

TASMANIA

CONTAINER REFUND SCHEME BILL 2021

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Meaning of container refund points
5. Meaning of first responsible supplier
6. Meaning of material recovery facility
7. Meaning of refund amount
8. Meaning of supply
9. Application of Act

PART 2 – CONTAINER REFUND SCHEME

Division 1 – Container refund scheme generally

10. Container refund scheme established

Division 2 – Approved containers

11. Approved container
12. Approval of eligible container
13. Marks only to be displayed on approved container

Division 3 – Scheme participants

14. Scheme coordinator
15. Network operator

16. Fit and proper persons
17. Minister may appoint scheme participants in certain circumstances
18. Suspension or cancellation of certain appointments

PART 3 – ADMINISTRATION OF CONTAINER REFUND SCHEME

Division 1 – Agreements for container refund scheme

Subdivision 1 – General

19. Agreements generally
20. Duration of agreements

Subdivision 2 – Specific agreements

21. Scheme coordinator agreements
22. Network operator agreements
23. Supply agreements
24. Refund point agreements

Division 2 – Compliance and enforcement for scheme participants

25. Scheme participants must comply with Act
26. Obligations of material recovery facility operators
27. Annual report by scheme coordinator
28. Secretary may perform or require audit in certain circumstances

PART 4 – CONTAINER REFUND POINTS AND REFUNDS

29. Claiming refunds under scheme
30. Requests for certain information
31. Refunds not payable in respect of certain containers
32. Refund point operator must accept approved containers

PART 5 – MISCELLANEOUS

33. Delegations
34. Recovery of costs
35. Authorised officers
36. Offences relating to authorised officers
37. Advisory committees

- 38. Provision of information
- 39. False or misleading information
- 40. Review of decisions relating to containers
- 41. Competition exemption
- 42. Offences by body corporate
- 43. Infringement notices
- 44. Regulations
- 45. Review of operation of Act
- 46. Administration of Act

CONTAINER REFUND SCHEME BILL 2021

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
10 November 2021

*(Brought in by the Minister for Environment, the Honourable
Roger Charles Jaensch)*

A BILL FOR

An Act to establish a container refund scheme to reduce litter in Tasmania and increase the recovery and recycling of containers

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Container Refund Scheme Act 2021*.

2. Commencement

This Act commences on a day or days to be proclaimed.

Container Refund Scheme Act 2021
Act No. of 2021

s. 3

Part 1 – Preliminary

3. Interpretation

In this Act, unless the contrary intention appears –

approved container means a container approved in accordance with section 12(1);

approved container list means the list of approved containers that is kept and maintained in accordance with section 12(3);

approved form means a form approved by the Secretary;

associate, of a relevant scheme participant, includes –

(a) a person who –

(i) holds, or will hold, an interest in the business of another relevant scheme participant; and

(ii) by virtue of that interest, is able to or will be able to exercise significant influence over the other relevant scheme participant; and

(b) a person who –

(i) holds, or will hold, an interest in a business in

Container Refund Scheme Act 2021
Act No. of 2021

Part 1 – Preliminary

s. 3

which another scheme participant also holds an interest; and

(ii) by virtue of that interest, is able to, or will be able to, exercise significant influence over, or in respect of, that business; and

(c) a person who holds, or will hold, a relevant position in a business, of the scheme participant, that is being operated under this Act; and

(d) a spouse, partner within the meaning of the *Relationships Act 2003*, parent, child or sibling of –

(i) the scheme participant; or

(ii) a person who holds a relevant position in the business of the scheme participant;

authorised officer includes –

(a) the Secretary; and

(b) a police officer; and

(c) a person appointed under section 35;

Container Refund Scheme Act 2021
Act No. of 2021

s. 3

Part 1 – Preliminary

beverage means a liquid, other than medication, that is intended for human consumption by drinking;

beverage container means a container, other than an exempt container, that –

- (a) is designed or manufactured to contain a liquid; and
- (b) contains a beverage; and
- (c) has been sealed while it contains the beverage to enable the beverage to be handled and transported in the container;

container refund machine means a machine, or other device, that is –

- (a) designed or manufactured to pay the refund amount when an approved container is inserted in, or otherwise deposited at, the machine or device; or
- (b) is prescribed as a container refund machine for the purposes of this Act;

container refund point – see section 4;

eligible container means –

- (a) a beverage container; or

Container Refund Scheme Act 2021
Act No. of 2021

Part 1 – Preliminary

s. 3

- (b) a container, or other item, that is prescribed as an eligible container;

equivalent Act means an Act, or the provisions of an Act, in force in another State or a Territory, that substantially correspond to the provisions of this Act;

exempt container means a container that –

- (a) is prescribed as a container to which this Act does not apply; or
- (b) is a container from a class of containers that is prescribed as a class of containers to which this Act does not apply;

first responsible supplier – see section 5;

material recovery facility – see section 6;

material recovery facility operator means the person responsible for the operation of a material recovery facility;

network operator means a person appointed by the Minister as a network operator under section 15(1) or section 17;

network operator agreement means an agreement to be a network operator that complies with the requirements of this Act in respect of such an agreement;

Container Refund Scheme Act 2021
Act No. of 2021

s. 3

Part 1 – Preliminary

pay, in relation to a refund amount, includes payments of the refund amount by way of –

- (a) money; and
- (b) vouchers that are redeemable at a later point in time; and
- (c) donations to another person, or organisation, for charitable purposes; and
- (d) other prescribed means of payment;

prescribed marks, in relation to an approved container, means the prescribed information, marks or labels required to be displayed on the exterior of the approved container;

refund amount – see section 7;

refund declaration means a declaration, in an approved form, relating to the depositing of a container at a container refund point;

refund point agreement means an agreement to operate a container refund point, that complies with the requirements of this Act in respect of such an agreement, between –

- (a) a network operator; and

Container Refund Scheme Act 2021
Act No. of 2021

Part 1 – Preliminary

s. 3

- (b) the person, employed or engaged to operate the container refund point for the network operator;

refund point operator, in relation to a container refund point, means –

- (a) the person employed, or engaged, to operate the container refund point under a refund point agreement; or
- (b) if no such person is so employed or engaged, the network operator for the container refund point;

relevant appointment, in relation to a person, means the appointment of the person as a scheme coordinator or a network operator;

relevant commercial interest, in relation to an organisation or business, means any share of the capital of, or any entitlement to receive income from, the organisation or business, other than –

- (a) as specified under this Act or in an agreement under this Act; or
- (b) as provided on the same terms as would be provided to a member of the public;

relevant position, in relation to an organisation or business, means an executive position, or a position of

Container Refund Scheme Act 2021
Act No. of 2021

s. 3

Part 1 – Preliminary

influence or authority, within the
organisation or business;

scheme means the container refund scheme
established under section 10;

scheme coordinator means a person
appointed by the Minister as scheme
coordinator under section 14(1) or
section 17;

scheme coordinator agreement means an
agreement to be a scheme coordinator
that complies with the requirements of
this Act in respect of such an agreement;

scheme participant includes each of the
following persons:

- (a) a first responsible supplier;
- (b) a scheme coordinator;
- (c) a network operator;
- (d) a refund point operator;
- (e) a material recovery facility
operator;

Secretary means the Secretary of the
Department;

supply – see section 8;

supply agreement, in relation to an approved
container, means an agreement relating to

Container Refund Scheme Act 2021
Act No. of 2021

Part 1 – Preliminary

s. 4

the supply of the container within the State, that –

- (a) contains the prescribed terms and conditions; and
- (b) complies with the requirements of this Act in respect of such an agreement.

4. Meaning of container refund points

- (1) For the purposes of this Act, the following are container refund points:
 - (a) a facility, or premises, where an empty approved container may be deposited in exchange for the payment of the refund amount;
 - (b) a container refund machine;
 - (c) a facility, premises or machine, or a class of facilities, premises or machines, that is or are prescribed as a container refund point.
- (2) Nothing in this Act prevents a container refund point from being operated –
 - (a) on a permanent or temporary basis; or
 - (b) from a permanent, or mobile, structure or vehicle; or
 - (c) on a for-profit basis or a not-for-profit basis.

Container Refund Scheme Act 2021
Act No. of 2021

s. 5

Part 1 – Preliminary

- (3) For the avoidance of doubt, a container refund point does not include a location where an empty approved container may be deposited by a person with the intention that –
- (a) another person is to deposit the container at a container refund point; and
 - (b) the refund amount in respect of the approved container is to be paid to the other person or another person.

5. Meaning of first responsible supplier

- (1) For the purposes of this Act and subject to subsection (2), a person is the first responsible supplier in respect of one or more eligible containers if –
- (a) the person first supplies those containers in the State; or
 - (b) the person is a member of a class of persons prescribed as the first responsible suppliers for the class of containers to which those containers belong.
- (2) Despite subsection (1)(a), a person is not the first responsible supplier for an eligible container solely on the basis that the person –
- (a) is responsible for transporting the container –
 - (i) into the State from a location outside of the State; or

Container Refund Scheme Act 2021
Act No. of 2021

Part 1 – Preliminary

s. 6

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- (ii) within the State; or
 - (b) is engaged under a contract to do one or more of the following for, or on behalf of, another person:
 - (i) to make the container;
 - (ii) to fill the container with a beverage;
 - (iii) to seal a beverage in the container; or
 - (c) is a member of a class of persons that is prescribed as not being the first responsible supplier for the class of containers to which those containers belong.
- (3) If there is a dispute as to who is the first responsible supplier for one or more eligible containers, the Secretary may determine who is the first responsible supplier in respect of the containers.

6. Meaning of material recovery facility

- (1) For the purposes of this Act, a material recovery facility means –
 - (a) a facility, or premises, at which approved containers may be sorted and prepared for recycling; or

Container Refund Scheme Act 2021
Act No. of 2021

s. 7

Part 1 – Preliminary

- (b) a facility or premises, or a class of facilities or premises, that is or are prescribed as a material recovery facility.
- (2) Despite subsection (1)(a), a facility or premises, or class of facilities or premises, may be prescribed as not being a material recovery facility.

7. Meaning of refund amount

- (1) For the purposes of this Act, the refund amount payable for each approved container deposited at a container refund point under the scheme is the prescribed refund amount.
- (2) The regulations may also prescribe other means by which the refund amount may be payable under the scheme.

8. Meaning of supply

- (1) Subject to subsection (2), the supply of an eligible container under this Act includes the supply of the eligible container –
 - (a) by way of sale or otherwise, and whether by wholesale or retail, in the course of carrying on a business or another organisation; and
 - (b) for a commercial or promotional purpose, whether for consideration or otherwise; and
 - (c) in a prescribed manner or circumstance.

Container Refund Scheme Act 2021
Act No. of 2021

Part 1 – Preliminary

s. 9

- (2) Despite subsection (1), the regulations may prescribe, in relation to an eligible container, the manner and circumstances that do not constitute the supply of the eligible container under this Act.

9. Application of Act

- (1) Unless the contrary intention appears, this Act is in addition to, and does not derogate from, the provisions of any other Act.
- (2) Nothing in this Act prevents a scheme participant from paying –
 - (a) a refund amount for a container other than an approved container; or
 - (b) an amount, under another scheme or program, for an approved container.

Container Refund Scheme Act 2021
Act No. of 2021

s. 10

Part 2 – Container Refund Scheme

PART 2 – CONTAINER REFUND SCHEME

Division 1 – Container refund scheme generally

10. Container refund scheme established

- (1) A container refund scheme is established to enable the payment of refunds for approved containers that are returned to container refund points operated under the scheme.
- (2) The scheme established under subsection (1) –
 - (a) applies in respect of approved containers; and
 - (b) is managed by a scheme coordinator; and
 - (c) is facilitated by a network operator.

Division 2 – Approved containers

11. Approved container

- (1) A person must not supply an eligible container to another person if he or she is aware, or reasonably ought to be aware, that –
 - (a) the container is not approved under section 12; or
 - (b) the container does not display the prescribed marks.

Penalty: In the case of –

Container Refund Scheme Act 2021
Act No. of 2021

Part 2 – Container Refund Scheme

s. 12

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- (a) a body corporate, a fine not exceeding 300 penalty units; or
 - (b) an individual, a fine not exceeding 100 penalty units.
 - (2) The first responsible supplier for an eligible container must not supply the eligible container to another person unless –
 - (a) the container is approved under section 12; and
 - (b) the first responsible supplier has entered into a supply agreement with the scheme coordinator in respect of the container; and
 - (c) the container displays the prescribed marks.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

12. Approval of eligible container

- (1) The Secretary may approve an eligible container for the purposes of the scheme –
 - (a) on the application, in the prescribed manner, by –

Container Refund Scheme Act 2021
Act No. of 2021

s. 13

Part 2 – Container Refund Scheme

- (i) the first responsible supplier in respect of the container; or
 - (ii) another person involved in the manufacture, production or distribution of the container; or
- (b) on the Secretary's own initiative.
- (2) The Secretary may impose any conditions, requirements or restrictions on an approval of an eligible container under subsection (1) that the Secretary considers appropriate.
- (3) The Secretary is to ensure that a list of approved containers, and other information in respect of approved containers that the Secretary considers appropriate, is kept and maintained.

13. Marks only to be displayed on approved container

- (1) A person must not place prescribed marks on a container that is not an approved container.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 800 penalty units; or
 - (b) an individual, a fine not exceeding 400 penalty units.
- (2) A person must not place marks on a container for the purpose of implying, or leading others to the belief, that the container –
 - (a) is an approved container; or

Container Refund Scheme Act 2021
Act No. of 2021

Part 2 – Container Refund Scheme

s. 14

- (b) displays the prescribed marks for such a container.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 800 penalty units; or
- (b) an individual, a fine not exceeding 400 penalty units.

Division 3 – Scheme participants

14. Scheme coordinator

- (1) The Minister may appoint a person as a scheme coordinator in respect of the scheme by entering into a scheme coordinator agreement with the person.
- (2) The Minister may only enter into a scheme coordinator agreement with a person if the Minister is satisfied that the person –
 - (a) has the knowledge, skills and experience required of a scheme coordinator; and
 - (b) has the financial capacity to be a scheme coordinator; and
 - (c) is a fit and proper person within the meaning of section 16; and
 - (d) has not been appointed as a network operator; and

Container Refund Scheme Act 2021
Act No. of 2021

s. 15

Part 2 – Container Refund Scheme

- (e) does not share a relevant commercial interest, or hold a relevant position, with a network operator or an associate of a network operator; and
 - (f) has met any other requirements prescribed in the regulations in respect of a scheme coordinator.
- (3) A person ceases to be appointed as a scheme coordinator when the first of the following occurs:
 - (a) the person's appointment as scheme coordinator is cancelled under section 18;
 - (b) the scheme coordinator agreement, in force in respect of the person, expires or terminates.

15. Network operator

- (1) The Minister may appoint a person as a network operator in respect of the scheme by entering into a network operator agreement with the person.
- (2) The Minister may only enter into a network operator agreement with a person if the Minister is satisfied that the person –
 - (a) has the knowledge, skills and experience required of a network operator; and
 - (b) has the financial capacity to be a network operator; and

Container Refund Scheme Act 2021
Act No. of 2021

Part 2 – Container Refund Scheme

s. 16

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- (c) is a fit and proper person within the meaning of section 16; and
 - (d) is not the scheme coordinator; and
 - (e) does not share a relevant commercial interest, or hold a relevant position, with the scheme coordinator or an associate of the scheme coordinator; and
 - (f) has met any other requirements prescribed in the regulations in respect of a network operator.
- (3) A person ceases to be appointed as a network operator when the first of the following occurs:
- (a) the person's appointment as network operator is cancelled under section 18;
 - (b) the network operator agreement, in force in respect of the person, expires or terminates.

16. Fit and proper persons

- (1) In determining whether a person is a fit and proper person under this Act, the Minister must take into account the following matters:
- (a) the person's conduct with regard to the scheme or a similar scheme established, or operating, in another jurisdiction;
 - (b) whether the person has been found guilty of one or more of the following offences,

Container Refund Scheme Act 2021
Act No. of 2021

s. 16

Part 2 – Container Refund Scheme

regardless of where the person was convicted:

- (i) an indictable offence where the maximum penalty for the offence is a term of imprisonment of at least 3 months;
 - (ii) an offence of dishonesty or fraud;
 - (iii) an offence under this Act or an equivalent Act;
 - (c) such other prescribed matters.
- (2) If the Minister is determining whether a body corporate is a fit and proper person, the Minister is to –
- (a) determine, under this section, whether each officer of the body corporate is a fit and proper person; and
 - (b) take into account each determination made in accordance with paragraph (a) when determining if the body corporate is a fit and proper person.
- (3) In addition to the matters to be taken into account under subsections (1) and (2), the Minister may –
- (a) take into account a matter not specified in those subsections, if the Minister considers the matter relevant to determining whether a person is a fit and proper person; and

Container Refund Scheme Act 2021
Act No. of 2021

Part 2 – Container Refund Scheme

s. 17

- (b) carry out such inquiries, consult such persons and take into account such matters as the Minister considers relevant to determining whether a person is a fit and proper person for the purposes of the scheme; and
- (c) require a person to provide further information, or evidence, in support of the person's appointment as a scheme participant.

17. Minister may appoint scheme participants in certain circumstances

- (1) Despite sections 14 and 15, the Minister may appoint a person as a scheme coordinator, or network operator, who does not meet the requirements of the relevant section to be a scheme coordinator, or network operator, if –
 - (a) the Minister is satisfied that there are no other suitable persons who –
 - (i) are interested in being appointed to the relevant position; or
 - (ii) meet the requirements under this Act in respect of the relevant position; or
 - (b) the Minister is satisfied that a temporary appointment under this section is necessary to ensure the continued operation of the scheme due to –

Container Refund Scheme Act 2021
Act No. of 2021

s. 17

Part 2 – Container Refund Scheme

- (i) the suspension or cancellation of a person's appointment under this Act as scheme coordinator or network operator; or
 - (ii) the termination of a scheme coordinator agreement or a network operator agreement.
- (2) The Minister may only appoint a person as a scheme coordinator, or network operator, under this section if the Minister is satisfied, on reasonable grounds, that the person meets the majority of the requirements specified in this Act in respect of the relevant appointment.
- (3) The appointment of a person as scheme coordinator, or network operator, under this section –
 - (a) is to be on such terms and conditions as are specified by the Minister; and
 - (b) may not exceed a cumulative period of 5 years; and
 - (c) does not prevent the person from being appointed as a scheme coordinator, or network operator, under another section of this Act after the appointment under this section ceases.

Container Refund Scheme Act 2021
Act No. of 2021

Part 2 – Container Refund Scheme

s. 18

18. Suspension or cancellation of certain appointments

- (1) The Minister may suspend, or cancel, a relevant appointment of a person at any time if the Minister believes on reasonable grounds that –
- (a) the person is no longer a fit and proper person in respect of the scheme; or
 - (b) the prerequisites for the suspension, or cancellation, of the relevant agreement, under which the person is appointed, have been met; or
 - (c) the person has given false or misleading information in, or in connection with –
 - (i) an application, report or information provided under this Act or an equivalent Act; or
 - (ii) an agreement entered into, or to be entered into, under this Act; or
 - (d) the person has contravened a provision of this Act or an equivalent Act; or
 - (e) the person has committed an offence, whether in this State or another jurisdiction, relating to fraud or dishonesty; or
 - (f) the prescribed circumstances have occurred in respect of one or more of the following:
 - (i) the person;

Container Refund Scheme Act 2021
Act No. of 2021

s. 18

Part 2 – Container Refund Scheme

- (ii) the relevant appointment of the person;
 - (iii) the agreement entered into as part of the relevant appointment of the person; or
 - (g) the relevant appointment has been suspended under this section and the person has not undertaken the steps specified under subsection (3)(c)(ii) in respect of the suspension.
- (2) In addition to subsection (1), the Minister may cancel the relevant appointment of a person at any time if the Minister believes, on reasonable grounds, that it is appropriate to do so.
- (3) If the Minister decides to suspend, or cancel, a relevant appointment of a person under this section, the Minister is to –
- (a) notify the person, in writing, that the relevant appointment has been suspended, or cancelled, as the case may be; and
 - (b) specify, in the notification under paragraph (a) –
 - (i) the reasons for the suspension or cancellation; and
 - (ii) in general terms, any information that the Minister took into account in making the decision to

Container Refund Scheme Act 2021
Act No. of 2021

Part 2 – Container Refund Scheme

s. 18

suspend or cancel the relevant appointment; and

- (c) if the relevant appointment is suspended under this section, specify –
 - (i) the period of suspension of the relevant appointment; and
 - (ii) the steps that the person must take for the suspension to be lifted, if any.
- (4) The cancellation or suspension of a relevant appointment of a person takes effect when the person is notified in accordance with subsection (3) in respect of the suspension or cancellation.
- (5) A relevant appointment that is suspended under this section is of no effect while it is so suspended.

Container Refund Scheme Act 2021
Act No. of 2021

s. 19

Part 3 – Administration of Container Refund Scheme

**PART 3 – ADMINISTRATION OF CONTAINER
REFUND SCHEME**

Division 1 – Agreements for container refund scheme

Subdivision 1 – General

19. Agreements generally

- (1) In addition to any other requirements specified in this Act, an agreement that is entered into for the purposes of this Act –
 - (a) must be in writing; and
 - (b) is to include each applicable term, and condition, specified under this Act in respect of the agreement, or class of agreements; and
 - (c) is, unless otherwise specified in the regulations, taken to include each applicable term, and condition, prescribed in relation to the agreement, or class of agreements, after the commencement of the agreement; and
 - (d) may include one or more of the following:
 - (i) performance targets or other targets or requirements;
 - (ii) sanctions for non-compliance;

Container Refund Scheme Act 2021
Act No. of 2021

Part 3 – Administration of Container Refund Scheme

s. 19

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- (iii) requirements for monitoring, auditing and reporting under the agreement;
 - (iv) such other terms and conditions as are agreed between the parties to the agreement; and
 - (e) may specify that the Secretary, or another person or authority, is required to approve a specific procedure, arrangement or process; and
 - (f) may specify terms and conditions relating to –
 - (i) the refunds, costs and other amounts payable by, or on behalf of, the parties to the agreement; and
 - (ii) profits, losses, expenses and revenue under the agreement; and
 - (iii) the methodologies used to calculate an amount payable under the agreement.
 - (2) In addition to any other requirements specified in this Act, an agreement, other than a supply agreement, that is entered into for the purposes of this Act may specify the circumstances in which the Secretary may –
 - (a) suspend the operation of the agreement; and

Container Refund Scheme Act 2021
Act No. of 2021

s. 20

Part 3 – Administration of Container Refund Scheme

- (b) appoint a person to fulfil the role, that is the subject of agreement, while the operation of the agreement is so suspended.
- (3) If a term or condition of an agreement under this Act is inconsistent with a term or condition specified in this Act in respect of the agreement, the term or condition of the agreement is void to the extent of the inconsistency.
- (4) Nothing in this Act, other than subsection (3), restricts the terms or conditions that may be included in an agreement under this Act.

20. Duration of agreements

An agreement that is entered into for the purposes of this Act is to have effect until the first of the following occurs:

- (a) the agreement is terminated;
- (b) the agreement expires under the terms of the agreement;
- (c) the agreement has been in force for the maximum period for the agreement, if any.

Subdivision 2 – Specific agreements

21. Scheme coordinator agreements

In addition to the requirements of this Act, an agreement to be a scheme coordinator must

Container Refund Scheme Act 2021
Act No. of 2021

specify the following terms and conditions in respect of the person appointed as the scheme coordinator under the agreement:

- (a) that the scheme coordinator is to enter into supply agreements with the first responsible suppliers of containers to ensure that the suppliers bear an appropriate proportion of the cost of the management, administration and operation of the scheme;
- (b) that the scheme coordinator is responsible for entering into an agreement with a network operator;
- (c) that the scheme coordinator is responsible for entering into agreements with material recovery facility operators;
- (d) other prescribed terms or conditions.

22. Network operator agreements

In addition to the requirements of this Act, an agreement to be a network operator must specify the following terms and conditions in respect of the person appointed as a network operator under the agreement:

- (a) details of the network of container refund points to be established and operated by, or on behalf of, the network operator under the scheme;

Container Refund Scheme Act 2021
Act No. of 2021

s. 23

Part 3 – Administration of Container Refund Scheme

- (b) that, unless otherwise specified in the agreement, the network operator is responsible for all operational and administrative costs in respect of the container refund points operated by, or on behalf of, the network operator;
- (c) that the network operator is to ensure that each approved container, deposited at the container refund points operated by or on behalf of the network operator, is recycled in accordance with this Act or the terms of the agreement;
- (d) that, in addition to paragraph (c), the network operator is to ensure that this Act is complied with in respect of each approved container deposited at the container refund points operated by, or on behalf of, the network operator;
- (e) other prescribed terms or conditions.

23. Supply agreements

- (1) The first responsible supplier for an approved container must enter into a supply agreement with a scheme coordinator in respect of the approved container.
- (2) A supply agreement –
 - (a) is to be in an approved form; and
 - (b) must contain the prescribed terms and conditions.

Container Refund Scheme Act 2021
Act No. of 2021

Part 3 – Administration of Container Refund Scheme

s. 24

24. Refund point agreements

- (1) A network operator may enter into a refund point agreement with a refund point operator for the refund point operator to operate one or more of the network operator's container refund points.
- (2) A refund point agreement is to be in an approved form.
- (3) A person, other than a network operator, must not operate a container refund point unless the person is the refund point operator in respect of the container refund point.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

Division 2 – Compliance and enforcement for scheme participants

25. Scheme participants must comply with Act

- (1) The first responsible supplier for an approved container must comply with each requirement imposed on the first responsible supplier –
 - (a) under this Act; and
 - (b) under the supply agreement in force in respect of the approved container.

Container Refund Scheme Act 2021
Act No. of 2021

s. 26

Part 3 – Administration of Container Refund Scheme

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 150 penalty units; or
 - (b) an individual, a fine not exceeding 50 penalty units.
- (2) A scheme coordinator must comply with each requirement imposed on the scheme coordinator under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
 - (b) an individual, a fine not exceeding 100 penalty units.
- (3) A network operator must comply with each requirement imposed on the network operator under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
 - (b) an individual, a fine not exceeding 100 penalty units.

26. Obligations of material recovery facility operators

- (1) Subject to subsection (2), a material recovery facility operator must not claim a refund amount in respect of an approved container until –

Container Refund Scheme Act 2021
Act No. of 2021

Part 3 – Administration of Container Refund Scheme

s. 26

- (a) the approved container has been recycled, in the prescribed manner, at the material recovery facility operated by the operator; or
- (b) the approved container has been –
 - (i) prepared for recycling, in the prescribed manner, at the material recovery facility operated by the operator; and
 - (ii) sent for recycling, in the prescribed manner, at another premises or facility.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 900 penalty units; or
 - (b) an individual, a fine not exceeding 300 penalty units.
- (2) Despite subsection (1), a material recovery facility operator is taken to have –
- (a) in the case of subsection (1)(a), recycled an approved container in the prescribed manner if the approved container is recycled as specified in the agreement in force, under the scheme, in respect of the material recovery operator; or
 - (b) in the case of subsection (1)(b), prepared an approved container for recycling in the prescribed manner if the approved

Container Refund Scheme Act 2021
Act No. of 2021

s. 27

Part 3 – Administration of Container Refund Scheme

container is prepared for recycling as specified in the agreement in force, under the scheme, in respect of the material recovery operator.

- (3) If a material recovery facility operator receives a refund amount from the scheme coordinator in respect of an approved container, the operator must ensure that the container does not enter into landfill.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 900 penalty units; or
 - (b) an individual, a fine not exceeding 300 penalty units.
- (4) Subsection (3) does not apply in respect of an approved container, or part of an approved container, that enters landfill in prescribed circumstances.

27. Annual report by scheme coordinator

- (1) Within 90 days after the end of each financial year, a scheme coordinator must –
- (a) prepare, in an approved form, an annual report for the Minister in respect of the scheme during the previous financial year; and
 - (b) provide the Minister with a copy of the annual report prepared in respect of the previous financial year.

Container Refund Scheme Act 2021
Act No. of 2021

Part 3 – Administration of Container Refund Scheme

s. 28

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- (2) A report under subsection (1) is to contain the prescribed information and details.
 - (3) As soon as practicable after the Minister is provided with a copy of the report by a scheme coordinator under subsection (1) –
 - (a) the Minister is to cause a copy of the report to be tabled in each House of Parliament; and
 - (b) the scheme coordinator is to publish the annual report –
 - (i) on the website operated by, or on behalf of, the scheme coordinator; and
 - (ii) in a manner that is freely accessible by members of the public.

28. Secretary may perform or require audit in certain circumstances

- (1) The Secretary may –
 - (a) perform an audit of the activities, or a specified aspect of the activities, of a scheme participant under this Act; or
 - (b) direct a scheme participant to engage an auditor to perform an audit of the activities, or a specified aspect of the activities, of the scheme participant under this Act.

Container Refund Scheme Act 2021
Act No. of 2021

s. 28

Part 3 – Administration of Container Refund Scheme

- (2) A requirement of the Secretary under subsection (1) is in addition to, and does not derogate from, an audit or report requirement under –
- (a) this Act, any other Act; or
 - (b) an agreement under this Act.
- (3) A scheme participant whose activities are required to be audited under subsection (1) must comply with the requirement.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

Container Refund Scheme Act 2021
Act No. of 2021

Part 4 – Container Refund Points and Refunds

s. 29

**PART 4 – CONTAINER REFUND POINTS AND
REFUNDS**

29. Claiming refunds under scheme

- (1) A person may claim a refund amount under the scheme by depositing an approved container at a container refund point.
- (2) Subject to subsection (3) and this Act, a refund point operator must ensure that a refund amount is paid, for each approved container deposited at the container refund point operated by the operator, to the person who deposited the container.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 120 penalty units; or
 - (b) an individual, a fine not exceeding 60 penalty units.
- (3) A refund point operator may refuse to pay a refund amount, for a container deposited at a container refund point operated by the operator, if –
 - (a) the container is not an approved container; or
 - (b) section 30(3) applies in respect of the person who deposited the container at the container refund point; or

Container Refund Scheme Act 2021
Act No. of 2021

s. 29

Part 4 – Container Refund Points and Refunds

- (c) section 31 applies in respect of the container.
- (4) Subsection (2) does not apply to a refund point operator in respect of an approved container deposited at a container refund point if –
 - (a) the operator has an agreement with the person depositing the container for the refund amount to be paid at a later time; or
 - (b) the prescribed circumstances exist in respect of the container, the refund point operator or the container refund point.
- (5) A refund point operator is not guilty of an offence under subsection (2) in respect of a container refund machine if –
 - (a) the machine accepts an approved container but does not pay a refund amount in respect of the container at the time of the acceptance of the container; and
 - (b) the refund point operator pays the refund amount owing in respect of the container as soon as practicable after the refund point operator becomes aware of the non-payment of the refund amount by the machine.
- (6) A person must not claim a refund amount for an approved container if the person knows, or reasonably ought to know, that –

Container Refund Scheme Act 2021
Act No. of 2021

Part 4 – Container Refund Points and Refunds

s. 30

- (a) a refund has been paid in respect of the container under this Act or under an equivalent Act; or
- (b) a refund is not payable in respect of the container under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 150 penalty units.

30. Requests for certain information

- (1) If a person deposits an approved container at a container refund point, the refund point operator for that container refund point –
 - (a) may require, if the prescribed circumstances exist, the person to provide a refund declaration in respect of the container; and
 - (b) must require the person to provide a refund declaration in respect of the container if –
 - (i) the number of approved containers deposited by the person exceeds the prescribed maximum amount of containers; and

Container Refund Scheme Act 2021
Act No. of 2021

s. 30

Part 4 – Container Refund Points and Refunds

- (ii) the person does not have a written agreement with the refund point operator that enables the person to deposit containers in a number that exceeds the prescribed maximum amount of containers.
- (2) If a refund point operator requires a person to provide a refund declaration under subsection (1), the refund point operator may also require, if the prescribed circumstances exist, the person to provide proof of the person's identity.
- (3) A refund point operator may refuse to pay a refund amount in respect of an approved container that a person has deposited at a container refund point if –
 - (a) the person refuses to provide a refund declaration as required by the refund point operator under subsection (1); or
 - (b) the person refuses to provide proof of the person's identity as required by the refund point operator under subsection (2); or
 - (c) the refund point operator is satisfied that the number of approved containers deposited by the person, or the person and one or more other persons acting on behalf of the person, exceeds the prescribed maximum amount of containers.

Container Refund Scheme Act 2021
Act No. of 2021

Part 4 – Container Refund Points and Refunds

s. 31

-
- (4) A refund point operator must keep, for the prescribed period –
- (a) each refund declaration that is provided to the operator under this section; and
 - (b) details of each piece of evidence that is provided to the operator under this section to prove the identity of a person.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
 - (b) an individual, a fine not exceeding 50 penalty units.
- (5) A refund point operator must not use evidence of a person's proof of identity provided under this section for a purpose other than as specified under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 50 penalty units.

31. Refunds not payable in respect of certain containers

- (1) A refund amount is not payable under this Act in respect of an approved container deposited at a container refund point if the refund point operator for the container refund point is

Container Refund Scheme Act 2021
Act No. of 2021

s. 32

Part 4 – Container Refund Points and Refunds

satisfied, on reasonable grounds, of one or more of the following:

- (a) that the approved container is not substantially empty;
 - (b) that the container does not display the relevant prescribed marks;
 - (c) that the container displays marks that are obscured, or damaged, in such a manner that the marks are unable to be identified as the relevant prescribed marks;
 - (d) that a refund amount has already been paid in respect of the container under this Act or an equivalent Act;
 - (e) that the container refund point is a container refund machine and the machine has refused to accept the container;
 - (f) that the prescribed circumstances apply in respect of the container.
- (2) Subsection (1)(e) does not prevent a container that is refused by a container refund machine from being deposited, and accepted, at another container refund point.

32. Refund point operator must accept approved containers

Unless otherwise authorised under this Act, a refund point operator must not refuse to accept an approved container that is, or has been,

Container Refund Scheme Act 2021
Act No. of 2021

Part 4 – Container Refund Points and Refunds

s. 32

deposited at the container refund point operated by the refund point operator.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

Container Refund Scheme Act 2021
Act No. of 2021

s. 33

Part 5 – Miscellaneous

PART 5 – MISCELLANEOUS

33. Delegations

- (1) The Minister may delegate to any person any of the Minister's powers and functions under this Act, other than this power of delegation.
- (2) The Secretary may delegate to any person any of the Secretary's powers and functions under this Act, other than this power of delegation.

34. Recovery of costs

- (1) The Secretary may charge a person (the *liable person*) a fee for any action taken by, or on behalf of, the Secretary under this Act if –
 - (a) the liable person was informed before the action was taken that such a fee for the action may be charged; and
 - (b) in the opinion of the Secretary, it is reasonable to charge the fee to –
 - (i) cover the administrative costs incurred by the Government in respect of the action; or
 - (ii) cover the costs of regulatory activity taken under this Act in respect of the action.
- (2) A fee charged under subsection (1) –

Container Refund Scheme Act 2021
Act No. of 2021

Part 5 – Miscellaneous

s. 35

-
- (a) is to be no more than is reasonable to cover the costs and expenses incurred in connection with the action taken for which the fee is charged; and
 - (b) is recoverable by the Department as a debt due and owing to the Department by the liable person in respect of the fee.
 - (3) For the purposes of subsection (2)(a), costs and expenses incurred in connection with an action include costs and expenses incurred by, or on behalf of, the Crown.

35. Authorised officers

- (1) The Secretary may appoint one or more of the following persons as an authorised officer for the purposes of this Act:
 - (a) a State Service officer or State Service employee;
 - (b) any other person the Secretary considers appropriate.
- (2) A person appointed as an authorised officer is appointed on such terms and conditions as the Secretary determines.
- (3) An authorised officer may do any one or more of the following if reasonably required for the purpose of administering, or enforcing, this Act:
 - (a) enter and inspect premises if –

Container Refund Scheme Act 2021
Act No. of 2021

s. 35

Part 5 – Miscellaneous

- (i) the occupier of the premises has given consent to the entry of the officer; or
 - (ii) the entry is in accordance with a warrant; or
 - (iii) the premises are a public place and the entry occurs while the premises are open to the public; or
 - (iv) the premises are business premises and the entry is during the ordinary business hours for the business operating at the premises;
- (b) direct that a moving vehicle be stopped and inspected;
- (c) take photographs, films, video, audio or other recordings;
- (d) remove a container, or other item, from premises for the purposes of an investigation or for testing;
- (e) require a person to provide the officer with a document or information, or a copy of a document or information, in an understandable form, that is in the possession or control of the person;
- (f) examine or copy, or take extracts from, a document or information found in the conduct of a search of premises or

Container Refund Scheme Act 2021
Act No. of 2021

Part 5 – Miscellaneous

s. 36

provided in accordance with paragraph (e);

- (g) require a person to answer a question in relation to a matter;
- (h) require a person to provide such assistance to the authorised officer as is reasonably required by the officer for the effective exercise of the officer's powers under this Act;
- (i) require a natural person to –
 - (i) state the person's full name and usual place of residence; or
 - (ii) produce evidence of the person's identity.
- (4) An authorised officer is required to identify himself or herself, if reasonably required to do so by any person, before performing a function, or exercising a power, under this Act.
- (5) If an authorised officer removes a container, or other item, in accordance with subsection (3)(d), the authorised officer must give the person who appears to be in possession of the container, or other item, a written receipt that describes the removed container, or item, and its condition.

36. Offences relating to authorised officers

- (1) A person must comply with –

Container Refund Scheme Act 2021
Act No. of 2021

s. 36

Part 5 – Miscellaneous

- (a) each requirement made of the person by an authorised officer under this Act, other than a requirement made under section 35(3)(i); and
- (b) each direction given to the person by an authorised officer.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
 - (b) an individual, a fine not exceeding 50 penalty units.
- (2) A natural person must comply with a requirement made of the person by an authorised officer under section 35(3)(i).

Penalty: Fine not exceeding 10 penalty units.

- (3) A person must not resist, obstruct or hinder an authorised officer in the performance of a function, or the exercise of a power, under this Act.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 50 penalty units.

Container Refund Scheme Act 2021
Act No. of 2021

Part 5 – Miscellaneous

s. 37

37. Advisory committees

- (1) The Minister may establish a committee, on such terms and conditions that the Minister considers appropriate, for the purpose of advising the Minister in respect of –
 - (a) the performance of the Minister's functions under this Act; or
 - (b) the operation of the scheme under this Act.
- (2) In establishing a committee under subsection (1), the Minister is to specify –
 - (a) the matters in respect of which the committee is to advise the Minister; and
 - (b) the members of the committee or the interests, and experience, that members of the committee, as a whole, must hold; and
 - (c) certain practices and procedures that apply in respect of the committee so established.
- (3) The regulations may prescribe the practice and procedures of a committee established under subsection (1).
- (4) Unless otherwise prescribed, or specified by the Minister under subsection (2)(c), a committee established under subsection (1) may regulate its own practice and procedures.

Container Refund Scheme Act 2021
Act No. of 2021

s. 38

Part 5 – Miscellaneous

- (5) The Minister may dissolve a committee established under subsection (1) on such terms and conditions as the Minister considers appropriate.

38. Provision of information

- (1) The Secretary may, by written notice to a scheme participant, require the scheme participant to provide the Secretary with such information, or such documentation or records, as is specified in the notice.
- (2) A scheme participant must comply with a notice given to the scheme participant under subsection (1).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

39. False or misleading information

- (1) A person, in providing an application, information, statement or document under this Act, must not –
- (a) provide it knowing it to be false or misleading; or
 - (b) omit any matter knowing that without the matter the application, information,

Container Refund Scheme Act 2021
Act No. of 2021

Part 5 – Miscellaneous

s. 40

statement or document is false or misleading.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
 - (b) an individual, a fine not exceeding 250 penalty units.
- (2) Subsection (1) does not apply to a person if the person –
 - (a) informed the person, to whom the application, information, statement or document was provided, that it was false, misleading or incomplete; and
 - (b) indicated the manner in which the application, information, statement or document was false, misleading or incomplete; and
 - (c) provided with the application, information, statement or document any further information the person has in respect of the application, information, statement or document.

40. Review of decisions relating to containers

A person who is aggrieved by a decision of the Secretary under this Act in respect of a container may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision.

Container Refund Scheme Act 2021
Act No. of 2021

s. 41

Part 5 – Miscellaneous

41. Competition exemption

- (1) The following are specifically authorised for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth:
 - (a) an agreement entered into under, or for the purposes of, this Act;
 - (b) the negotiating of, or entering into or making of, an agreement under this Act, including the conduct of the parties to such an agreement;
 - (c) conduct authorised, or required, by the terms or conditions of an agreement under this Act;
 - (d) the grant or refusal to grant approval to a container under section 12;
 - (e) a prescribed matter.
- (2) Anything authorised by this section is authorised only to the extent that it would otherwise contravene Part IV of the *Competition and Consumer Act 2010* of the Commonwealth.

42. Offences by body corporate

- (1) In this section, a person is concerned in, or takes part in, the management of a body corporate if the person is one of the following persons:
 - (a) a director of the body corporate;
 - (b) a secretary of the body corporate;

Container Refund Scheme Act 2021
Act No. of 2021

Part 5 – Miscellaneous

s. 42

-
- (c) a person involved in managing the affairs of the body corporate, by whatever name called;
 - (d) a receiver and manager of property of the body corporate;
 - (e) an administrator of a deed of arrangement executed by the body corporate;
 - (f) a liquidator of the body corporate appointed in a voluntary winding-up of the body corporate;
 - (g) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.
- (2) If a body corporate contravenes a provision of this Act, a person who is concerned in, or takes part in, the management of the body corporate is taken to have contravened that provision.
- (3) It is a defence in proceedings taken against a person who is concerned in, or has taken part in, the management of a body corporate in accordance with subsection (2) for the person to prove that –
- (a) the body corporate contravened the provision without the person's knowledge; or
 - (b) the person was not in a position to influence the conduct of the body

Container Refund Scheme Act 2021
Act No. of 2021

s. 43

Part 5 – Miscellaneous

corporate in relation to its contravention of the provision; or

(c) the person, if in such a position, attempted to prevent the contravention by the body corporate.

- (4) A person may be convicted of a contravention of a provision of this Act in accordance with subsection (2) whether or not the body corporate has been convicted of, or charged with, its contravention.
- (5) Nothing in this section affects the liability imposed on a body corporate for an offence committed by it against a provision of this Act.

43. Infringement notices

- (1) An authorised officer may issue and serve an infringement notice on a person if satisfied that the person has committed a prescribed offence against this Act or the regulations.
- (2) An infringement notice under subsection (1) is not to –
- (a) relate to 4 or more offences; and
 - (b) be served on a person who has not attained the age of 16 years.
- (3) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.

Container Refund Scheme Act 2021
Act No. of 2021

Part 5 – Miscellaneous

s. 44

-
- (4) Any payments made in respect of an infringement notice are payable –
- (a) to a council, if the notice was served by a person who is an authorised officer by virtue of the person’s employment or engagement by the council; or
 - (b) in any other case, into the Environment Protection Fund established by section 97 of the *Environmental Management and Pollution Control Act 1994*.

44. Regulations

- (1) The Governor may make regulations for the purpose of this Act.
- (2) Without limiting subsection (1), the regulations may –
 - (a) prescribe the processes and procedures for –
 - (i) approving a container; or
 - (ii) varying, or revoking, the approval of a container; and
 - (b) specify circumstances in which the first responsible supplier for an approved container is required to notify the Secretary in respect of the approved container; and
 - (c) prescribe the practices and procedures, including transitional arrangements, to be

Container Refund Scheme Act 2021
Act No. of 2021

s. 44

Part 5 – Miscellaneous

- followed when a scheme participant ceases to be a scheme participant; and
- (d) prescribe the circumstances in which a temporary scheme participant may be established and the practices and procedures for establishing such a temporary scheme participant; and
 - (e) prescribe the skills, qualifications or training that may be required to be held by –
 - (i) a scheme participant; or
 - (ii) a person employed or engaged by a scheme participant; and
 - (f) specify matters or information to be contained in, or requirements of –
 - (i) an audit to be performed under this Act; or
 - (ii) monitoring to be performed under this Act; or
 - (iii) a report, or other document, required to be prepared or provided under this Act; and
 - (g) specify one or more of the following in respect of certain agreements, between scheme participants, that are required to be entered into under this Act:
 - (i) the form of the agreement;

Container Refund Scheme Act 2021
Act No. of 2021

Part 5 – Miscellaneous

s. 44

-
- (ii) the information to be included in the agreement;
 - (iii) that the agreement be approved as prescribed; and
 - (h) prescribe terms and conditions that must or may, or may not, be included in an agreement under this Act; and
 - (i) unless otherwise specified in this Act, prescribe the maximum period that an agreement under this Act may be in force; and
 - (j) prescribe the circumstances in which information is to be available to the public and the means, or methods, for making that information available; and
 - (k) provide that a contravention of a regulation is an offence and, in respect of such an offence, provide for the imposition of a fine not exceeding 500 penalty units, and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues.
- (3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (4) The regulations may adopt or incorporate the whole or part of any policy, protocol, standard, rule, code, specification, guidelines, program,

Container Refund Scheme Act 2021
Act No. of 2021

s. 45

Part 5 – Miscellaneous

scheme or plan, as amended from time to time, with or without modification, issued, prescribed, made or published by any person or body before, or after, the regulations take effect.

- (5) The regulations may authorise any matter to be, from time to time, determined or approved by the Secretary or such other person as is specified in the regulations.

45. Review of operation of Act

- (1) The Minister is to cause an independent review of the operation of the scheme, and this Act, to be completed before the 5th anniversary of the commencement of this Act.
- (2) As soon as practicable after an independent review is completed under subsection (1), the person who undertakes the independent review is to give the Minister a written report on the outcome of the review.
- (3) The Minister is to cause a copy of the report, given to the Minister under subsection (2), to be tabled in each House of Parliament within 10 sitting-days of that House after the report is received by the Minister.
- (4) This section does not apply if a committee of either House of Parliament, or a joint committee of both Houses of Parliament, has reviewed the operation of this Act, or has started such a review, after this Act commences and before the 5th anniversary of that commencement.

Container Refund Scheme Act 2021
Act No. of 2021

Part 5 – Miscellaneous

s. 46

46. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Environment; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Parks, Water and Environment.