

Container Deposit and Recovery Scheme Bill 2016

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by Mr Christopher Tallentire, MLA)

**Container Deposit and Recovery Scheme
Bill 2016**

A Bill for

An Act to establish a beverage container deposit and recovery scheme to be administered by the Waste Authority, to impose a levy as part of that scheme, and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Container Deposit and Recovery Scheme Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent(*assent day*);
- (b) the rest of the Act — on the last day of the period of 12 months after assent day.

3. Terms used

authorised collection depot means premises authorised by the Authority under section 12 to be an authorised collection depot;

authorised transfer station means premises authorised by the Authority under section 13 to be an authorised transfer station;

Authority means the Waste Authority established by the *Waste Avoidance and Resource Recovery Act 2007* section 8;

BCEL Account means the Beverage Container Environmental Levy Account established under section 9;

beverage means —

- (a) any carbonated or non-carbonated soft drink, fruit juice or water; or
- (b) liquor (as defined in the *Liquor Control Act 1988* section 3(1)) that is a liquid at 20° Celsius; or
- (c) milk, including animal milk, soy milk or processed milk; or
- (d) any other liquid intended for human consumption by drinking that is prescribed to be a beverage,

but does not include a beverage of a class that is prescribed not to be a beverage;

1 **beverage container** means a container, containing a beverage,
 2 that is produced for the sale of the beverage in a sealed form to
 3 the consumer, that has a capacity not exceeding 3 litres and that
 4 is —

- 5 (a) a plastic or glass bottle; or
- 6 (b) an aluminium or steel can; or
- 7 (c) a liquid paperboard or composite carton; or
- 8 (d) a composite container,

9 but does not include a beverage container of a class that is
 10 prescribed not to be a beverage container;

11 **beverage container environmental levy** means the levy imposed
 12 by this Act;

13 **import** means to bring, or cause to be brought, into Western
 14 Australia;

15 **label** includes emboss, paint or stamp;

16 **recognised jurisdiction** means a State or Territory that —

- 17 (a) has a beverage container deposit and recovery scheme
 18 that is similar to the Scheme under this Act; and
- 19 (b) is prescribed for the purposes of this definition;

20 **refund amount** means 10 cents, or any higher amount
 21 prescribed following a review conducted in accordance with
 22 section 18;

23 **Scheme** means the Beverage Container Deposit and Recovery
 24 Scheme established under section 4.

1 **Part 2 — Beverage Container Deposit and**
2 **Recovery Scheme**

3 **4. Beverage Container Deposit and Recovery Scheme**

4 The Authority must establish and administer a scheme called the
5 Beverage Container Deposit and Recovery Scheme.

6 **5. Functions of the Authority**

7 (1) In administering the Scheme the Authority is to —

- 8 (a) manage the operation of the Scheme having regard to
9 the provision of environmentally sustainable uses of
10 resources and best practice in waste management; and
11 (b) collect the beverage container environmental levy; and
12 (c) grant exemptions under section 16; and
13 (d) authorise premises to be an authorised collection depot;
14 and
15 (e) authorise premises to be an authorised transfer station;
16 and
17 (f) enter into agreements with the operators of authorised
18 collection depots and authorised transfer stations; and
19 (g) facilitate and promote the Scheme; and
20 (h) provide grants or other financial incentives to encourage
21 the use of recyclable and reusable beverage containers
22 and the increased use of recycled material from
23 beverage containers; and
24 (i) provide information and advice to the Minister in
25 relation to the operation of the Scheme.

26 (2) Without limiting subsection (1), the Authority may use any
27 available funds for any of the following purposes —

- 28 (a) market creation and support for collected beverage
29 containers and materials;

- 1 (b) financial support for kerbside recycling services (that is,
2 services involving the collection by or on behalf of local
3 governments of beverage containers that have been
4 separated for recycling by occupants of residences or
5 businesses);
- 6 (c) further offsetting the costs of the collection industry
7 from the operation of the Scheme;
- 8 (d) product development to improve the recyclability and
9 reusability of beverage containers;
- 10 (e) assistance with supporting recycling of beverage
11 containers in regional and remote communities;
- 12 (f) other activities and programmes connected with
13 recycling of beverage containers which the Authority
14 considers will facilitate environmentally sustainable use
15 of resources and promote best practice in waste
16 management.

17 **6. Producer or importer of beverage containers liable to pay**
18 **beverage container environmental levy**

- 19 (1) A person who produces a beverage container in Western
20 Australia, or who imports a beverage container into Western
21 Australia, for the purpose of sale within Western Australia is
22 liable to pay a levy (the *beverage container environmental*
23 *levy*) for each such beverage container.
- 24 (2) Subsection (1) does not apply to a person to the extent to which
25 the person is exempt from the subsection under section 16.

26 **7. Amount of beverage container environmental levy**

27 The beverage container environmental levy is, for each
28 beverage container —

- 29 (a) 10 cents; or
- 30 (b) if the regulations prescribe a higher amount for the
31 purposes of this section, that amount.

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1 **8. When beverage container environmental levy must be paid**

2 A person who is liable to pay a beverage container
3 environmental levy must pay the levy to the Authority within
4 14 days after the end of the month in which the beverage
5 container was sold by that person in Western Australia.

6 Penalty: a fine of \$50 000, and a daily penalty of \$5 000 for
7 each day during which the offence continues.

8 **9. Beverage Container Environmental Levy Account**

9 (1) There is to be established and kept as an agency special purpose
10 account established under the *Financial Management Act 2006*
11 section 16 an account to be called the “Beverage Container
12 Environmental Levy Account”.

13 (2) The BCEL Account is to be administered by the Authority.

14 (3) The BCEL Account is to be credited with —

- 15 (a) any beverage container environmental levy paid; and
16 (b) income derived from the investment of money forming
17 part of the BCEL Account; and
18 (c) any other money lawfully payable to the credit of the
19 BCEL Account.

20 (4) Money held in the BCEL Account may be applied by the
21 Authority —

- 22 (a) for the purposes set out in section 5(2); and
23 (b) in payment of the costs of administering the BCEL
24 Account (including the costs of collecting the beverage
25 container environmental levy).

26 (5) The provisions of the *Financial Management Act 2006* and the
27 *Auditor General Act 2006* regulating the financial
28 administration, audit and reporting of departments apply to and
29 in relation to the BCEL Account.

30 (6) The administration of the BCEL Account is for the purposes of
31 the *Financial Management Act 2006* section 52 to be regarded

1 as a service of the department of the Public Service principally
2 assisting in the administration of this Act.

3 **10. Beverage containers must be labelled as refundable**

4 (1) A person must not sell a beverage container unless the container
5 is labelled to the following effect: [X] refund at collection
6 depots when sold in Western Australia.

7 Penalty: a fine of \$15 000.

8 (2) In subsection (1) —
9 X means the refund amount.

10 **11. Prescribed labelling requirements**

11 If any labelling requirements are prescribed in relation to
12 beverage containers, a person must not sell a beverage container
13 unless the container is labelled in accordance with the relevant
14 prescribed labelling requirements.

15 Penalty: a fine of \$15 000.

16 **12. Authorised collection depots**

17 (1) The Authority may authorise premises to be an authorised
18 collection depot, and may amend or revoke such an
19 authorisation.

20 (2) The Authority may enter into an agreement with the operator of
21 an authorised collection depot in respect of the location,
22 operation and functions of the authorised collection depot.

23 (3) Without limiting subsection (2), an agreement may include
24 provisions relating to the following —

25 (a) the delivery of sorted empty beverage containers to an
26 authorised transfer station;

27 (b) the payment to the operator of the authorised collection
28 depot of an amount equal to the refund amounts paid by
29 the operator in a period;

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- 1 (c) the keeping of records and the inspection of them;
- 2 (d) the payment of any penalty by the operator of the
- 3 authorised collection depot for a failure to comply with
- 4 the agreement.
- 5 (4) Without limiting the types of collection depots that may be
- 6 authorised —
- 7 (a) collection depots may involve manual or mechanised
- 8 handling facilities, including reverse vending machines;
- 9 and
- 10 (b) any of the following may be authorised as collection
- 11 depots —
- 12 (i) local government sites;
- 13 (ii) community centres and community-based
- 14 facilities;
- 15 (iii) shopping centres and centre car parks;
- 16 (iv) service stations or other retailers;
- 17 (v) schools;
- 18 (vi) “drive through” recycling centres;
- 19 (vii) authorised transfer stations.

20 **13. Authorised transfer stations**

- 21 (1) The Authority may authorise premises to be an authorised
- 22 transfer station, and may amend or revoke such an authorisation.
- 23 (2) The Authority may enter into an agreement with the operator of
- 24 an authorised transfer station in respect of the location,
- 25 operation and functions of the authorised transfer station.
- 26 (3) Without limiting subsection (2), an agreement may include
- 27 provisions relating to the following —
- 28 (a) the receiving and processing of empty beverage
- 29 containers;

- 1 (b) the payment to the operator of the authorised transfer
2 station of an amount equal to the refund amounts paid
3 by the operator in a period;
- 4 (c) the sale of processed materials;
- 5 (d) the keeping of records and the inspection of them;
- 6 (e) the submission of a monthly report to the Authority on
7 the number and types of empty beverage containers
8 received and processed;
- 9 (f) the payment of any penalty by the operator of the
10 authorised transfer station for a failure to comply with
11 the agreement.
- 12 (4) After the period of 12 months from the commencement of this
13 Act, an agreement may include, or may be amended to include,
14 provisions relating to accepting and paying a refund on crushed
15 and broken empty beverage containers using an estimate of the
16 refund amount due.

17 **14. Offence to claim refund on beverage container purchased**
18 **outside Western Australia or a recognised jurisdiction**

- 19 (1) A person must not present to an authorised collection depot or
20 authorised transfer station for the purpose of claiming the refund
21 amount a beverage container which the person knows or has
22 reason to believe was not purchased in Western Australia or a
23 recognised jurisdiction.
- 24 Penalty: a fine of \$30 000.
- 25 (2) The operator of an authorised collection depot or authorised
26 transfer station may request any person presenting a beverage
27 container for the purpose of claiming the refund amount to
28 complete a declaration in the prescribed form stating that the
29 person has no reason to believe that the beverage container was
30 not purchased in Western Australia or a recognised jurisdiction.
- 31 (3) Subject to subsection (6), if within any period of 48 hours a
32 person presents 3000 or more beverage containers to an
33 authorised collection depot or authorised transfer station for the

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1 purpose of claiming the refund amount, the operator of the
2 authorised collection depot or authorised transfer station must
3 request the person to complete the declaration referred to in
4 subsection (2).

5 Penalty: a fine of \$15 000.

6 (4) The operator of an authorised collection depot or authorised
7 transfer station must not pay the refund amount to a person who
8 has not complied with a request made under subsection (2)
9 or (3).

10 Penalty: a fine of \$15 000.

11 (5) The operator of an authorised collection depot or authorised
12 transfer station must —

13 (a) keep any declaration made under this section for a
14 period of 3 years after it is made; and

15 (b) have the declaration readily available for inspection at
16 any reasonable time by an authorised officer.

17 Penalty: a fine of \$50 000.

18 (6) Subsection (3) does not apply in respect of beverage containers
19 returned to a reverse vending machine.

20 **15. Authorised collection depot or authorised transfer station to**
21 **pay refund**

22 (1) A person who accepts the return of an unbroken empty beverage
23 container at an authorised collection depot or authorised transfer
24 station must pay the person who returns it the refund amount.

25 (2) Subject to subsections (3) and (5), the operator of an authorised
26 collection depot must not unreasonably refuse to accept any
27 unbroken empty beverage container labelled in accordance with
28 section 10 that is returned to the authorised collection depot.

29 Penalty: a fine of \$5 000.

- 1 (3) The operator of an authorised collection depot or authorised
2 transfer station may refuse to accept the return of a beverage
3 container if —
- 4 (a) the beverage container is in an unsafe condition; or
5 (b) the operator has reason to believe that the beverage
6 container was not sold in Western Australia or a
7 recognised jurisdiction; or
8 (c) a request to complete a declaration under section 14 in
9 respect of the beverage container has not been complied
10 with.
- 11 (4) The capacity of an operator of an authorised transfer station to
12 refuse to accept the return of a beverage container that is in an
13 unsafe condition is subject to an agreement under section 13(4).
- 14 (5) A reverse vending machine may be operated so as to not accept
15 the return of a beverage container in a condition which prevents
16 the reverse vending machine from reading the label referred to
17 in section 10.

18 **16. Exemption from section 6**

- 19 (1) A person may apply to the Authority, in the form approved by
20 the Authority, to be wholly or partly exempt from section 6(1).
- 21 (2) The Authority must within the prescribed period grant an
22 exemption to the person if the Authority is satisfied that the
23 criteria and considerations prescribed for the purposes of this
24 section apply in respect of the person.
- 25 (3) The Authority must within the prescribed period advise the
26 applicant in writing —
- 27 (a) as to the decision of the Authority; and
28 (b) if the Authority grants the exemption, as to the terms
29 and conditions applying to the exemption; and
30 (c) if the Authority refuses to grant the exemption, of the
31 reasons for refusing to grant the exemption.

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- 1 (4) If any of the criteria and considerations prescribed for the
2 purposes of this section cease to apply in respect of a holder of
3 an exemption, the Authority —
- 4 (a) may by notice in writing to the holder of the exemption
5 revoke the exemption; and
- 6 (b) if the exemption is revoked, must specify in the
7 notice —
- 8 (i) the reason for revoking the exemption; and
9 (ii) a reasonable period of time by the end of which
10 the person will need to comply with this Act.
- 11 (5) If an exemption is revoked under subsection (4), the person who
12 held the exemption need not comply with this Act during the
13 period specified in the notice under subsection (4)(b)(ii).

14 **17. Records and enforcement**

- 15 (1) A person liable to pay the beverage container environmental
16 levy must keep the records necessary to substantiate the amount
17 of levy paid or payable by the person.
18 Penalty: a fine of \$50 000.
- 19 (2) Records under subsection (1) in relation to a levy amount need
20 not be kept for more than 3 years after the last day on which the
21 levy amount must be paid under section 8.
- 22 (3) The *Waste Avoidance and Resource Recovery Act 2007* Part 8
23 has effect as if this Act were part of that Act and as if premises
24 that are or were authorised collection depots or authorised
25 transfer stations were premises to which Division 1 of that Part
26 applied.

27 **18. Review of refund amount**

- 28 (1) The Authority must review the refund amount at least once
29 every 5 years after the commencement of this Act.

- 1 (2) In conducting a review, the Authority must have regard to the
2 minimum refund amount necessary to maintain the appropriate
3 level of incentive —
- 4 (a) for producers, distributors and consumers of beverages
5 in beverage containers to reuse or recycle beverage
6 containers; and
- 7 (b) to ensure high rates of recovery of beverage containers;
8 and
- 9 (c) to reduce litter and litter-related costs; and
- 10 (d) to reduce waste, disposal and recycling costs; and
- 11 (e) to conserve resources.

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Part 3 — General provisions

19. Relationship with aspects of the *Waste Avoidance and Resource Recovery Act 2007*

This Act does not prevent —

- (a) a product stewardship plan in relation to beverage containers from being registered under the *Waste Avoidance and Resource Recovery Act 2007*; and
- (b) the implementation and operation of extended producer responsibility schemes under the *Waste Avoidance and Resource Recovery Act 2007* that deal with containers not covered by the Scheme.

20. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.

21. Regulations

- (1) The Governor may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out this Act.
- (2) The *Waste Avoidance and Resource Recovery Act 2007* section 97(1), (3) and (4) and section 98 apply with respect to regulations made under this Act.

1 **22. Transitional provision: Act does not extend to existing**
2 **beverage containers**

3 This Act does not apply to beverage containers produced in or
4 imported into Western Australia before this Act came into
5 operation.

6



Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
assent day.....	2
authorised collection depot.....	3
authorised transfer station.....	3
Authority.....	3
BCEL Account.....	3
beverage.....	3
beverage container.....	3
beverage container environmental levy.....	3, 6(1)
import.....	3
label.....	3
recognised jurisdiction.....	3
refund amount.....	3
Scheme.....	3
X.....	10(2)