



Western Australia

Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019

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Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019

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Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019

No. 5 of 2019

An Act to amend the *Waste Avoidance and Resource Recovery Act 2007*.

[Assented to 20 March 2019]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

3. Act amended

This Act amends the *Waste Avoidance and Resource Recovery Act 2007*.

4. Long title amended

In the long title after the 2nd bullet point insert:

- **establish a container deposit scheme; and**

5. Section 19 amended

After section 19(1) insert:

- (1A) A reference to “this Act” in Schedule 2 does not include a reference to Part 5A.

6. Part 5A inserted

After section 47 insert:

Part 5A — Container deposit scheme

Division 1 — Preliminary

47A. Objects of Part

The main objects of this Part are to —

- (a) increase the recovery and recycling of empty beverage containers; and
- (b) reduce the number of empty beverage containers that are disposed of as litter or to landfill; and
- (c) ensure that first responsible suppliers of beverage products take product stewardship responsibility in relation to their beverage products; and
- (d) provide opportunities for social enterprise, and benefits for community organisations, through participation in the container deposit scheme; and
- (e) create opportunities for employment; and
- (f) complement existing collection and recycling activities for recyclable waste.

47B. Overview of container deposit scheme

This Part establishes a container deposit scheme that includes the following general features —

- (a) a company will be appointed to the office of Coordinator of the scheme with responsibility for administering the scheme;

- (b) if a beverage is to be supplied in a container, various conditions must be met, including a supply agreement being in force that requires a contribution to the costs of the scheme (including the costs of refund amounts paid under the scheme);
- (c) a refund amount will be paid to a person who returns an empty container to a refund point;
- (d) containers that have been returned to a refund point must not be disposed of in a prohibited manner.

47C. Terms used

- (1) In this Part —

appointed day, for a section, has the meaning given in subsection (2);

beverage means —

- (a) a substance that is a liquid at room temperature and intended for human consumption by drinking; or
- (b) a thing or class of things prescribed by the regulations to be a beverage,

but does not include a thing or class of things prescribed by the regulations not to be a beverage;

beverage product means a product that consists of a particular beverage packaged in a container of a particular type;

civil penalty has the meaning given in section 47ZZ(1);

company means a company registered under the Corporations Act;

container means —

- (a) a vessel that is made to be —

- (i) filled with a beverage; and
- (ii) sealed for storage, transport and handling before being supplied for the use or consumption of the beverage;

or

- (b) a thing or class of things prescribed by the regulations to be a container,

but does not include a thing or class of things prescribed by the regulations not to be a container;

container approval has the meaning given in section 47F(1);

Coordinator means the company for the time being occupying the office of Coordinator of the scheme under section 47X;

Corporations Act means the *Corporations Act 2001* (Commonwealth);

corresponding law means a law of the Commonwealth or another State or a Territory that is prescribed by the regulations to be a law corresponding to this Act;

disposal premises means premises —

- (a) which are used for the purpose of receiving waste; and
- (b) in respect of which the occupier is required to hold a licence under the *Environmental Protection Act 1986*, whether or not the licence is in force;

eligible company has the meaning given in section 47V(1);

eligible individual means an individual who —

- (a) is not an insolvent under administration within the meaning of the Corporations Act section 9; and

- (b) is not disqualified from managing corporations, under the Corporations Act Part 2D.6; and
- (c) has not been convicted of —
 - (i) an offence against this Act, the *Environmental Protection Act 1986* or a corresponding law; or
 - (ii) an indictable offence, or an offence that, if committed in Western Australia, would be an indictable offence, against another written law or another law of the Commonwealth or another State or a Territory;

exporter means a person who, within the meaning given in section 47P(2), exports a beverage product;

export rebate agreement has the meaning given in section 47P(3);

first responsible supplier has the meaning given in section 47D;

Interim Coordinator has the meaning given in section 47ZT(1);

material recovery agreement has the meaning given in section 47R(2);

material recovery facility means —

- (a) a facility or other place at which recyclable waste is sorted and prepared for recycling, whether or not the waste is also recycled at the facility or place; or
- (b) a facility or other place or class of facilities or places prescribed by the regulations to be a material recovery facility,

but does not include a facility or other place or class of facilities or places prescribed by the regulations not to be a material recovery facility;

MRF operator means the operator of a material recovery facility;

prohibited manner, in relation to the disposal of a container, means disposing of the container —

- (a) at disposal premises; or
- (b) by burial; or
- (c) in contravention of the *Environmental Protection Act 1986* Part V Division 1; or
- (d) in any other manner prescribed by the regulations to be a prohibited manner,

but does not include any manner of disposing of the container that is prescribed by the regulations not to be a prohibited manner;

refund amount means the amount prescribed for the purposes of section 47J;

refund mark means marking or labelling on a container that shows the refund amount and complies with the requirements prescribed by the regulations;

refund point means —

- (a) a facility or other place for the return of empty containers in exchange for the payment of refund amounts; or
- (b) a facility or other place or class of facilities or places prescribed by the regulations to be a refund point,

but does not include a facility or other place or class of facilities or places prescribed by the regulations not to be a refund point;

refund point agreement has the meaning given in section 47Q(1);

refund point operator means —

- (a) the operator of a refund point; or

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- (b) a person or class of persons prescribed by the regulations to be a refund point operator,

but does not include a person or class of persons prescribed by the regulations not to be a refund point operator;

scheme means the container deposit scheme established by this Part;

Scheme Account has the meaning given in section 47ZN(1);

scheme agreement means each of the following —

- (a) an export rebate agreement;
- (b) a material recovery agreement;
- (c) a refund point agreement;
- (d) a supply agreement;

supply means —

- (a) to supply, by way of sale or otherwise, in the course of carrying on a business; or
- (b) to supply free of charge for a commercial or promotional purpose,

but does not include a transaction or class of transactions prescribed by the regulations not to be a supply;

supply agreement has the meaning given in section 47O(1);

supply amounts has the meaning given in section 47O(1);

type, in relation to a container, is the combination of —

- (a) the volume of a beverage the container is made to hold; and
- (b) the material the container is made of.

- (2) A reference in a section in this Part to the *appointed day* for the section is a reference to the day fixed by the Minister by order published in the *Gazette* to be the appointed day for the purposes of that section.
- (3) Subject to subsection (4), for the purposes of this Part, a supply of a beverage product is *in the State* if —
 - (a) the beverage product is received in the State (whether or not the supplier is located in the State); or
 - (b) under the regulations, it is taken to be in the State.
- (4) A supply of a beverage product is not in the State if, under the regulations, it is taken not to be in the State.
- (5) In sections 47ZE, 47ZF, 47ZM, 47ZN(1) and (2) and 47ZP a reference to a Coordinator includes a company that has been notified of its appointment to the office of Coordinator of the scheme under section 47X but has not yet commenced occupying the office.

47D. First responsible supplier

- (1) Subject to subsection (2), the *first responsible supplier* of a beverage product is —
 - (a) the person who first supplies the beverage product in the State; or
 - (b) the person who, under the regulations, is taken to be the first responsible supplier of the beverage product.
- (2) A person is not the first responsible supplier of a beverage product if, under the regulations, the person is taken not to be the first responsible supplier of the beverage product.

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- (3) Unless the regulations provide otherwise, if a person (the **transporter**) only transports a beverage product between the supplier of the beverage product and the recipient of the beverage product, each of the following is not a supply of the beverage product —
 - (a) the transfer of the beverage product from the supplier to the transporter;
 - (b) the transfer of the beverage product from the transporter to the recipient.
- (4) Unless the regulations provide otherwise, if a person (the **contract bottler**) is engaged under a contract to make a beverage product or fill containers with a beverage for another person (the **contract counterparty**), in circumstances where the beverage product is manufactured solely for the contract counterparty, the transfer of the beverage product from the contract bottler to the contract counterparty following completion of the manufacturing process is not a supply.
- (5) For the purposes of subsections (1)(b) and (2), the regulations may provide for circumstances in which a person, or a person who belongs to a prescribed class or who meets prescribed criteria —
 - (a) is taken to be the first responsible supplier of a beverage product or class of beverage products;
or
 - (b) is taken not to be the first responsible supplier of a beverage product or class of beverage products.
- (6) Without limiting subsection (5), the circumstances referred to in that subsection may include circumstances where a person has entered into an agreement with another person as to who is to be the first responsible supplier of a beverage product.

Division 2 — Supply of beverage products

47E. Requirement for supply agreement, container approval, refund mark and barcode

- (1) Subsection (2) applies on and after the appointed day for this section.
- (2) A person who is the first responsible supplier of a beverage product commits an offence when the beverage product is first supplied in the State unless, at that time —
 - (a) a supply agreement is in force between the person and the Coordinator in relation to the beverage product; and
 - (b) a container approval that applies to the beverage product is in force (whether or not it is held by the person); and
 - (c) the container used for the beverage product bears a refund mark and a barcode that complies with the requirements prescribed by the regulations.

Penalty for this subsection: a fine of \$75 000.

- (3) If a person charged with an offence against subsection (2) supplied the beverage product in the State, the person is taken, in any proceedings for the offence, to be the first responsible supplier of the beverage product unless the contrary is shown.
- (4) Regulations may deal with any matter in relation to the supply of beverage products or a person who supplies beverage products.

47F. Container approval

- (1) On and after the appointed day for this section, a person may apply to the CEO for an approval (a

container approval) that applies to a beverage product or class of beverage products.

- (2) The CEO may, subject to the regulations, grant or refuse to grant the container approval.
- (3) A container approval is subject to —
 - (a) any conditions prescribed by the regulations; and
 - (b) any further conditions the CEO —
 - (i) considers necessary or desirable to impose; and
 - (ii) specifies in the approval.
- (4) The first responsible supplier of a beverage product must not contravene a condition of a container approval that applies to the beverage product.
Penalty for this subsection: a fine of \$10 000.

47G. Regulations relating to container approvals

Regulations may deal with any matter in relation to container approvals or applications for container approvals, and may (without limitation) —

- (a) deal with, or with any matter in relation to, any of the following —
 - (i) the manner and form in which an application for a container approval is to be made and the process for applying;
 - (ii) the information that must accompany an application for a container approval or otherwise be provided to the CEO;
 - (iii) the payment of fees in relation to container approvals or applications for container approvals;

- (iv) the matters to be considered in deciding whether to grant a container approval and the criteria that must be met before a container approval is granted;
- (v) the grounds on which a container approval may be refused or taken to be refused;
- (vi) the way in which the grant of, or refusal to grant, a container approval is to be communicated;
- (vii) the conditions to be imposed on a container approval, including the term of a container approval;
- (viii) the amendment of a container approval by the CEO (including the amendment or revocation of conditions on the approval or the imposition of new conditions);
- (ix) the transfer of a container approval by the holder;
- (x) the suspension or cancellation of a container approval by the CEO;
- (xi) the maintenance by the Coordinator of a public database of container approvals, including the information to be included, the information required to be provided to the Coordinator, the payment of fees or charges and the requirements the database must comply with;

and

- (b) require the verification of information or documents by statutory declaration; and

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- (c) prescribe offences in relation to the supply by a person or class of persons of beverage products that do not have a container approval; and
- (d) provide for any of the following —
 - (i) circumstances in which an approval (however described) under a corresponding law is taken to be a container approval;
 - (ii) circumstances in which a container approval is taken to be held, including where an approval (however described) is held under a corresponding law, or where a person has complied with prescribed requirements of a corresponding law;
 - (iii) the conditions that apply to a container approval referred to in subparagraphs (i) and (ii).

47H. Review by State Administrative Tribunal

A person who is, or intends to be, the first responsible supplier of a beverage product may apply to the State Administrative Tribunal for a review of —

- (a) a decision of the CEO to refuse to grant a container approval that applies to the beverage product; or
- (b) a decision of the CEO to refuse to transfer a container approval that applies to the beverage product to or from the person (but only if, in the case of a transfer of a container approval to the person, the current holder of the container approval has consented to the application for review); or

- (c) a decision of the CEO to amend, suspend or cancel a container approval that applies to the beverage product.

Division 3 — Return of containers

47I. Requirements for refund point operators

- (1) A person (other than the Coordinator) must not act as a refund point operator in respect of a refund point unless a refund point agreement is in force between the person and the Coordinator in respect of the refund point.

Penalty for this subsection: a fine of \$75 000.

- (2) Regulations may prescribe eligibility criteria that must be met before a person may act as a refund point operator.

47J. Refund amount

Regulations may prescribe an amount as the refund amount for the purposes of this Part.

47K. Regulations relating to refund points and refund amounts

Regulations may deal with any matter in relation to refund points, refund amounts or the acceptance of empty containers at refund points, and may (without limitation) —

- (a) prescribe the circumstances in which a refund point operator —
 - (i) is or is not required to accept delivery of an empty container presented by a person to a refund point; and
 - (ii) is or is not required to pay to the person the refund amount;

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- and
- (b) deal with, or with any matter in relation to, the manner in which refund amounts are to be paid; and
- (c) prescribe any conditions that must be met before a person may receive a refund amount (including any information that a person must give); and
- (d) prohibit a person or class of persons from claiming, or attempting to claim, payment of a refund amount —
 - (i) to which they are not entitled under this Act; or
 - (ii) in prescribed circumstances;
- and
- (e) require information or documents given by a person to be verified by statutory declaration.

47L. Coordinator as refund point operator

- (1) The Coordinator must not act as a refund point operator unless directed to do so by the Minister.
 - (2) The Minister may direct the Coordinator to act as a refund point operator in respect of a refund point —
 - (a) if —
 - (i) persons in part of the community do not have reasonable access to a refund point; and
 - (ii) the Coordinator has not identified another person with whom to enter into a refund point agreement to operate the refund point;
- or

- (b) if the achievement of the objects of this Part may be materially adversely affected without the provision of the refund point.

47M. Collected or returned containers must not be disposed of in a prohibited manner

- (1) In this section, an empty container is a *collected container* if —
 - (a) a container approval is in force that applies to the beverage product for which the container was used; and
 - (b) the container has been collected or received by an MRF operator (other than where the container was returned to a refund point).
- (2) In this section, an empty container is a *returned container* if —
 - (a) a container approval is in force that applies to the beverage product for which the container was used; and
 - (b) the container has been returned to a refund point.
- (3) On and after the appointed day for this section, the Coordinator must not dispose of, or allow the disposal of, a collected container or a returned container in a prohibited manner.
Penalty for this subsection: a fine of \$250 000.
- (4) On and after the appointed day for this section, an MRF operator must not dispose of, or allow the disposal of, a collected container or a returned container in a prohibited manner.
Penalty for this subsection: a fine of \$50 000.

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- (5) On and after the appointed day for this section, a person (other than the Coordinator or an MRF operator) must not dispose of, or allow the disposal of, a container in a prohibited manner if —
- (a) the container is a collected container or a returned container; and
 - (b) the person knows, or ought reasonably to know, that the container is a collected container or a returned container.

Penalty for this subsection: a fine of \$50 000.

- (6) If an exemption has been granted in respect of a container under section 47N, subsections (3), (4) and (5) do not apply to the container.
- (7) For the purposes of subsections (3), (4) and (5), a person has allowed the disposal of a container in a prohibited manner if —
- (a) the person arranged for the container to be disposed of; and
 - (b) when the person made the arrangement, or at any later time prior to the disposal, the person knew, or ought reasonably to have known, that the container was likely to be disposed of in a prohibited manner; and
 - (c) the container was disposed of in a prohibited manner.
- (8) A person has not disposed of, or allowed the disposal of, a container in a prohibited manner if —
- (a) the person took the container, or arranged for the container to be taken, to a facility at which containers of that type can be recycled; and
 - (b) part of the container could not be recycled at the facility; and

- (c) only that part of the container was disposed of in a prohibited manner.
- (9) Nothing in this section or section 47N affects the liability of a person for disposing of a container in a manner that contravenes the *Environmental Protection Act 1986* or any other written law.

47N. Extraordinary circumstances exemption

- (1) This section applies if a container has become unsuitable to be recycled because of extraordinary circumstances.
- (2) On and after the appointed day for this section, a person may apply to the CEO for an exemption from the requirements of section 47M in respect of the container.
- (3) The CEO may grant the exemption, subject to any conditions that the CEO specifies in the exemption, if satisfied that —
 - (a) the container has become unsuitable to be recycled; and
 - (b) the circumstances that caused the container to become unsuitable to be recycled were extraordinary and either —
 - (i) could not have reasonably been foreseen by the person; or
 - (ii) were beyond the person's control.
- (4) A person who has been granted an exemption must comply with any condition specified in the exemption.
Penalty for this subsection: a fine of \$50 000.

Division 4 — Scheme agreements and scheme participants

470. Supply agreement

- (1) The Coordinator may enter into a written agreement (a *supply agreement*) with a person in relation to one or more beverage products that includes provisions about —
 - (a) unless the regulations provide otherwise, the person's obligation to pay to the Coordinator amounts (*supply amounts*) to contribute to the costs of —
 - (i) paying refund amounts in relation to containers used for the beverage products that are returned to refund points; and
 - (ii) paying amounts to MRF operators in relation to containers used for the beverage products that are collected or received by the MRF operators; and
 - (iii) administering the scheme, including the costs of paying other amounts to refund point operators and any other costs reasonably incurred by the Coordinator in carrying out its functions;and
 - (b) any other matter prescribed by the regulations.
- (2) On and after the appointed day for this section, if a supply agreement requires a person to pay supply amounts, the person must pay the supply amounts to the Coordinator in accordance with this Act and the terms of the supply agreement.
Civil penalty: \$50 000.

- (3) The Coordinator must not claim, or attempt to claim, payment from a person under a supply agreement —
 - (a) if the Coordinator is not entitled to the payment under this Act or the supply agreement; or
 - (b) in any other circumstances prescribed by the regulations.

Civil penalty: \$50 000.

47P. Export rebate agreement

- (1) In this section —

scheme container means a container in relation to which a supply amount has been paid under a supply agreement.
- (2) A person *exports* a beverage product —
 - (a) if the person supplies the beverage product from the State to a place outside of the State, unless under the regulations the supply of the beverage product is taken not to be an export; or
 - (b) if under the regulations, the person is taken to export the beverage product.
- (3) The Coordinator may enter into a written agreement (an *export rebate agreement*) with an exporter that includes provisions about —
 - (a) the Coordinator's obligation to make payments to the exporter in relation to scheme containers used for beverage products that the person exports; and
 - (b) any other matter prescribed by the regulations.

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- (4) An exporter must not claim, or attempt to claim, payment from the Coordinator under an export rebate agreement —
- (a) if the exporter is not entitled to the payment under this Act or the export rebate agreement; or
 - (b) in any other circumstances prescribed by the regulations.

Civil penalty: \$50 000.

47Q. Refund point agreement

- (1) The Coordinator may enter into a written agreement (a ***refund point agreement***) with a person that includes provisions about —
- (a) the Coordinator's obligation to make payments to the person for certain costs incurred by the person in operating a refund point; and
 - (b) any other matter prescribed by the regulations.
- (2) A refund point operator must not claim, or attempt to claim, payment from the Coordinator under a refund point agreement —
- (a) if the refund point operator is not entitled to the payment under this Act or the refund point agreement; or
 - (b) in any other circumstances prescribed by the regulations.

Civil penalty: \$50 000.

47R. Material recovery agreement

- (1) In this section, a container is an ***approved container*** if a container approval is in force that applies to the beverage product for which the container was used.

- (2) The Coordinator may enter into a written agreement (a *material recovery agreement*) with an MRF operator that includes provisions about —
 - (a) the Coordinator’s obligation to make payments to the MRF operator in relation to empty approved containers the MRF operator collects or receives (other than containers that have been returned to a refund point); and
 - (b) any other matter prescribed by the regulations.
- (3) An MRF operator must not claim, or attempt to claim, payment from the Coordinator under a material recovery agreement —
 - (a) if the MRF operator is not entitled to the payment under this Act or the material recovery agreement; or
 - (b) in any other circumstances prescribed by the regulations.

Civil penalty: \$50 000.

47S. Regulations relating to scheme agreements and scheme participants

- (1) In this section —

scheme participant means each of the following —

 - (a) a party to a scheme agreement (other than the Coordinator);
 - (b) any other person who is —
 - (i) the first responsible supplier of a beverage product; or
 - (ii) an exporter; or
 - (iii) a refund point operator; or
 - (iv) an MRF operator.

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- (2) Regulations may deal with any matter in relation to a scheme participant, a scheme agreement or payments under a scheme agreement.
- (3) Without limiting subsection (2), regulations may do any of the following —
 - (a) deal with the content of a scheme agreement, including the matters or terms that must be included in a scheme agreement;
 - (b) require a scheme agreement to be approved by the Minister or CEO or be in a form or format approved by the Minister or CEO;
 - (c) deal with, or with any matter in relation to, the review, amendment, assignment, novation, termination or term of a scheme agreement;
 - (d) deal with, or with any matter in relation to, the following —
 - (i) the cases or classes of cases in which a supply agreement is not to require a person to pay supply amounts, or is to require a person to pay reduced supply amounts;
 - (ii) the circumstances in which a requirement in a supply agreement to pay supply amounts has effect (including any conditions that must be met before payment is required);
 - (iii) the scheme participants or classes of scheme participants that may be entitled to payment under a scheme agreement;
 - (iv) the circumstances in which a scheme participant is entitled to payment under a scheme agreement (including any conditions that must be met before a

- scheme participant is entitled to payment);
- (v) how the amounts to be paid under a scheme agreement are to be calculated;
 - (vi) without limiting subparagraph (v), how supply amounts under a supply agreement are to be calculated, including the means for estimating the number of containers that will be returned to refund points that were used for beverage products to which the supply agreement relates;
 - (vii) without limiting subparagraph (v), how payments under an MRF agreement are to be calculated, including the means for estimating the number of containers collected or received by an MRF operator;
 - (viii) the terms and conditions of payment under a scheme agreement;
 - (ix) the manner in which the Coordinator or a scheme participant is required to make claims for payment under a scheme agreement;
 - (x) the assessment of claims for payment under a scheme agreement;
- (e) impose obligations on a scheme participant, including in relation to complying with a scheme agreement, supplying beverage products, exporting beverage products, operating refund points, collecting or receiving beverage products, record keeping and reporting;

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- (f) require information or documents given by a scheme participant or the Coordinator to be verified by statutory declaration;
- (g) deal with, or with any matter in relation to, an MRF operator sharing, with a local government operating a waste collection service, payments received by the MRF operator from the Coordinator, including —
 - (i) agreements between MRF operators and the local governments in respect of the sharing of payments, including the period within which an agreement must be reached, and the consequences of failing to reach an agreement; and
 - (ii) how payments are to be shared in the absence of any agreement.

47T. Content of scheme agreements not limited

Subject to the regulations, nothing in this Division limits the matters for which a scheme agreement may provide.

Division 5 — Coordinator of the scheme

Subdivision 1 — Preliminary

47U. Terms used

- (1) In this Division —
 - beverage supplier* means —
 - (a) a person who supplies beverage products; or
 - (b) a person who does not supply beverage products, but who is taken under this Act to be the first responsible supplier of a beverage product;

business associate, of a corporation means —

- (a) a member or shareholder of the corporation; or
- (b) a person who otherwise holds a beneficial interest in the corporation; or
- (c) another person whom the Minister is satisfied is associated with the ownership or management of the corporation or is in a position to control or influence the affairs of the corporation,

but does not include an executive officer of the corporation;

corporation has the meaning given in the Corporations Act section 57A;

executive officer, of a corporation, means a person (whatever the person's position is called and whether or not the person is a director of the corporation) who —

- (a) is a member of the governing body of the corporation; or
- (b) is concerned with, or takes part in, the corporation's management;

independent of the beverage industry, in relation to a person, means that the person is not a beverage supplier or an executive officer, employee or business associate of a beverage supplier;

independent of the waste industry, in relation to a person, means that the person is not a provider of a waste service, or an executive officer, employee or business associate of a provider of a waste service;

major beverage supplier means a beverage supplier other than a minor beverage supplier;

minor beverage supplier means a beverage supplier or class of beverage suppliers that is prescribed by the regulations to be a minor beverage supplier.

47V. Eligible company

- (1) An *eligible company* is a company that —
 - (a) is carried on other than for the profit or gain of its individual members; and
 - (b) has a constitution that complies with subsection (2).
- (2) The constitution of a company complies with this subsection if it, at all times —
 - (a) requires the company to maintain a board, constituted by 9 directors, that has the composition required under subsection (3); and
 - (b) prohibits dividends being paid to, or the income, profits or assets of the company being distributed among, its members; and
 - (c) requires the persons appointed or employed as executive officers of the company to be eligible individuals; and
 - (d) includes provisions about —
 - (i) the way the chair and directors are appointed and removed; and
 - (ii) the way the chair and directors vote on and decide matters; and
 - (iii) the remuneration and other entitlements of the chair and directors; and
 - (iv) the way the constitution is amended; and
 - (v) any other matter prescribed by the regulations.
- (3) The required composition of the board is the following —
 - (a) a chair who is —

- (i) a director; and
 - (ii) independent of the beverage industry;
and
 - (iii) independent of the waste industry; and
 - (iv) approved by the Minister;
- (b) at least 1 director who is an executive officer, employee or business associate of a minor beverage supplier or an association that represents minor beverage suppliers;
- (c) at least 1 director who is an executive officer, employee or business associate of a major beverage supplier;
- (d) at least 1 director who —
 - (i) is independent of the beverage industry;
and
 - (ii) has experience in the recycling and waste industry (including, but not limited to, experience in waste recovery, processing, transport or logistics);
- (e) in addition to the chair, at least 1 other director who —
 - (i) represents the interests of the community; and
 - (ii) is independent of the beverage industry;
and
 - (iii) is independent of the waste industry;
and
 - (iv) is approved by the Minister;
- (f) at least 2 other directors who —
 - (i) have legal or financial qualifications and experience; and

- (ii) are independent of the beverage industry; and
 - (iii) are independent of the waste industry.
- (4) Regulations may deal with any matter in relation to the Minister's approval under subsection (3)(a)(iv) and (e)(iv) and may (without limitation) deal with the grounds on which the Minister may refuse to approve a person.

Subdivision 2 — Appointment of Coordinator of the scheme

47W. Office of Coordinator of the scheme

- (1) An office of Coordinator of the scheme is established.
- (2) The office of Coordinator of the scheme is not —
 - (a) an office in the Public Service; or
 - (b) an organisation for the purposes of the *Public Sector Management Act 1994*; or
 - (c) an office established for a public purpose.
- (3) The *Public Sector Management Act 1994* does not apply to, or in relation to, the appointment of the Coordinator and the Coordinator is not subject to that Act.
- (4) The Coordinator is not an agent of the State and does not have the status, immunities and privileges of the State.

47X. Appointment of Coordinator

- (1) The Minister may appoint an eligible company to the office of Coordinator of the scheme.
- (2) The Minister may invite eligible companies to apply for appointment to the office of Coordinator of the

scheme, and may assess any applications received, in any manner the Minister considers appropriate.

- (3) The appointment of an eligible company to the office of Coordinator of the scheme must be by notice in writing given to the eligible company.
- (4) The notice must specify —
 - (a) the day on which the eligible company is to commence occupying the office; and
 - (b) whether the appointment is indefinite or for a period specified in the notice; and
 - (c) any other matter prescribed by the regulations.

47Y. Conditions of appointment

- (1) The Minister may attach conditions to an appointment under section 47X(1).
- (2) The conditions must be specified in the notice of appointment.
- (3) Regulations may deal with any matter in relation to the Minister's power to attach conditions under subsection (1) or amend or revoke or attach new conditions under section 47ZQ(1)(a) and may (without limitation) deal with the content of a condition or amendment.

47Z. Functions of Coordinator

- (1) The Coordinator's main function is to administer and provide governance for the scheme.
- (2) Without limiting subsection (1), the Coordinator has the following functions —
 - (a) to enter into, and manage, supply agreements in order to ensure contributions are made to the costs of the scheme;

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- (b) to establish and maintain databases of container approvals and scheme agreements;
- (c) to enter into, and manage, export rebate agreements;
- (d) to establish a network of refund points by entering into refund point agreements and, if directed to do so by the Minister, by acting as a refund point operator;
- (e) to enter into, and manage, refund point agreements;
- (f) to enter into, and manage, material recovery agreements;
- (g) to ensure arrangements are in place for —
 - (i) returning and collecting containers; and
 - (ii) handling, sorting, processing, verifying, transporting and recycling containers that have been returned to a refund point or collected or received by an MRF operator;
- (h) to determine the amounts payable under the scheme to and by the Coordinator under scheme agreements;
- (i) to make and receive the payments referred to in paragraph (h);
- (j) to ensure arrangements are in place for verifying the validity of payments claimed and made under the scheme;
- (k) to raise and maintain public awareness of the scheme, including how the scheme operates and the location of refund points;
- (l) to receive and deal with complaints relating to the scheme from members of the public and entities participating in the scheme;

- (m) to obtain data on recycling rates for containers prior to the commencement of the scheme and throughout its operation in order to measure the outcomes of the scheme;
 - (n) any other functions given under this Act or another Act.
- (3) Regulations may deal with any matter in relation to the Coordinator's functions, and may (without limitation) —
- (a) give the Coordinator additional functions; and
 - (b) deal with any matter in relation to the Coordinator's performance of its functions.

47ZA. Powers of Coordinator

The Coordinator has all the powers it needs to perform its functions.

47ZB. Delegation by Coordinator

- (1) The Coordinator may delegate any function of the Coordinator under another provision of this Act or another written law to —
- (a) a director of the Coordinator; or
 - (b) the chief executive officer of the Coordinator (however described); or
 - (c) an appropriately qualified employee of the Coordinator.
- (2) The delegation must be in writing executed by the Coordinator.
- (3) Except as provided in subsection (4), a person to whom a function is delegated under this section cannot delegate that function.

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- (4) A delegation under subsection (1)(b) to the chief executive officer of the Coordinator (however described) may expressly authorise the chief executive officer to further delegate the function to an appropriately qualified employee of the Coordinator.
- (5) A person performing a function that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation, unless the contrary is shown.
- (6) Nothing in this section limits the ability of the Coordinator to perform a function through an officer or agent.

Subdivision 3 — Operations of Coordinator

47ZC. Coordinator must not act unfairly

- (1) In negotiating, entering into, performing obligations under or enforcing a scheme agreement, the Coordinator must not act unfairly, or unreasonably discriminate, against or in favour of any person.
- (2) The Coordinator must not enter into an agreement that is, or contains a provision that is, inconsistent with this Act.

47ZD. Coordinator performance targets

Regulations may deal with any matter in relation to performance targets for the Coordinator, and may (without limitation) deal with, or with any matter in relation to —

- (a) the performance targets and other measures by which the performance of the Coordinator is to be judged, which may include targets in relation to —

- (i) the number, location and accessibility to the public of refund points; and
 - (ii) the rate of return or collection of containers (including by reference to any particular area of operation);
- and
- (b) the period for which a performance target is to be judged; and
 - (c) how the Coordinator is to report on its performance against a performance target; and
 - (d) the consequences of the Coordinator failing to achieve a performance target, which may include the Minister giving a written direction, appointing an administrator to the Coordinator, or amending or revoking the appointment of the Coordinator.

47ZE. Business plan of Coordinator

- (1) The Coordinator must prepare a draft business plan and give it to the Minister at each of the following times —
 - (a) in the case of the first draft business plan given by a particular Coordinator — at a time directed by the Minister;
 - (b) in the case of subsequent plans — no later than 3 months before the start of each financial year that has not been covered by a business plan given to the Minister.
- (2) A draft business plan given under subsection (1) must cover the following period (the *relevant period*) —
 - (a) in the case of a plan given under subsection (1)(a) — the period directed by the Minister; and
 - (b) in any other case — the financial year following the day on which the plan is given.

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- (3) A draft business plan must be prepared and given in accordance with any requirements prescribed by the regulations and must include —
- (a) a budget of estimated costs of the scheme for the relevant period, including the estimated costs of —
 - (i) the Coordinator; and
 - (ii) refund amounts to be paid under the scheme; and
 - (iii) the operation of refund points, including handling, sorting, processing, verifying, transporting and recycling containers;and
 - (b) in the case of —
 - (i) a plan given under subsection (1)(a) — a strategic plan for the duration of the Coordinator’s term of appointment or any other period directed by the Minister; and
 - (ii) any subsequent plan — an update of the original strategic plan for the duration of the Coordinator’s term of appointment or any other period directed by the Minister;and
 - (c) an operational plan for the relevant period.

47ZF. Approval of business plan

- (1) In this section —
relevant period means a financial year or another period referred to in section 47ZE(2)(a).

- (2) If the Coordinator gives the Minister a draft business plan in relation to a relevant period under section 47ZE or subsection (3), the Minister may, by written notice —
 - (a) approve the draft business plan; or
 - (b) direct the Coordinator to, within the period specified in the notice —
 - (i) take specified steps in relation to the draft business plan or make specified modifications to the draft business plan; and
 - (ii) submit a revised draft business plan.
- (3) The Coordinator must comply with a direction under subsection (2)(b) as soon as is practicable and in any event within the period specified in the notice.
- (4) A draft business plan in relation to a relevant period that has been approved under subsection (2)(a) is the business plan for that period.
- (5) If the Minister has not approved a draft business plan in relation to a relevant period before the start of that period, the business plan for that period is, until a business plan is approved for the period, the business plan for the previous relevant period with any modifications determined by the Minister.

47ZG. Amendment to business plan

- (1) The Coordinator may amend a business plan during the period covered by the plan.
- (2) The Coordinator must give the amended business plan to the Minister within 10 business days after making the amendment.

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- (3) The Minister may, by written notice, approve the amended business plan.
- (4) An amendment to a business plan, other than a minor amendment that does not materially change the plan, has no effect until the amended business plan has been approved by the Minister.

47ZH. Compliance with business plan

- (1) In this section —
business plan, for a period, means the business plan that is the business plan for that period under section 47ZF(4) or (5), as amended by any amendments that have effect under section 47ZG.
- (2) The Coordinator must have regard to the business plan for the current period in carrying out its functions.
- (3) The Coordinator must not depart significantly from the business plan for the current period without first obtaining the approval of the Minister.
- (4) The Coordinator must ensure that a copy of the business plan for the current period is —
 - (a) available for inspection by members of the public at its principal place of business whenever that place is open to the public; and
 - (b) published on the internet.

47ZI. Reporting by Coordinator

Regulations may deal with any matter in relation to the provision or publication of information by the Coordinator or the reporting and notification obligations of the Coordinator, and may (without limitation) —

- (a) require the Coordinator to provide or publish prescribed information or a prescribed class of information; and
- (b) prescribe the format of information to be provided or published; and
- (c) require the Coordinator to notify the Minister about a prescribed matter or event.

47ZJ. Notification of events

- (1) In this section —

criminal record check, in relation to a person, means a document issued by the Police Force of Western Australia, the Australian Federal Police or the police force of another State or a Territory that sets out the criminal convictions (if any) of the person for offences under the law of the State, the Commonwealth or the other State or Territory.

- (2) The Coordinator must notify the CEO within 10 business days after any of the following events happens —
- (a) the Coordinator ceases to be an eligible company;
 - (b) an executive officer of the Coordinator ceases to be an eligible individual;
 - (c) the appointment or employment of an executive officer of the Coordinator ends;
 - (d) a person is appointed or employed as an executive officer of the Coordinator;
 - (e) a shareholder or member of the Coordinator ceases to be a shareholder or member of the Coordinator;
 - (f) a person becomes a shareholder or member of the Coordinator;

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- (g) the Coordinator becomes aware that a business associate of the Coordinator is not an eligible individual.
- (3) A notice about an event mentioned in subsection (2)(a) must include the Coordinator's plan and timetable for making the Coordinator an eligible company.
- (4) A notice about an event mentioned in subsection (2)(d) or (f) must be accompanied by the signed consent of the person who is the subject of the notice to —
 - (a) the collection of personal or background information about the person by the CEO; and
 - (b) a criminal record check.

47ZK. CEO to have access to information, agreements and databases

- (1) In this section —
 - document* includes any tape, disk or other device or medium on which information is recorded or stored;
 - information* means information specified, or of a description specified, by the CEO that relates to the functions of the Coordinator.
- (2) The CEO is entitled —
 - (a) to have information in the possession of the Coordinator and, if the information is in or on a document, to have, and make and retain copies of, that document; and
 - (b) without limiting paragraph (a) —
 - (i) to have, and make and retain copies of, any scheme agreement; and
 - (ii) to have access to, and extract and retain data from, any database established by the Coordinator under this Act.

- (3) For the purposes of subsection (2) the CEO may request the Coordinator to —
 - (a) provide information, agreements or data to the CEO; and
 - (b) give the CEO access to information, agreements or a database.
- (4) The Coordinator must comply with a request under subsection (3).

Subdivision 4 — Scheme Account

47ZL. Terms used

In this Subdivision —

approved governance plan, for a Scheme Account, means the plan most recently approved by the CEO for that Scheme Account under section 47ZM(4), as amended by any amendments that have effect under section 47ZM;

bank account means an account held at a bank as defined in the *Financial Management Act 2006* section 3;

scheme funds means any moneys prescribed by the regulations.

47ZM. Governance plan for Scheme Account

- (1) The Coordinator must prepare a draft governance plan for a Scheme Account and give it to the CEO at each time directed by the CEO.
- (2) A draft governance plan must be prepared and given in accordance with any requirements prescribed by the regulations and must —
 - (a) in the case of the first draft governance plan given by a particular Coordinator — set out the Coordinator's proposed governance

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arrangements for a Scheme Account, including details of —

- (i) how the funds in the Scheme Account will be controlled and accounted for during the Coordinator's appointment; and
- (ii) how the funds in the Scheme Account will be transferred to the person who replaces the Coordinator as Coordinator following any expiry, revocation or other termination of the Coordinator's appointment;

and

- (b) in the case of any subsequent plan — consist of an update of the original governance plan.
- (3) Subsection (1) does not apply to an Interim Coordinator.
- (4) If the Coordinator gives the CEO a draft governance plan under subsection (1) or (5), the CEO may, by written notice —
- (a) approve the draft governance plan; or
 - (b) direct the Coordinator to, within the period specified in the notice —
 - (i) take specified steps in relation to the draft governance plan or make specified modifications to the draft governance plan; and
 - (ii) submit a revised draft governance plan.
- (5) The Coordinator must comply with a direction under subsection (4)(b) as soon as is practicable and in any event within the period specified in the notice.

- (6) If the Coordinator wishes to amend the governance plan, the Coordinator must give the amended governance plan to the CEO within 10 business days after making the amendment.
- (7) The CEO may, by written notice, approve the amended governance plan.
- (8) An amendment to a governance plan, other than a minor amendment that does not materially change the plan, has no effect until the amended governance plan has been approved by the CEO.

47ZN. Scheme Account

- (1) The Coordinator must establish a bank account (the ***Scheme Account***) in accordance with subsection (2).
Penalty for this subsection:
 - (a) a fine of \$250 000;
 - (b) a daily penalty of a fine of \$2 500 for each day or part of a day during which the offence continues.
- (2) The Scheme Account must be established by the Coordinator —
 - (a) after the first occasion on which the CEO approves a draft governance plan given to the CEO under section 47ZM by that Coordinator; and
 - (b) before the earlier of —
 - (i) 10 business days after the approval; or
 - (ii) the day on which the Coordinator commences occupying the office of Coordinator of the scheme.

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- (3) The Coordinator must maintain the Scheme Account in accordance with this Act and the approved governance plan for the Scheme Account.

Penalty for this subsection: a fine of \$250 000.

- (4) The Coordinator —

- (a) must credit all scheme funds to the Scheme Account; and
- (b) must not credit any moneys other than scheme funds to the Scheme Account.

Penalty for this subsection: a fine of \$250 000.

47ZO. Regulations relating to Scheme Account and governance plans

Regulations may deal with any matter in relation to the Scheme Account, the use of moneys in the Scheme Account, draft governance plans or approved governance plans for the Scheme Account.

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

47ZP. Ministerial directions

- (1) The Minister may —
- (a) give written directions to the Coordinator with respect to the performance of its functions under this or any other Act, either generally or in relation to a particular matter; and
- (b) amend or revoke a direction given under paragraph (a).

- (2) Regulations may deal with any matter in relation to a power of the Minister under subsection (1) and may (without limitation) deal with —
 - (a) the grounds on which the Minister may give, amend or revoke a direction; and
 - (b) the process that must be followed in relation to the giving, amending or revoking of a direction; and
 - (c) the content of a direction or amendment.
- (3) The Coordinator must comply with a direction given under subsection (1).
Civil penalty: \$125 000.

47ZQ. Amendment, administration and revocation

- (1) The Minister may, if the Minister considers it appropriate, do any one or more of the following —
 - (a) amend or revoke the conditions that apply to the appointment of the Coordinator or attach new conditions to the appointment;
 - (b) appoint an administrator to the Coordinator or remove an administrator that has been appointed;
 - (c) revoke the appointment of the Coordinator.
- (2) Without limiting the grounds on which the Minister may exercise a power under subsection (1), the Minister may exercise the power if the Coordinator has contravened a provision of this Part or a regulation made for the purposes of this Part.
- (3) Regulations may deal with any matter in relation to a power of the Minister under subsection (1) and may (without limitation) deal with —

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- (a) the grounds on which the Minister may exercise a power under subsection (1); and
 - (b) the process that must be followed in relation to the Minister's exercise of a power under subsection (1).
- (4) Nothing in this Subdivision is intended to exclude or limit the operation of the Corporations Act Chapter 5.

47ZR. Appointment of administrator

- (1) This section applies if the Minister appoints an administrator to the Coordinator under section 47ZQ(1)(b).
- (2) The Minister may, in the notice of appointment —
- (a) limit the functions or powers of the administrator; or
 - (b) attach conditions to the appointment of the administrator.
- (3) Subject to any limits and conditions in its notice of appointment, an administrator, during the administrator's term of appointment and to the exclusion of any other person —
- (a) has control of the Coordinator's business, property and affairs; and
 - (b) may carry on that business and manage that property and those affairs; and
 - (c) may terminate or dispose of all or part of that business, and may dispose of any of that property; and
 - (d) may perform any function that the Coordinator or any of its officers could perform if the administrator had not been appointed; and

- (e) has the other functions stated in the administrator's notice of appointment.
- (4) Nothing in subsection (3) limits the generality of anything else in it.
- (5) Subject to any limits and conditions in its notice of appointment, the administrator has all the powers it needs to perform its functions.
- (6) When performing a function the administrator is taken to be acting as the Coordinator's agent.
- (7) The appointment of an administrator under section 47ZQ(1)(b) ends by force of this subsection if an administrator is appointed to the Coordinator under the Corporations Act Part 5.3A.
- (8) Regulations may deal with any matter in relation to an administrator appointed under section 47ZQ(1)(b).

47ZS. Only the administrator can deal with the Coordinator's property

- (1) In this section —
Australian ADI has the meaning given in the Corporations Act section 9;
Court means the Supreme Court of Western Australia.
- (2) This section applies if —
 - (a) an administrator is appointed to the Coordinator under section 47ZQ(1)(b); and
 - (b) during the term of the administrator's appointment, the Coordinator purports to enter into, or a person purports to enter into on behalf of the Coordinator, a transaction or dealing affecting property of the Coordinator.
- (3) The transaction or dealing is void unless —

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- (a) the administrator entered into it on the Coordinator's behalf; or
 - (b) the administrator consented to it in writing before it was entered into; or
 - (c) it was entered into under an order of the Court.
- (4) Subsection (3) does not apply to a payment made —
- (a) by an Australian ADI out of an account kept by the Coordinator with the ADI; and
 - (b) in good faith and in the ordinary course of the ADI's banking business; and
 - (c) on or before the day on which the administrator gives to the Australian ADI written notice of the administrator's appointment.
- (5) Subsection (3) has effect subject to an order that the Court makes after the purported transaction or dealing.
- (6) If, because of subsection (3), the transaction or dealing is void, or would be void apart from subsection (5), an officer or employee of the Coordinator commits an offence if the officer or employee —
- (a) purported to enter into the transaction or dealing on the Coordinator's behalf; or
 - (b) was in any other way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the transaction or dealing.

Penalty for this subsection: a fine of \$10 000.

47ZT. Interim Coordinator

- (1) If the appointment of a company to the office of Coordinator of the scheme is revoked or otherwise terminated, the Minister may appoint a person (the ***Interim Coordinator***) to perform the functions of the Coordinator for a specified period or until the Minister

appoints an eligible company to the office of Coordinator of the scheme under section 47X.

- (2) The Minister may, in the notice of appointment —
 - (a) limit the functions or powers of the Interim Coordinator; or
 - (b) attach conditions to the appointment of the Interim Coordinator.
- (3) Subject to any limits and conditions in its notice of appointment, the Interim Coordinator, during its term of appointment and to the exclusion of any other person —
 - (a) has the functions of the Coordinator under this Act; and
 - (b) has any other functions stated in the notice of appointment.
- (4) Subject to any limits and conditions in its notice of appointment, the Interim Coordinator has all the powers it needs to perform its functions.
- (5) Unless this Act expressly provides otherwise, or the context otherwise requires, during the term of an Interim Coordinator's appointment, this Act applies to the Interim Coordinator as if a reference in this Act to the Coordinator were a reference to the Interim Coordinator.
- (6) The application of this Act to the Interim Coordinator under subsection (5) is subject to any modifications that are necessary or are prescribed by the regulations.
- (7) Regulations may deal with any matter in relation to the Interim Coordinator.

47ZU. Remuneration and costs

- (1) If a person appointed as an administrator under section 47ZQ(1)(b) or as an Interim Coordinator under section 47ZT(1) is not employed in the Public Sector (as defined in the *Public Sector Management Act 1994*), the person is entitled to be paid the remuneration determined by the CEO.
- (2) The costs of and incidental to the performance of the functions of an administrator appointed under section 47ZQ(1)(b) are payable by the company to which the administrator is appointed.
- (3) Unless the CEO directs otherwise, the costs of and incidental to the performance of the functions of an Interim Coordinator are payable by the company (not itself also being an Interim Coordinator) that was the Coordinator most recently before the Interim Coordinator.

47ZV. Providing assistance

- (1) An administrator appointed under section 47ZQ(1)(b) may, for the purpose of performing its functions, by a notice given to an officer or employee or former officer or employee of the Coordinator, require the person to —
 - (a) produce documents in the person's possession that the administrator reasonably requires to perform the functions; or
 - (b) provide other information or assistance the administrator reasonably requires to perform the functions.
- (2) An Interim Coordinator may, for the purpose of performing its functions, by a notice given to an officer or employee or former officer or employee of a person

who was previously the Coordinator, require the officer or employee or former officer or employee to —

- (a) produce documents in the possession of the officer or employee or former officer or employee that the Interim Coordinator reasonably requires to perform the functions; or
 - (b) provide other information or assistance the Interim Coordinator reasonably requires to perform the functions.
- (3) A person must comply with a requirement under subsection (1) or (2) unless the person has a reasonable excuse.

Penalty for this subsection:

- (a) a fine of \$10 000;
 - (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.
- (4) It is a reasonable excuse for an individual not to comply with the requirement if doing so might tend to incriminate the individual.

47ZW. Review by State Administrative Tribunal

- (1) In this section —
- affected person* means —
- (a) a company that has been appointed to the office of Coordinator of the scheme; or
 - (b) a person who has been appointed to perform the functions of the Coordinator under section 47ZT(1).
- (2) An affected person may apply to the State Administrative Tribunal for a review of —

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- (a) the Minister's decision to amend or revoke the conditions that apply to the appointment of the affected person, or to attach new conditions to the appointment (except where the amendment, revocation or attachment was made or done at the request of, or with the agreement of, the affected person); or
- (b) the Minister's decision to appoint an administrator to the affected person; or
- (c) the Minister's decision to revoke the appointment of the affected person; or
- (d) the Minister's decision to give the affected person a direction under section 47ZP.

Subdivision 6 — Transitional arrangements

47ZX. Transitional arrangements between Coordinators

Regulations may deal with any matter in relation to the transition from a person who is, or has been, the Coordinator or an Interim Coordinator (the *previous Coordinator*) to a person who subsequently is to, or has, become the Coordinator or an Interim Coordinator (the *subsequent Coordinator*) and may (without limitation), deal with, or with any matter in relation to the following —

- (a) the transfer of funds from the Scheme Account established by the previous Coordinator, or the subsequent Coordinator's access to that Scheme Account or funds in that Scheme Account;
- (b) the novation, from the previous Coordinator to the subsequent Coordinator, of any agreement or class of agreements the previous Coordinator has entered into in relation to the scheme (despite anything in the agreements to the contrary);

- (c) the amendment, modification, assignment or termination of any agreement or class of agreements the previous Coordinator has entered into in relation to the scheme (despite anything in the agreements to the contrary);
- (d) the production of documents in the previous Coordinator's possession to the subsequent Coordinator;
- (e) the provision of information, databases, assets or assistance by the previous Coordinator to the subsequent Coordinator.

Division 6 — Miscellaneous

47ZY. Penalties for Coordinator, Interim Coordinator and directors of Coordinator

- (1) If an offence under this Part expressly applies to the Coordinator, the penalty that is expressed to apply to that offence is, for the purposes of the *Sentencing Act 1995* section 40, a statutory penalty expressly provided for a body corporate.
- (2) If the Coordinator commits an offence under this Act and, by virtue of section 93 and the *Environmental Protection Act 1986* section 118, a person who is a director or who is concerned in the management of the Coordinator is convicted of the same offence, the person is liable to a fine that is one-fifth of the maximum fine that could be imposed on a company occupying the office of Coordinator of the scheme convicted of the offence under this Act.
- (3) If the Interim Coordinator is an individual and is convicted of an offence that expressly applies to the Coordinator, the Interim Coordinator is liable to a fine that is one-fifth of the maximum fine that could be imposed on a company occupying the office of

Coordinator of the scheme convicted of the offence under this Act.

47ZZ. Civil penalty provisions

(1) In this section —

civil penalty, for a civil penalty provision, means —

- (a) in the case of a provision referred to in paragraph (a) of the definition of civil penalty provision, the amount following the expression “Civil penalty:” below that provision; or
- (b) in the case of a provision referred to in paragraph (b) of the definition of civil penalty provision, the amount prescribed under regulations referred to in subsection (2)(b).

civil penalty provision means —

- (a) a provision of this Act below which the expression “Civil penalty:” followed by an amount, expressed in dollars, appears; or
- (b) a provision of the regulations prescribed as a civil penalty provision under regulations referred to in subsection (2)(a).

(2) Regulations may —

- (a) provide that a provision of the regulations that imposes an obligation on a person (including an obligation in relation to compliance with prescribed provisions of a scheme agreement) is a civil penalty provision; and
- (b) prescribe, for a contravention of a provision referred to in paragraph (a), the amount that may, in accordance with the regulations, be demanded from or imposed on a person who contravenes the civil penalty provision, being an amount not exceeding \$25 000; and

- (c) provide for and regulate the taking of proceedings in respect of an alleged contravention of a civil penalty provision (*civil penalty proceedings*); and
- (d) provide for the making of an order that a person found in civil penalty proceedings to have contravened the civil penalty provision is to pay an amount not exceeding the civil penalty for the civil penalty provision; and
- (e) provide for other orders that can be made in civil penalty proceedings; and
- (f) provide for the enforcement of orders made in civil penalty proceedings generally, and in particular, provide for the demand for payment of the civil penalty and the enforcement of that demand; and
- (g) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied.

47ZZA. Inconsistent provision has no effect

Unless the regulations provide otherwise, a provision of any of the following agreements has no effect to the extent the provision is inconsistent with this Act —

- (a) a scheme agreement;
- (b) any other agreement entered into by the Coordinator, a first responsible supplier of a beverage product, an exporter, a refund point operator or an MRF operator, in each case in order to carry out its functions under this Act or to implement the scheme.

47ZZB. Beverages consumed on interstate or international journeys

Regulations may deal with, or with any matter in relation to, beverage products supplied, used or consumed on interstate or international journeys that begin or end in, or pass through, the State and may (without limitation) provide for payment obligations and the payment of refund amounts.

47ZZC. Power to require information or material

(1) In this section —

authorised person means the CEO or a person authorised, for the purposes of this section, in writing by the CEO;

relevant matter means the following —

- (a) the scheme, including its administration and proper operation;
- (b) the performance of the Coordinator;
- (c) compliance with this Act or any contractual arrangements relating to the scheme.

(2) An authorised person may require a person —

- (a) to provide oral or written answers to specified questions in relation to a relevant matter; or
- (b) to produce to the authorised person specified material or material of a specified class that is —
 - (i) in relation to a relevant matter; and
 - (ii) in the person's possession or control.

(3) The authorised person may make the requirement —

- (a) if an oral response is required — orally; or

- (b) in any other case — by notice given to the person to whom the requirement is addressed.
- (4) The authorised person must —
 - (a) allow a person a reasonable time within which to comply with the requirement; and
 - (b) if the requirement is made by notice given to the person, specify the time allowed in the notice.
- (5) The authorised person may require a person to verify information or documents by statutory declaration.
- (6) A person must comply with a requirement under this section within the time allowed under subsection (4) or within any further time allowed by the authorised person.

Penalty for this subsection:

 - (a) a fine of \$20 000;
 - (b) a daily penalty of a fine of \$2 000 for each day or part of a day during which the offence continues.
- (7) The CEO must ensure that each authorised person (other than the CEO) is issued with an authority in writing signed by the CEO and bearing a photograph of that authorised person.
- (8) The authorised person must carry the authority when performing functions under this section and, if it is practicable to do so, produce the authority before making a requirement under this section.

47ZZD. Disclosure of information

- (1) Regulations may allow the Minister or CEO to publish, or require another person to publish, in the manner prescribed by the regulations, any prescribed

information or class of information relating to the scheme.

- (2) Any person who publishes information in accordance with this Act is taken, for the purposes of section 93 and the *Environmental Protection Act 1986* section 120, to have disclosed the information with the prior permission in writing of the Minister.

47ZZE. Performance audit

- (1) The CEO may —
 - (a) carry out an audit of the Coordinator’s activities under this Act; or
 - (b) direct the Coordinator to engage and pay for an auditor, approved by the CEO, to conduct an audit of, and report to the CEO about, the Coordinator’s activities under this Act.
- (2) A direction given under subsection (1)(b) must specify —
 - (a) the matters to be audited; and
 - (b) a day on or before which the report must be given to the CEO.
- (3) The CEO may at any time amend or cancel a direction given under subsection (1)(b).
- (4) For the purposes of this section the CEO may approve a person as an auditor if the CEO is satisfied the person —
 - (a) has qualifications and experience that are appropriate to the audit; and
 - (b) is independent of the Coordinator and any business conducted by it; and
 - (c) is able to conduct the audit and to prepare a report in accordance with the directions given.

- (5) The Coordinator must cooperate with the CEO in the CEO's conduct of an audit under subsection (1)(a) and provide any information and documents that the CEO requests.
- (6) The Coordinator must comply with a direction given by the CEO under subsection (1)(b).
Civil penalty: \$250 000.
- (7) Regulations may deal with any matter in relation to audits under this section and may (without limitation) deal with any matter in relation to the recovery of expenses incurred by the CEO.

47ZZF. False or misleading information

- (1) A person must not do anything set out in subsection (2) —
 - (a) in connection with an application for a container approval; or
 - (b) in connection with a claim for payment under a scheme agreement or any other agreement between a person and the Coordinator; or
 - (c) in, or in connection with, a notice or document given under this Part or regulations made for the purposes of this Part; or
 - (d) in compliance, or purported compliance, with a requirement under this Part or regulations made for the purposes of this Part.Penalty for this subsection: a fine of \$50 000.
- (2) The things to which subsection (1) applies are making a statement or giving information that —
 - (a) the person knows is false or misleading in a material particular; or

- (b) omits anything without which the statement or information is, to the person's knowledge, misleading in a material particular.

47ZZG. Authorisations for competition legislation

- (1) The following are specifically authorised for the purposes of the *Competition and Consumer Act 2010* (Commonwealth) and the Competition Code of Western Australia —
 - (a) appointing, under Division 5, a company to the office of Coordinator of the scheme;
 - (b) granting, refusing, amending, transferring, suspending or cancelling a container approval;
 - (c) an export rebate agreement;
 - (d) a material recovery agreement;
 - (e) a refund point agreement;
 - (f) a supply agreement;
 - (g) the conduct of a person negotiating, entering into or performing an agreement mentioned in paragraph (c), (d), (e) or (f);
 - (h) the conduct of a person that is authorised or required by or under the conditions of a container approval.
- (2) Anything authorised to be done by subsection (1) is authorised only to the extent that it would otherwise contravene the *Competition and Consumer Act 2010* (Commonwealth) Part IV or the Competition Code of Western Australia.

47ZZH. Corporations Act displacement

- (1) In this section —
Corporations legislation means the Corporations legislation to which the Corporations Act Part 1.1A applies.
- (2) A provision of this Part, to the extent the provision is incapable of concurrent operation with a provision of the Corporations Act, is declared to be a Corporations legislation displacement provision for the purposes of section 5G of that Act in relation to the Corporations legislation generally.

47ZZI. Powers in relation to transitional matters

- (1) In this section —
specified means specified or described in transitional regulations;
transitional matter —
 - (a) means a matter or issue of a transitional nature that arises as a result of the enactment of the *Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019* or the coming into operation of provisions of that Act or regulations under this Act; and
 - (b) includes a saving or application matter or issue;**transitional regulations** means regulations referred to in subsection (2).
- (2) If there is not sufficient provision in this Part for dealing with a transitional matter, regulations may prescribe anything required, necessary or convenient to be prescribed in relation to that matter.

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- (3) Transitional regulations may provide that specified provisions of this Act —
 - (a) do not apply to or in relation to any matter; or
 - (b) apply with specified modifications to or in relation to any matter.
- (4) If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day on which the *Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019* section 6 comes into operation, the regulations have effect according to their terms.
- (5) If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as to —
 - (a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
 - (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.
- (6) Transitional regulations made in relation to a matter referred to in subsection (3) must be made within whatever period is reasonably and practicably necessary to deal with a transitional matter.

7. Section 69 amended

(1) In section 69 delete “A person other than” and insert:

(1) A person other than

(2) In section 69 in the Penalty delete “Penalty:” and insert:

Penalty for this subsection:

(3) At the end of section 69 insert:

(2) Subsection (1) does not apply to a person who collects local government waste in the course of acting as a refund point operator (as defined in section 47C).

8. Section 94 amended

(1) In section 94(1) delete “An action” and insert:

Subject to subsection (3A), an action

(2) After section 94(3) insert:

(3A) Subsection (1) does not apply to anything that a person has done in the performance or purported performance of the functions of the Coordinator of the container deposit scheme established by Part 5A.