CONTAINER DEPOSIT AND RECOVERY SCHEME BILL 2016

EXPLANATORY MEMORANDUM (E211)

(Introduced by Chris Tallentire MLA)

INTRODUCTION

The Container Deposit and Recovery Scheme Bill (the Bill) will establish a container deposit and recovery scheme for beverage bottles, cans and cartons, to be administered by the Waste Authority.

The purpose of the Bill is to divert beverage containers from landfill and reduce the amount of litter on our beaches, roadsides and parklands.

Part 1 of the Bill provides for preliminary matters.

Clause 1 – Short title

The short title is the Container Deposit and Recovery Scheme Act 2016.

Clause 2 – Commencement

Sections 1 and 2 of the Bill come into operation on receiving Royal Assent. The rest of the Act comes into operation 12 months after assent day to allow for a transition period before the Scheme becomes operational.

Clause 3 – Terms used

Describes the terms used throughout the Bill.

Part 2 of the Bill specifies how the Beverage Container Deposit and Recovery Scheme (the Scheme) is to be established and administered.

Clause 4 – Beverage Container Deposit and Recovery Scheme

This clause provides for the Waste Authority to establish and administer the Scheme.

Clause 5 – Functions of the Authority

This clause provides the functions of the Authority in administering the Scheme and specifies the purposes for which the Authority may use any available funds.

Clause 6 – Producer or importer of beverage containers liable to pay beverage container environmental levy

This clause provides that an importer or producer of a beverage container for the purpose of sale within Western Australia is liable to pay the beverage container environmental levy, unless they have been granted an exemption under s.16.

Clause 7 – Amount of beverage container environmental levy

This clause sets the amount of the beverage container environmental levy at 10 cents. It enables a higher amount to be set by regulation. The rate of 10 cents per container means that the WA Scheme will be consistent with container deposits currently applying in South Australia and the Northern Territory.

Clause 8 – When beverage container environmental levy must be paid

This clause provides that a producer or importer must pay the levy to the Waste Authority within 14 days after the end of the month in which the beverage container was sold by that person in Western Australia. It also sets the penalty for noncompliance.

Clause 9 – Beverage Container Environmental Levy Account

This clause directs the establishment of a "Beverage Container Environmental Levy Account" to be administered by the Waste Authority into which funds collected by the beverage container environmental levy are paid and from which the Authority draws money to apply for the purposes specified in s.5(2).

Clause 10 – Beverage containers must be labelled as refundable

This clause provides that all beverage containers must be labelled as refundable. The labelling requirements are similar to those required by the South Australian and Northern Territory beverage container schemes. The wording of the clause allows some flexibility to producers wishing to refer to states in addition to WA. The clause also sets the penalty for non-compliance.

Clause 11 – Prescribed labelling requirements

This clause prescribes that a person must not sell a beverage container unless the container is labelled in accordance with the relevant labelling requirements. It also sets the penalty for non-compliance.

Clause 12 – Authorised collection depots

This clause provides for the Authority to approve a premises to be an authorised collection depot. The Authority may enter into an agreement with the operator of such a depot in respect of the location, operation and functions of the authorised collection depot. The agreement may include provisions relating to delivery of sorted empty beverage containers to an authorised transfer station, payment to the operator of the depot of an amount equal to the refund amounts paid by the operator and payment of any penalty by the operator for failure to comply with the agreement. It also sets out (but does not limit) the types of collection depots that can be authorised. Depots may involve manual or mechanised handling, including reverse vending machines. Depots may be at council sites, community centres and community based facilities, shopping centres and centre car parks, service stations or other retailers, schools, "drive through" recycling centres and at authorised transfer stations. Depots are intended to collect used beverage containers directly from the public, and to issue refunds under the Scheme.

Clause 13 – Authorised transfer stations

This clause provides for the Authority to approve a premises to be an authorised transfer station. The Authority may enter into an agreement with the operator of such a transfer station in respect of the location, operation, and functions of the authorised transfer station. Authorised transfer stations are intended to receive used containers from authorised depots and other

large scale redeemers like businesses, local governments and community groups. They will generally not deal directly with the public except via an authorised collection depot on their premises.

Clause 14– Offence to claim refund on beverage container purchased outside Western Australia or a recognised jurisdiction

This clause prohibits the claim of a refund of the levy on a beverage container which a person knows or has reason to believe was not purchased in Western Australia. It enables the operator of a collection depot or transfer station to request a person presenting a beverage container for the purpose of claiming a refund of the levy to complete a declaration stating that the person has no reason to believe that the beverage container was not purchased in Western Australia. Such a declaration is mandatory for any person presenting 3000 or more beverage containers within a 48 hour period to a depot or transfer station. Where a person has not complied with a request for a declaration, the refund amount must not be paid. Operators must keep any declaration for three years and make it available for inspection. The clause also sets the penalties for non-compliance.

Clause 15 – Authorised collection depot or authorised transfer station to pay refund

This clause provides that an authorised collection depot or authorised transfer station must pay a refund of the levy to a person returning a used beverage container. A depot may refuse to accept the container if the container is in an unsafe condition, or the operator has reason to believe that the beverage container was not sold in Western Australia, or a request to complete a declaration under section 14(2) has not been complied with. Reverse vending machines may be set up to reject containers which are returned in a condition which prevents the machine from reading the label. The clause sets the penalty for non-compliance.

Clause 16 – Exemption from section 6

This clause enables the Authority to grant exemptions from section 6. This is intended to provide an exemption for beverages sold in containers that can be reused or re-filled by the producer or retailer, and for any other beverage

container that the Authority decides to exempt on the grounds that it cannot be returned to a depot or transfer station.

Clause 17 – Records and enforcement

This clause sets out record-keeping requirements. It also sets the penalty for noncompliance. The provisions reflect the fact that record-keeping is important to ensure the openness and transparency of mechanisms to govern and track the movement of deposit monies and quantities of recycled materials.

Clause 18 – Review of refund amount

This clause provides that the Authority must review the amount of the refund value at least once every 5 years. The Authority must have regard to the minimum refund value necessary to maintain the appropriate level of incentive to re-use or recycle beverage containers, ensure high rates of recovery, reduce litter and litter-related costs, reduce waste, disposal and recycling costs and conserve resources.

Part 3 of the Bill sets out general provisions associated with the establishment and administration of the Scheme.

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

This clause specifies that the Act does not prevent a product stewardship plan in relation to beverage containers being registered under the *Waste Avoidance and Resource Recovery Act 2007* or the implementation and operation of extended producer responsibility schemes that deal with containers not covered by the Scheme under the *Waste Avoidance and Resource Recovery Act 2007*.

Clause 20 – Protection from liability for wrongdoing

This clause provides for a person to be protected against any liability for wrongdoing if the person is doing anything, in good faith, in the performance of a function under the Act. It also relieves the State of any liability arising from the person having done or not done that thing in the performance of their duties.

Clause 21 – Regulations

This clause provides for the making of regulations.

Clause 22 – Transitional provision – Act does not extend to existing beverage containers

This clause specifies that the Scheme does not apply to beverage containers produced in or imported into Western Australia before this Act came into operation.