

CLAUSE NOTES
Container Refund Scheme Bill 2021

PART I – PRELIMINARY

Clause 1	<p>Short title</p> <p>This clause provides that, once passed, the Bill will be cited as the <i>Container Refund Scheme Act 2021</i>.</p>
Clause 2	<p>Commencement</p> <p>This clause provides for the amendments to commence on a day or days to be proclaimed.</p>
Clause 3	<p>Interpretation</p> <p>Subclause 1 defines how terms and phrases in the Act are to be interpreted and applied.</p>
Clause 4	<p>Meaning of container refund points</p> <p>This clause provides a definition of what is a 'container refund point' under the Act.</p> <p>This clause also clarifies the difference between a container refund point – where a person can take a container and get a refund – and a container donation point (that charities and community groups will likely run) where an individual can take containers but does not get a refund.</p>
Clause 5	<p>Meaning of first responsible supplier</p> <p>This clause provides the definition for a 'first responsible supplier', specifically that they are the person who first supplies the containers in the State.</p> <p>This clause also sets out circumstances which, by themselves, don't meet the definition of a first responsible supplier, including a person who transports a container, or is engaged under contract to make, fill or seal a container of behalf of someone else. If there is a dispute as to who is a first responsible supplier, the Secretary will make a determination.</p> <p>(Note that this definition is intentionally broad to allow for the fullest capture of who will fall under this definition, and more detail is expected in the regulations)</p>
Clause 6	<p>Meaning of material recovery facility</p> <p>This clause defines a 'material recovery facility' as a facility where approved containers may be sorted and prepared for recycling.</p>

Clause 7	<p>Meaning of refund amount</p> <p>This clause provides the definition of 'refund amount', noting that it does not dictate what this refund amount will be but instead identifies that there will be a prescribed amount payable for each approved container deposited at a refund point.</p>
Clause 8	<p>Meaning of Supply</p> <p>Clause 8 defines the concept of 'supply' as incorporating both wholesale and retail, whether carrying on a business or other organisation, whether for a commercial or promotional purpose and whether for payment or not.</p> <p>Subclause 2 allows for circumstances that do not constitute supply to be identified in regulations.</p>
Clause 9	<p>Application of Act</p> <p>Clause 9 clarifies that the provisions of this Act are in addition to, and do not curtail the application of any other State law.</p> <p>Subclause 2 allows for payments on containers that are not approved or are part of another scheme or program.</p>

PART 2 – CONTAINER REFUND SCHEME

Division 1 – Container refund scheme generally

Clause 10	<p>Container refund scheme established</p> <p>Clause 9 establishes a container refund scheme in Tasmania and sets out its mode of operation – specifically that a payment will be provided for approved containers returned to container refund points.</p> <p>Subclause 2 establishes that the scheme applies to approved containers, is managed by a scheme coordinator, and is facilitated by a network operator. This clause specifies the existence of the two separate governance entities – the Scheme Coordinator and Network Operator – that form the split responsibility governance model.</p>
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Division 2 – Approved containers

Clause 11	<p>Approved container</p> <p>This clause creates an offence for the supply of any container that is not approved or that does not display a refund mark, and provides for a fine not exceeding 300 penalty units for body corporates or 100 penalty units for individual. This offence will apply to any operation covered by the definition of 'supply' in clause 8, which would include retailers and restaurants.</p> <p>Subclause 2 establishes an offence for first responsible suppliers if they supply containers that have not been approved, do not have the required refund</p>
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	<p>markings, and if the first responsible supplier has not entered a supply agreement with the scheme coordinator. A fine not exceeding 1,000 penalty units for body corporates and 500 penalty units for individuals will apply.</p>
Clause 12	<p>Approval of eligible container</p> <p>Clause 12 gives the Secretary the ability to approve eligible containers for inclusion in the scheme, including the ability to impose conditions or restrictions on approvals of certain containers as appropriate. This clause also requires that a list of approved containers be maintained.</p>
Clause 13	<p>Marks only to be displayed on approved container</p> <p>Clause 13 sets out the penalties for placing refund marks on unapproved containers, including fraudulently placing marks for the purpose of leading people to believe it is an approved container. A fine not exceeding 800 penalty units for body corporates and 400 penalty units for individuals will apply.</p>

Division 3 – Scheme participants

Clause 14	<p>Scheme coordinator</p> <p>Clause 13 allows for the Minister to appoint a scheme coordinator, and sets out that the scheme coordinator must have the skills and experience required, the financial capacity, and crucially for the purpose of the split responsibility governance model – the scheme coordinator can not also be appointed as the network operator, or share a commercial interest with the network operator. They must also be a ‘fit and proper person’ under clause 16. The scheme coordinator must also meet any other requirements set out in the regulations or the scheme coordinator agreement.</p> <p>Subclause 3 notes that a person ceases to be the scheme coordinator when their appointment is cancelled under clause 18 or when the agreement expires.</p>
Clause 15	<p>Network operator</p> <p>Clause 15 allows for the Minister to appoint a network operator, and sets out that the network operator must have the skills and experience required, the financial capacity and that the network operator can not also be appointed as the scheme coordinator, or share a commercial interest with the scheme coordinator. They must also be a ‘fit and proper person’ under clause 16. The network operator must also meet any other requirements set out in the regulations or the network operator agreement.</p> <p>Subclause 3 notes that a person ceases to be the network operator when their appointment is cancelled under clause 18 or when the agreement expires.</p>
Clause 16	<p>Fit and proper person</p> <p>This clause sets out the criteria for determining whether a prospective scheme coordinator or network operator is a ‘fit and proper person’. Under</p>

	<p>this clause, the Minister must consider the conduct of the person in this scheme or other schemes in other jurisdictions. The Minister should also consider if the person has been found guilty of indictable offences or dishonesty/fraud offences.</p> <p>Subclause 3 also provides the Minister with scope to identify matters not specified in subclause 1 but that are deemed relevant to determining whether a person is fit and proper. Subsequent to this, the Minister may carry out inquiries or consultations to determine whether a person is fit and proper, and may require the person to provide further information to support their application.</p>
Clause 17	<p>Minister may appoint scheme participant in certain circumstances</p> <p>While clause 14 and 15 set out the process for appointing a scheme coordinator and network operator, this clause provides for the circumstances where there are no applicants who meet the requirements or where an incumbent has been suspended or terminated. This clause allows the Minister to make a temporary appointment of no more than 5 years to ensure the continued operation of the scheme. In order to do so, the person appointed must meet the majority of the requirements specified in this Act..</p> <p>An appointment through this clause does not prevent the person from being appointed as scheme coordinator or network operator in subsequent processes under clause 14 and 15 of this Act.</p>
Clause 18	<p>Suspension or cancellation of certain appointments</p> <p>This clause allows the Minister to suspend or cancel the appointment of the scheme coordinator or network operator if the Minister believes on reasonable grounds that the person is no longer fit and proper, has met the prerequisites for suspension or cancellation in the relevant agreement, has given false or misleading information, has committed an offence related to fraud, or has generally breached a provision in this Act.</p> <p>Subclause 2 sets out the process the Minister must undertake if a person is suspended or their contract cancelled under this clause – specifically that the person is notified in writing, informed of the reasons for suspension/cancellation, and told of the information the Minister took into account when making the decision. If the person is suspended, they must also be informed of the period of suspension and the steps required to lift the suspension. If an appointment is suspended or cancelled under contractual terms, the form of the notice specified in the contract must be followed.</p>

PART 3 – ADMINISTRATION OF CONTAINER REFUND SCHEME

Division 1 – Agreements for container refund scheme

Subdivision 1 - General

Clause 19	Agreements generally
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	<p>Clause 19 sets out the broad requirements for all agreements entered into for the purposes of this act. This includes that they must be in writing, include each applicable term and condition specified in this Act, and may include items such as performance targets, sanctions for non-compliance, and requirements for monitoring/auditing/reporting.</p> <p>The agreements may specify that the Secretary or other person is required to authorise a procedure or process.</p> <p>The agreements may specify terms and conditions relating to refunds, costs and amounts payable; profits, losses, expenses and revenue under the agreement; and the methodologies used to calculate amounts payable under the agreement.</p> <p>Agreements (except supply agreements) will specify the circumstances where the Secretary may suspend the agreement and appoint a person to fulfil the role during the suspension.</p> <p>Agreements under this clause may not have terms and conditions inconsistent with terms and conditions set out in this Act.</p>
Clause 20	<p>Duration of agreement</p> <p>This clause states that agreements entered into under this act will have effect until the agreement is terminated, expires under the terms of the agreement, or has been in force for the maximum period for the agreement.</p>

Subdivision 2 – Specific agreements

Clause 21	<p>Scheme coordinator agreement</p> <p>This clause sets out requirements of the person appointed as the scheme coordinator, beyond the already established requirements of the Act:</p> <ul style="list-style-type: none"> - That they enter into supply agreements with first responsible suppliers of containers to ensure proportional financial contributions to the Scheme, - That they are responsible for entering into an agreement with the network operator, and - That they are responsible for entering into agreements with material recovery facilities. <p>There may also be other prescribed terms and conditions under the agreement.</p>
Clause 22	<p>Network operator agreement</p> <p>This clause sets out what the agreement with the network operator must do, beyond the already established requirements of the Act:</p> <ul style="list-style-type: none"> - Provide details of the network of container refund points, - That unless otherwise specified in the agreement, the network operator is responsible for operational and administrative costs of container refund points,

	<ul style="list-style-type: none"> - That each approved container returned to a refund point is recycled, and - Ensuring that the act is complied with regarding the return of approved containers (which essentially means that refund payments are made correctly according to the circumstances). <p>There may also be other prescribed terms and conditions under the agreement.</p>
Clause 23	<p>Supply agreement</p> <p>Clause 23 establishes the requirement of the first responsible supplier of approved containers to enter into a supply agreement with the scheme coordinator.</p>
Clause 24	<p>Refund point agreement</p> <p>This clause sets out that the network operator can enter into a refund point agreement with a refund point operator to run one or more of the network operator's container refund points.</p> <p>Subclause 3 creates an offence for the operation of a refund point without a refund point agreement – and provides for a fine not exceeding 300 penalty units for body corporates or 100 penalty units for individuals.</p>

Division 2 – Compliance and enforcement for scheme participants

Clause 25	<p>Scheme participant must comply with Act</p> <p>This clause states the penalties for non-compliance with the requirements of the Act for the three main scheme participants.</p> <p>For first responsible suppliers, a fine not exceeding 150 penalty units will apply for body corporates and 50 penalty units for individuals will apply.</p> <p>For the scheme coordinator and network operator, a fine not exceeding 300 penalty units will apply for body corporates and 100 penalty units for individuals will apply.</p>
Clause 26	<p>Obligation of material recovery facility operator</p> <p>This clause ensures that material recovery facility operators may not claim a refund payment for any approved container that hasn't been recycled and sets out the penalties for claiming a refund payment if a container has been sent to landfill.</p> <p>Subclause 4 allows for regulations to set out any circumstances where directing approved containers to landfill is allowed.</p> <p>A fine not exceeding 900 penalty units for body corporates and 300 penalty units for individuals will apply.</p>
Clause 27	<p>Annual report by scheme coordinator</p> <p>Clause 27 requires the scheme coordinator to produce an annual report for the Minister within 90 days of the end of each financial year. The Minister will</p>

	then be required to table a copy of the annual report in Parliament, and the scheme coordinator will be required to publish the annual report on a publicly accessible website.
Clause 28	<p>Secretary may perform or require audit in certain circumstances</p> <p>This clause allows the Secretary to perform an audit, or require a scheme participant to engage an auditor, on activities performed by a scheme participant under this Act.</p> <p>If a scheme participant does not comply with the requirement to be audited they may incur a fine not exceeding 300 penalty units for body corporates and 100 penalty units for individuals.</p>

PART 4 – CONTAINER REFUND POINTS AND REFUNDS

Clause 29	<p>Claiming refund under scheme</p> <p>This clause sets out the requirement for a refund to be paid for each approved container returned to a container refund point. A fine applies if this refund is not paid (with some exemptions in subsequent subclauses/clauses), with an amount not exceeding 120 penalty units for body corporates and 60 penalty units for individuals.</p> <p>A refund point operator may refuse to pay a refund if the container is not an approved container, or under the conditions set out in clause 30 and clause 31. This clause also provides some exemptions to the offence if the refund point operator has an agreement to pay the refund amount at a later time or if a machine accepts an approved container but does not pay the refund amount (as long as the refund point operator pays the refund amount as soon as practicable).</p> <p>Subclause 6 also creates an offence if a person claims a refund amount knowing that a refund has already been paid for the container, with a fine not exceeding 300 penalty units for body corporates and 150 penalty units for individuals.</p>
Clause 30	<p>Request for certain information</p> <p>This clause requires that a person provide to a refund point operator a refund declaration relating to containers being deposited.</p> <p>A refund declaration will be required if the number of containers being deposited exceed the maximum amount or if the person depositing the containers does not have an agreement that allows them to deposit containers exceeding the maximum amount. (Note: the regulations will set the prescribed maximum amount of containers allowable for deposit without a refund declaration)</p> <p>In providing a refund declaration, a refund point operator can also ask for proof of identify of the person depositing the containers. A refund point operator can refuse to pay a refund amount if the person does not provide a refund declaration or proof of identity.</p>

	<p>A refund point operator must keep for a prescribed period each refund declaration and evidence of identity. A fine not exceeding 100 penalty units for a body corporate and 50 penalty units for an individual will apply.</p> <p>The same fines apply if a refund point operator uses the evidence of proof of identity for any purposes other than those specified in the Act.</p>
Clause 31	<p>Refund not payable in respect of certain containers</p> <p>This clause sets out the circumstances where a refund amount is not payable for an approved container. This includes when the container isn't substantially empty, it doesn't display the prescribed marks, the prescribed marks are damaged or obscured, a refund has already been paid for the container, or if a container refund machine rejects the container.</p> <p>With the last point, if a container refund machines rejects the container, it doesn't prevent the container from being accepted at another refund point.</p>
Clause 32	<p>Refund point operator must accept approved containers</p> <p>Clause 32 stipulates that a refund point operator must not refuse to accept an approved container at a container refund point (unless otherwise authorised in this Act).</p> <p>A fine not exceeding 300 penalty units for body corporates and 100 penalty units for individuals will apply.</p>

PART 5 – MISCELLANEOUS

Clause 33	<p>Delegations</p> <p>This clause allows the Minister and the Secretary, the ability to delegate any of their powers or functions under the Act, except this power of delegation.</p>
Clause 34	<p>Recovery of costs</p> <p>Clause 34 allows the Secretary to charge a person a fee for actions undertaken by, or on behalf of, the Secretary. To do this, the liable person must be informed before the action is taken that a fee may be charged, and it must be seen as reasonable by the Secretary to cover administrative costs incurred by the Government or to cover the cost of regulatory activity.</p> <p>A fee under this clause is to be no more than is reasonable to cover costs and expenses incurred by the Secretary when undertaking the action.</p>

<p>Clause 35</p>	<p>Authorised officers</p> <p>The general purpose and scope of clause 34 is to define the Secretary's powers to appoint authorised officers. The following subclauses are of particular note.</p> <p>Subclause 1 states that the Secretary may appoint State Service officers or employees, or any other person considered appropriate, as an authorised officer under this Act.</p> <p>Subclause 2 sets out that this person is appointed on the terms and conditions set by the Secretary.</p> <p>Subclause 3 states the actions that the authorised officer may undertake if required for the administration or enforcement of this Act. This subclause goes into substantial details around allowable actions, including the ability to enter and inspect premises with the permission of the occupier or with a warrant, taking photos or videos, removing containers or other items for investigation or testing, requiring the provision of documents of information and the ability to copy documents or information, and requiring a person to answer questions.</p> <p>Subclause 4 sets out that if an authorised officer removes a container or item, they must provide the person with a written receipt.</p> <p>Subclause 5 and 6 states that a person must comply with requirements made by an authorised officer, and not resist or obstruct an authorised officer, with penalty units not exceeding 100 for a body corporate or 50 for an individual.</p>
<p>Clause 36</p>	<p>Offences relating to authorised officers</p> <p>This clause establishes three offences related to authorised officers.</p> <p>Subclause (1) creates an offence for not complying with directions and requirements made by an authorised officer. A fine not exceeding 100 penalty units for a body corporate and 50 penalty units will apply.</p> <p>Subclause (2) creates an offence for not complying with a request to state full name and place of residence or produce evidence of the persons identity. A fine not exceeding 10 penalty units will apply.</p> <p>Subclause (3) creates an offence for resisting, obstructing or hindering an authorised officer in performance of their functions under the Act. A fine not exceeding 100 penalty units for body corporates and 50 penalty units for individuals will apply.</p>

<p>Clause 37</p>	<p>Advisory committees</p> <p>Clause 37 allows the Minister to establish a committee for the purpose of advising on the exercising of the Minister's functions under this Act, and the operation of the scheme.</p> <p>This clause requires the Minister to specify on the establishment of a committee: the matters that will be advised on, the members of the committee and the experience they must hold, and procedures to apply to the committee.</p>
<p>Clause 38</p>	<p>Provision of information</p> <p>This clause allows the Secretary to issue a notice that requires a scheme participant to provide the Secretary with information such as documents and records. Subclause (2) creates an offence for failing to comply with such a notice. A fine not exceeding 250 penalty units for body corporates and 100 penalty units for individuals will apply.</p>
<p>Clause 39</p>	<p>False or misleading information</p> <p>This clause sets out that while providing information under the Act, a person must not provide it knowing it is false or misleading, or omit pertinent factual information.</p> <p>A fine not exceeding 500 penalty units for body corporates and 250 penalty units for individuals will apply.</p> <p>Subclause 2 notes that this clause does not apply if there is acknowledgement of the false or incomplete information provided by the person, or if explanatory information is provided to accompany the false or incomplete information.</p>
<p>Clause 40</p>	<p>Review of decisions relating to containers</p> <p>This clause allows that 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 for a review of that decision.</p>
<p>Clause 41</p>	<p>Competition exemption</p> <p>Clause 38 specifies authorisation of agreements under this Act for the purposes of the <i>Competition and Consumer Act 2010</i> of the Commonwealth.</p>
<p>Clause 42</p>	<p>Offences by body corporate</p> <p>Clause 39 sets out the definition of a person who takes part in the management of a body corporate, and their culpability for offences committed by body corporates under the Act. It also states what constitutes a defence in proceedings for an individual if a body corporate has committed an offence.</p>

<p>Clause 43</p>	<p>Infringement notices</p> <p>This clause provides that an authorised officer may issue an infringement notice if a person has committed an offence in this Act or the regulations.</p> <p>An infringement notice cannot relate to 4 or more offences or be served on anyone under the age of 16.</p> <p>Payments under this clause are to be made to a council, if this authorised officer is part of a council, or in other cases into the Environment Protection Fund.</p>
<p>Clause 44</p>	<p>Regulations</p> <p>This clause allows for the creation of regulations for this Act.</p> <p>These regulations may include but are not limited to:</p> <ul style="list-style-type: none"> • set out the processes for approving a container, or revoking that approval, • specify circumstances where a first responsible supplier is required to notify the Secretary regarding an approved container, • prescribe procedures, including transitional arrangements, for when a scheme participant ceases to be a scheme participant, • prescribe the circumstances where a temporary scheme participant may be established and any arrangements for that establishment • prescribe the skills, qualifications or training that may be required to be held by a scheme participant, or an employee of a scheme participant • specify matters to be contained in audits, monitoring or reporting of the scheme under this Act; • specify the form of agreements under the Act and the information to be included in agreements; • specify the maximum period for an agreement under this Act, • prescribe circumstances where information is to be made available to the public, and • provide that a contravention of a regulation is an offence, with a fine not exceeding 500 penalty units will apply. Where it is a continuing offence, a further fine not more than 50 penalty units per day will apply per day of the offence continuing. <p>Subclause (3) allows the regulations to be flexible in how and when they apply to certain matters.</p> <p>Subclause (4) provides that the regulations may adopt or incorporate any policy or protocol, standard or guidelines</p> <p>Subclause (5) allows the regulations to authorise the secretary or other person to approve matters under the regulations.</p>

<p>Clause 45</p>	<p>Review of operation of Act</p> <p>Clause 42 requires an independent review of the scheme and the Act to be completed before the 5th anniversary of the commencement of the Act.</p> <p>Once the review is completed, the Minister is to be given a written report on the outcome of the review, and the Minister is required to table that report in Parliament within 10 sitting days of receipt of the report.</p> <p>This section doesn't apply if a committee or joint committee of Parliament has reviewed the operation of this Act.</p>
<p>Clause 46</p>	<p>Administration of Act</p> <p>This clause establishes that the administration of this Act is assigned to the Minister for Environment, and the department responsible is the Department of Primary Industries, Parks, Water and Environment.</p>