, maintenance of a public database of approvals by the scheme coordinator, and prescription of offences if a person does not have container approval.

The section also provides for regulations dealing with circumstances in which an approval under a corresponding law, meaning a Commonwealth or another State or Territory law prescribed to be a corresponding law by the regulations, is deemed to be a container approval, those in which a container approval is deemed to be held, including where an approval is held under a corresponding law, and conditions that apply to container approvals.

- Section 47H provides for a right of merits review by the first responsible supplier of a beverage product to the State Administrative Tribunal for a decision by the CEO to refuse to approve a container approval that applies to a beverage product, to refuse a transfer of such a container approval to or from the person (on the consent of the current holder of the container approval), or to amend, cancel or suspend a container approval.

Division 3 – Return of containers

The following provisions are inserted.

- Section 47I provides that it is an offence for a person other than the scheme coordinator to act as a refund point operator in respect of a refund point

unless a refund point agreement is in force. This section also allows regulations to prescribe eligibility criteria that must be met before a person may act as a refund point operator.

- Section 47J provides that the regulations may prescribe a refund amount for the purposes of the proposed new Part 5A of the WARR Act.
- Section 47K provides that regulations may deal with any matter in relation to refund points, refund amounts or the acceptance of empty containers. This includes, without limitation, prescribing circumstances in which a refund point operator is or is not required to accept delivery of an empty container and pay the person the refund amount, the manner of payment, conditions that must be satisfied before the receipt of a refund amount and prohibitions on attempting to claim or claiming payment of refund amounts.
- Section 47L allows for a scheme coordinator to act as a refund point operator if directed to do so by the Minister in circumstances where the community does not have reasonable access to a refund point and the scheme coordinator has not identified another person with whom to enter into a refund point agreement, or the achievement of the objects of the container deposit scheme will be materially adversely affected without the refund point.
- Section 47M (read with the definition of 'prohibited manner' in section 47C) creates an offence for the scheme coordinator, MRF operator or other person to dispose of or allow collected or returned containers to be disposed of at disposal premises, by burial, in contravention of the *Environmental Protection Act 1986* Part V Division 1 or through any other manner prescribed in regulation. For a person other than the scheme coordinator or the MRF operator, the offence also includes the element of knowledge; that the person knew, or ought reasonably to have known, that the container was a collected container or a returned container.

Limited circumstances are provided for in section 47M where a person is deemed not to have disposed of, or allowed the disposal of a container, in a prohibited manner. This includes where the person took the container or arranged for it to be taken to a recycling facility, or part of the container cannot be recycled and only that part is disposed of in a prohibited manner. However, nothing authorises disposal in contravention of the *Environmental Protection Act 1986*.

This provision imposes penalties in circumstances where the scheme coordinator, MRF operator or other person directly disposes of the containers or arranges for their contractors (refund point operators, transporters, processors or recyclers) to do so, and when that arrangement was made, or at any later time, they knew or ought reasonably to have known that their contractors were likely to dispose of the containers and they were in fact disposed of in a prohibited manner.

- Section 47N provides that the requirements under sections 47M do not apply where the CEO grants an exemption, upon application, from the

requirement to recycle containers if a container has become unsuitable to be recycled because of extraordinary circumstances.

Under section 47N(3), such an exemption from the requirements of section 47M in respect of the container can be granted, subject to specified conditions, where a container has become unsuitable to be recycled due to extraordinary circumstances which either could not have reasonably been foreseen by the scheme coordinator, MRF operator or other relevant person, or were beyond the control of those persons, such as, for example, a flood in the area where the containers were stored.

The section provides that it is an offence for a person who has been granted an exemption must comply with any condition specified in the exemption. The exemption does not affect a person's liability for an offence relating to the disposal of the container under the *Environmental Protection Act 1986* Part V Division 1 or any other written law.

Division 4 – Scheme agreements and scheme participants

The following provisions are inserted.

- Section 47O provides for supply agreements that place an obligation on a person in relation to one or more beverage products to pay the scheme coordinator supply amounts. These amounts will reflect an estimation of that person's share of the costs of paying refunds in relation to containers used for beverage products returned to refund points, amounts to operators of material recovery facilities (MRF operators) in relation to collection or receipt of containers used for beverage products collect or received by MRF operators, and the cost of administering the scheme. Regulations may prescribe any other matter to include in supply agreements.

This section creates an offence if the person does not pay supply amounts to the scheme coordinator in accordance with the WARR Act and the terms of its supply agreement. Section 47O(3) also creates an offence for a scheme coordinator to claim payment from a person under the supply agreement unless entitled to claim under that agreement, the WARR Act, or as prescribed by regulations.

- Section 47P provides for export rebate agreements. The scheme coordinator can enter into an export rebate agreement with an exporter that includes provisions about allowing the exporter to be rebated for scheme containers used for beverage products they export out of Western Australia. The term 'exports' is explained in section 47P(2) (as well as an 'exporter' in section 47C(1)) to mean if a person is taken to export the beverage product under the regulations or supplies the beverage product from Western Australia to a place outside the State unless the regulations provide it is not an export.

The reason for allowing rebates is that when beverage products are exported from Western Australia, no scheme costs will actually be incurred in respect of those products as no refund will be paid in Western Australia.

If the beverage products are transported to another CDS jurisdiction, the person will be liable as an importer to pay scheme costs in that jurisdiction, which could amount to an unjustified doubling of CDS costs. It is also desirable to keep the process and criteria for rebates as consistent as possible between jurisdictions to make the process uniform and streamlined across Australia.

Section 47P(4) creates an offence for an exporter to claim payment under the export rebate agreement unless entitled to claim under that agreement, the WARR Act or as prescribed by regulations.

- Section 47Q provides for the ability to enter of a refund point agreement, being an agreement between the scheme coordinator and a person for the scheme coordinator to make payments to the person for costs incurred in operating a refund point. Section 47Q also creates an offence for a refund point operator to claim payment under the refund point agreement unless entitled to claim under that agreement, the WARR Act or as prescribed by regulations.
- Section 47R provides that the scheme coordinator and a MRF operator may enter into a written material recovery agreement (MRA) that provides payments to be made by the scheme coordinator to MRF operators relating to empty approved containers used for beverage products that are collected or received as part of kerbside collection that would have been, if the containers had been returned to a refund point, eligible for payment of a refund amount, or as prescribed by regulations.

This ensures that implementation and operation of the CDS does not reduce revenue for operators of kerbside recycling (local governments and MRF operators), which could adversely impact on the viability of kerbside recycling programs. It is intended to offset the revenue which may be lost through the reduction in beverage containers disposed of in kerbside recycling bins.

Sections 47R creates offences for a MRF operator to claim payment under the MRA unless entitled to claim under agreement, the WARR Act or as prescribed by regulations.

- Section 47S(2) provides that regulations may deal with any matter relating to a scheme participant as defined in section 47S(1), scheme agreements, such as a supply agreement, an export rebate agreement, an MRA and a refund point agreement, or payments under a scheme agreement.

Section 47S(3) provides that these regulations may include the content, approval by the Minister of the scheme agreement or the form of it, review, amendment, assignment, novation, termination or term of a scheme agreement, where no or reduced payment is to be made under a supply agreement of supply amounts, or when payment of supply amounts are triggered. They also may include which particular scheme participants are to pay supply amounts or are entitled to receive payment and under what circumstances, how payments are calculated under scheme agreements,

terms and conditions of payment, the manner in which the scheme coordinator or the scheme participant is to make claims for payment under a scheme agreement and the assessment of those claims. Further, regulations may impose obligations on a scheme participant such as compliance with a scheme agreement, supplying beverage products, operating refund points, record keeping and reporting.

Section 47S also provides that regulations may deal with a prescribed period within which MRF operators and local governments must develop an agreement on how to share the refund amounts received between the MRF operator and the local government, or how payments will be shared in absence of such an agreement. Noting the CDS may affect the economics of kerbside recycling, this ensures that MRF operators and local governments can negotiate how the proceeds of the refund amounts will be shared until their service contracts are renegotiated.

- Section 47T provides that the content of scheme agreements are not limited.

Division 5 – Coordinator of the scheme

Subdivision 1 – Preliminary

- Section 47U inserts terms used, including the meaning of a minor beverage supplier to be a beverage supplier prescribed by regulation to be so, and a major beverage supplier to be a beverage supplier other than a minor one.

Further, section 47U defines a **beverage supplier** in this Division for the purposes of the meaning of being **independent of the beverage industry**, **major beverage supplier** and **minor beverage supplier** with respect to the composition of the board of the scheme coordinator, which are also defined in section 47U. **Beverage supplier** means a person who supplies beverage products or does not supply beverage products but who is taken under the WARR Act to be the first responsible supplier of a beverage product.

- Section 47V sets out the definition of ‘eligible company’. The key features include that the company is established under the Corporations Act, must operate on a not-for-profit basis, and must contain specified board representation to ensure that the company represents broader interests than just major beverage companies.

The section also provides that the board is to consist of 9 directors, with one director as chair who is independent of both the beverage and waste industries. At least another 3 board directors are to be independent of the beverage industry and at least 2 independent of the waste industry. It also includes at least one with experience in the recycling and waste industry, which could include waste recovery and processing, transport, logistics and recycling, one representing community interests and one with legal or financial qualifications.

Subsection 4 also provides for regulations which set out the grounds under which the Minister may refuse to approve a person to the scheme coordinator's board of directors.

Subdivision 2 – Appointment of Coordinator of the scheme

The following provisions are inserted.

- Section 47W establishes the office of the scheme coordinator. The section provides that it is not an office of the public service, an organisation under the *Public Sector Management Act 1994* or an office established for a public purpose, and that the *Public Sector Management Act 1994* does not apply to the appointment of the scheme coordinator and the scheme coordinator is not subject to that Act.

This section also provides that the scheme coordinator is not an agent of the State. It is intended that the eligible company will not be treated as a government entity while carrying out the functions of scheme coordinator.

- Section 47X allows the Minister to appoint, on application assessed in a manner the Minister considers appropriate, an eligible company as the scheme coordinator. The appointment must be by notice in writing, specifying the date the eligible company commences in the office, whether the terms of appointment are indefinite or for a specified period, any other matter prescribed by regulations and any conditions which apply to the appointment. It is not intended that the appointment is achieved by way of contract; the obligations of the scheme coordinator will instead be found in the WARR Act, regulations and any conditions imposed on the appointment.

This provision also confers a broad power inviting applications from eligible companies in a manner the Minister sees fit. It is not intended to include detail on the criteria for assessment, or information required for an application and assessment process, in the WARR Act itself. It is intended that this information will be published in the expression of interest or call for proposals/tender documents published to seek applications.

- Section 47Y enables the Minister to attach conditions to an appointment of a scheme coordinator, including making regulations to deal with the attachment of conditions.
- Section 47Z provides that the main function of the scheme coordinator is to administer and provide governance for the CDS. A number of other functions are also included under section 47Y(2) which do not limit the main function, including entering into and managing supply, refund point, export rebate and material recovery agreements (supply agreements are to be managed to ensure the costs of the CDS are contributed to by the first responsible suppliers of beverage products), and establishing and maintaining databases of container approvals and supply agreements.

The scheme coordinator must also establish a network of refund points, determine amounts payable by under the CDS to and by the scheme

coordinator under scheme agreements, make and receive those payments, raise and maintain public awareness of the CDS, deal with complaints and obtain data on recycling rate of containers before and during the scheme to measure outcomes.

Section 47Z also states that regulations may give additional functions to the scheme coordinator and deal with any other matter in relation to its functions.

- Section 47ZA ensures that the scheme coordinator has all powers necessary to carry out its functions.
- Section 47ZB ensures that the scheme coordinator may delegate in writing any of its functions. This allows directors, the chief executive officer of the scheme coordinator or an appropriately qualified employee of the scheme coordinator to undertake functions. There is also a qualified power of sub-delegation allowing the chief executive officer of the scheme coordinator, with the scheme coordinator's approval, to delegate a function delegated to him or her to an appropriately qualified employee of the scheme coordinator. Further, this section does not limit the ability for the scheme coordinator to perform a function through an officer or agent.

Subdivision 3 – Operations of Coordinator

The following provisions are inserted.

- Section 47ZC provides that the scheme coordinator should not act unfairly or unreasonably discriminate against or in favour of any person in relation scheme agreements. The section also provides that the scheme coordinator must not enter into a scheme agreement that is, or contains a provision that is, inconsistent with the WARR Act.
- Section 47ZD provides that regulations may deal with any matter in relation to performance targets of the scheme coordinator. It is intended that performance targets and measures be imposed for a specified period on the scheme coordinator in relation to the number, location and accessibility to the public of refund points, and the rate of return of containers across Western Australia and by region.

These targets guide the scheme coordinator in designing the network, and they will have to be publicly reported on. If targets are consistently not met, the Minister may issue a written direction appointing an administrator, or amend or revoke the scheme coordinator's appointment.

- Section 47ZE provides that the scheme coordinator must prepare and give to the Minister a draft business plan at a directed time and for a period as directed by the Minister or as required by the section.

The section also provides that the draft business plan must be prepared and given in to the Minister in accordance with any regulations prescribed, and must include a budget of estimated costs of the CDS, and a strategic plan

and operational plan for the relevant periods respectively. This section allows a high level of Ministerial oversight of the administration of the CDS by the scheme coordinator.

- Section 47ZF provides for the Minister to approve the scheme coordinator's draft business plan for the relevant period. Before approval is given, the section allows the Minister to make a written direction to the scheme coordinator within the period specified in the notice of direction to take specified steps or make specified modifications to the draft business plan, and submit a revised business plan to the Minister, who may then approve the plan. The scheme coordinator must comply with the direction by the Minister within the period specified in the notice.

If the Minister has approved the draft business plan, that is the business plan for the relevant period. If it is not approved before the start of the relevant period, the business plan for the relevant period is to be, until approval is given, the business plan for the previous relevant period with any modifications determined by the Minister.

- Section 47ZG provides for an amendment to the business plan to be given to the Minister for approval within the relevant period, unless it is a minor amendment that does not materially change the plan. The amendments have no effect, other than a minor amendment, until approved by the Minister.
- Section 47ZH provides that the scheme coordinator must have regard to the business plan during the relevant period in carrying out its functions and not depart significantly from the plan unless approved by the Minister. It also provides for public inspection of the business plan and its publication on the internet. This allows a high level of Ministerial oversight of the administration of the CDS by the scheme coordinator.
- Section 47ZI provides that regulations may deal with any matter relating to publication of information by the scheme coordinator or reporting and notification obligations of the scheme coordinator, such as requiring the scheme coordinator to notify the Minister about a prescribed matter or event. This allows a high level of Ministerial oversight of the administration of the CDS by the scheme coordinator.
- Section 47ZJ sets out notification requirements that apply to the scheme coordinator including that the scheme coordinator must notify the CEO of particular events, such as if the scheme coordinator ceases to be an eligible company or an executive officer of the scheme coordinator ceases to be an eligible individual. The section also provides that the notice must include the scheme coordinator's plan and timetable for making itself an eligible company, or if the notice relates to an eligible individual, it is to be accompanied by a signed consent by that individual allowing the CEO to collect his or her personal or background information and a criminal record check. This allows oversight of the administration of the CDS by the Department administering the WARR Act.

- Section 47ZK provides that the CEO is entitled to information that relates to the CDS in the possession of the scheme coordinator and to have and take copies of the documents that hold that information. The section requires the scheme coordinator must comply with a request for this information and/or documents from the CEO. This allows oversight of the administration of the CDS by the Department administering the WARR Act.

Subdivision 4 – Scheme Account

The following provisions are inserted.

- Section 47ZL sets out the terms used in Subdivision 3.
- Section 47ZM requires the scheme coordinator to prepare and provide the CEO with a proposed governance plan for the scheme account at times directed by the CEO and in accordance with any regulation requirement or a specified obligation in section 47ZM(2) for approval. If approval is not given, the CEO may direct the scheme coordinator, within the period specified in the notice, to take specified steps or make specified modifications to the draft governance plan, and submit a revised governance plan to the CEO, who may then approve the plan. The scheme coordinator must comply with the direction by the CEO within the period specified in the notice.

This section provides for an amendment to the governance plan within the relevant period and given to the CEO for approval, unless it is a minor amendment that does not materially change the plan. The amended governance plan has no effect, other than the minor amendment, until it has been approved by the CEO.

- Section 47ZN creates an offence if the establishment of a scheme account following approval of a draft governance plan by the CEO if not done within certain timeframes set out in this section. All scheme funds must be credited to the scheme account by the scheme coordinator, and it must not credit any money other than scheme funds to the scheme account.
- Section 47ZO provides for regulations that may deal with any matter relating to Scheme Account or use of its monies, or proposed or approved governance plans.

Subdivision 5 – Appointment of administrator or Interim Coordinator and other Ministerial powers

- Section 47ZP makes it an offence if the scheme coordinator fails to comply with Ministerial directions in relation to any aspect of the scheme coordinator's functions. Regulations may deal with any matter in relation to these directions, including the grounds on which the Minister may give a direction. The scheme coordinator commits an offence if it does not comply with such a Ministerial direction. This allows a high level of Ministerial oversight of the administration of the CDS by the scheme coordinator.

- Section 47ZQ provides that the Minister may decide to amend, revoke or supplement conditions that apply to the scheme coordinator, or an administrator or interim scheme coordinator (where one has been appointed). The Minister may also appoint or remove an administrator to the scheme coordinator and/or revoke the appointment of the scheme coordinator. Without limiting these, the Minister may exercise these powers if the scheme coordinator has contravened a provision of Part 5A of the WARR Act.

Where an appointment is revoked, the Minister may appoint an administrator to carry out the functions of the scheme coordinator. This provision provides a mechanism under the CDS to impose sanctions on the scheme coordinator relating to any performance issues, such as the scheme coordinator being non-compliant with its obligations, being no longer an eligible company, having not meet its performance targets or having not complied with a direction by the Minister

Section 47ZQ also provides for a head power allowing regulations dealing with any matter relating to these powers of the Minister, including grounds for exercising powers and the process to be followed by the Minister.

- Section 47ZR sets out the functions of administrator appointed under section 47ZQ, including the control, the undertaking and managing of the scheme coordinator's business, property and affairs, or terminating or disposing of any of these, or performing any function that the scheme coordinator or any of its officers could perform prior to administration.

Under this section in the notice of appointment the Minister may limit the functions and powers of the administrator or attach conditions to its appointment. Such an appointment of an administrator ends if an administrator is appointed to the scheme coordinator under the Corporations Act Part 5.3A. It also provides that regulations may be made in relation to any matter in relation to an administrator appointed under section 47ZQ(1)(b).

- Section 47ZS provides that where an administrator is appointed to the scheme coordinator, only the administrator can enter into a transaction or dealing affecting the property of the scheme coordinator. This does not apply to a payment made by an Australian ADI defined under section 9 of the Corporations Act in certain circumstances. If a transaction or dealing is void under section 47ZS, an offence can be committed by an officer or employee of the scheme coordinator.
- Section 47ZT allows the Minister, if he or she has revoked a company's appointment as scheme coordinator or it is otherwise terminated, to appoint an interim scheme coordinator to occupy the office of scheme coordinator and undertake the functions of the scheme coordinator under the WARR Act, and is subject to the application of the WARR Act as if it were the scheme coordinator. These functions and powers may be limited or the appointment of the interim scheme coordinator be subject to conditions specified in the appointment on an interim basis until an eligible company is

appointed by the Minister. Regulations may deal with any matter in relation to the interim scheme coordinator.

- Section 47ZU provides for the payment of remuneration and costs of and incidental to the performance and functions of an administrator or interim scheme administrator if they are not employed in the public sector.
- Section 47ZV allows requests by an appointed administrator or interim coordinator under notice to an officer, employee, or former officer or employee of the scheme coordinator, for information, documents or assistance reasonably required to perform the administrator's functions. It is an offence if those persons do not comply with this requirement, unless they have a reasonable excuse. Self-incrimination can be a reasonable excuse for non-compliance with a requirement under section 47ZV, and such a provision is found in section 112A of the *Environmental Protection Act 1986* and adopted into the WARR Act by section 93 of the WARR Act.
- Section 47ZW provides for a right of review by a company appointed as scheme coordinator or a person appointed to perform the functions of the scheme coordinator (i.e. an interim scheme coordinator) to the State Administrative Tribunal of the Minister's decision to amend, revoke or attach new appointment conditions without the request or agreement of the company or person, appoint an administrator to the company or person, or revoke the appointment of or give a direction to the company or person.

Subdivision 6 – Transitional arrangements

- Section 47ZX provides that regulations may deal with any matter in relation to the transition of the administration and governance of the CDS between one scheme coordinator or interim scheme coordinator and a subsequent coordinator of the CDS. Further, regulations may deal with the subsequent access to the scheme account or its funds, subsequent novation, amendment, modification, assignment or termination of any agreements the previous coordinator has entered into in relation to the CDS, or production of documents or provision of information or assistance received by previous coordinators.

Division 6 – Miscellaneous

The following provisions are inserted.

- Section 47ZY provides that if an offence expressly applies to the scheme coordinator, the penalty that is expressed to apply to that offence is, for the purposes of section 40 of the *Sentencing Act 1995*, a statutory penalty expressly provided for a body corporate.

The section also provides that if the scheme coordinator commits an offence against the WARR Act and, by virtue of section 118 of the *Environmental Protection Act 1986* as adopted into the WARR Act by section 93, a director or person concerned with the management of the scheme coordinator is convicted of the same offence, the fine for that

person is one-fifth of that could be imposed on the company occupying the office of the scheme coordinator convicted of the offence under the WARR Act.

Further, if the interim scheme coordinator is an individual and is convicted of an offence expressed to apply to the scheme coordinator, the interim coordinator is liable to a fine one-fifth of the maximum fine that could be imposed on the scheme coordinator convicted of the offence under the WARR Act.

- Section 47ZZ provides that regulations may provide that a regulation that imposes an obligation on a person is a civil penalty provision, prescribe the amounts, not exceeding \$25,000, which may be demanded from or imposed upon a person who contravenes a civil penalty provision and create other regulations in relation to civil penalties. This section also provides for and regulates proceedings taken in respect of an alleged contravention of a civil penalty provision, orders in relation to the amount a person is to pay if convicted of such a contravention as well as other orders that can be made, enforcement of orders and for the manner in which civil penalty amounts paid are dealt with and applied.
- Section 47ZZA provides that inconsistent provisions of a scheme agreements or any other agreement entered into by a scheme coordinator, a first supplier of a beverage product, an exporter, a refund point operator or an MRF operator to carry out its functions in each case under the WARR Act or implement the CDS, have no effect.
- Section 47ZZB provides that regulations may deal with any matter in relation to beverage products supplied, used or consumed on interstate or international journeys that begin or end in, or pass through, the State, such as in cars, trains, buses, on planes and ships, and providing for payment obligations and payment of refund amounts in respect of the empty containers.
- Section 47ZZC extends the power under section 82(2) of the WARR Act by empowering an authorised person, being the CEO or a person authorised for the purposes of this section by the CEO, to require a person to provide information or produce material relating to the administration and operation of the CDS, the performance of the scheme coordinator, verification of the validity of payments made to any person (refund point operator, processor, recycler and MRF) under the CDS, and determining whether any person has complied with the requirements under the WARR Act, regulations or contractual arrangements relating to the CDS. If any such requirement by an authorised person is not complied with within the timeframes set by the authorised person, the non-compliant person commits an offence.

The CEO must ensure that each authorised person, other than the CEO, is issued an authority in writing signed by the CEO and bearing that authorised person's photograph. The authorised person must carry this

authority when performing functions under this section and produce the authority before making a requirement under this section.

This section allows oversight and, where reasonable, investigation of the administration and operation of the CDS by the Department administering the WARR Act.

- Section 47ZZD provides a head power for regulations allowing the CEO to publish, or require another person (for example, the scheme coordinator) to publish, certain categories of prescribed information relating to the CDS so that these documents can be specified in the regulations, and the CEO or the scheme coordinator will not infringe section 120 of the *Environmental Protection Act 1986* (applied by section 93 of the WARR Act) by publishing them. This enables the operation of the CDS to be as transparent as possible in terms of costs, payments and scheme coordinator performance.
- Section 47ZZE gives the CEO the power to require an audit of the scheme coordinator's activities to be carried out, either by the CEO or by an independent auditor at the scheme coordinator's expense at the direction of the CEO. The direction must specify the matters to be audited and when it is to be given to the CEO. The CEO may amend or cancel the direction.

This provision supports the oversight of the CDS to ensure public transparency. If the scheme coordinator does not comply with a direction for audit given by the CEO, it will commit an offence, carrying civil penalties of \$250,000. Regulations may also deal with any matter in relation to audits under this section or any matter in relation to recovery of expenses incurred by the CEO.

- Section 47ZZF creates an offence in relation to providing information that is false or misleading as part of an application for approval of a container, as part of a claim for payment under the CDS under a scheme agreement or any other agreement between the scheme coordinator and another person, in connection with a notice or document given or regulations made for the purposes of Part 5A, or in compliance with a requirement under Part 5A of the WARR Act or its regulations. This ensures that all claims are valid and based on accurate information thereby supporting the successful operation and integrity of the CDS.
- Section 47ZZG expressly authorises any activities which form part of the CDS which may infringe the Commonwealth *Competition and Consumer Act 2011* or the Competition Code of Western Australia.
- Section 47ZZH provides that if there is any element of the provisions of the new Part 5A of the WARR Act that may be incapable of concurrent operation with the Corporations Act, it is declared to be a Corporations legislation displacement provision.
- Section 47ZZI provides for powers in relation to transitional matters to be prescribed in regulations, which may prescribe anything required, necessary or convenient to be prescribed in circumstances where insufficient

provisions has been made in Part 5A of the WARR Act for dealing with a particular transitional, saving or application matter or issue.

Transitional regulations may also provide that provisions of the WARR Act do not apply or apply with specified modifications to or in relation to a matter.

Clause 7: Section 69 amended

This clause amends section 69 of the WARR Act to ensure that a person who collects local government waste in the course of acting as a refund point operator (defined in section 47C) does not commit an offence created by section 69. Without such an amendment, the refund point operator would be prohibited from collecting local government waste in a local government district for a fee or reward as the refund point operator is not authorised to do so under that section.

Clause 8: Section 94 amended

This clause inserts section 94(3A) of the WARR Act. In effect, it excludes the application of section 94(1) of the WARR Act from the functions performed or purported to be performed by the scheme coordinator. The scheme coordinator is a private company which deals with a many other parties in administering the CDS. If it carries out its functions negligently, this could cause financial loss to third parties. Consequently, the scheme coordinator is not to be protected from tortious liability under section 94 of the WARR Act simply because it is carrying out a function under the WARR Act.

Table of penalties

The following table sets out each penalty in Part 5A of the WARR Act, whether the penalty is civil or criminal and the maximum amount that can be imposed under each penalty.

Section	Description	Civil or Criminal	Penalty
47E(1)	Person must not supply a beverage product unless they have a supply agreement, container approval and refund mark etc.	Criminal	\$75 000 (fine for a body corporate would be \$375,000 under the <i>Sentencing Act 1995</i>)
47F(4)	First supplier of a beverage product contravening a condition of a container approval	Criminal	\$10 000 (fine for a body corporate would be \$50,000 under the <i>Sentencing Act 1995</i>)
47I(1)	Person acting as a refund point operator without refund point agreement	Criminal	\$75 000 (fine for a body corporate would be \$375,000 under the <i>Sentencing Act 1995</i>)

47M(3)	Coordinator disposing of container in prohibited manner	Criminal	\$250 000 (fine for a director would be \$50,000 under 47ZY)
47M(4)	MRF operator disposing of container in prohibited manner	Criminal	\$50 000 (fine for a body corporate would be \$250,000 under the <i>Sentencing Act 1995</i>)
47M(5)	Person disposing of container in a prohibited manner	Criminal	\$50,000 (fine for a body corporate would be \$250 000 under the <i>Sentencing Act 1995</i>)
47N(4)	Person who has been granted an exemption from requirement to not dispose of container in a prohibited manner, must comply with any condition in the exemption	Criminal	\$50,000 (fine for a body corporate would be \$250 000 under the <i>Sentencing Act 1995</i>)
47O(2)	Pay supply amounts under supply agreement	Civil	\$50,000
47O(3)	Coordinator must not claim payment if it is not entitled	Civil	\$50,000
47P(4)	Exporter must not claim payment under export rebate agreement if it is not entitled	Civil	\$50,000
47Q(2)	Refund point operator must not claim payment under refund point agreement if it is not entitled	Civil	\$50,000
47R(3)	MRF operator must not claim payment under material recovery agreement if it is not entitled	Civil	\$50,000
47ZN(1)	Coordinator must establish bank account	Criminal	\$250,000 and daily of \$2,500 (fine for a director would be \$50,000 under 47ZY)
47ZN(5)	Coordinator must maintain scheme account in accordance	Criminal	\$250,000 (fine for a director would be \$50,000 under 47ZY)

	with approved governance plan		
47ZN(6)	Coordinator must credit all scheme funds to scheme account and must not credit any moneys other than scheme funds to scheme account	Criminal	\$250,000 (fine for a director would be \$50,000 under 47ZY)
47ZP(3)	Coordinator must comply with a direction given by minister	Civil	\$125,000
47ZS(6)	Offence for entering into a transaction or dealing while an administrator is appointed	Criminal	\$10,000
47ZV(3)	Failing to provide assistance to administrator or interim coordinator	Criminal	\$10,000, daily \$1000
47ZZC(6)	Failing to comply with a request for information from CEO	Criminal	\$20,000, daily \$2,000 (fine for a body corporate would be \$100,000 under the <i>Sentencing Act 1995</i>)
47ZZE(6)	Coordinator must comply with a direction to undertake an audit	Civil	\$250,000
47ZZF(1)	Giving false and misleading information	Criminal	\$50,000 (fine for a body corporate would be \$250,000 under the <i>Sentencing Act 1995</i>)