



Regulatory Framework Discussion Paper

NSW Container Deposit Scheme

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Have your say

Stakeholder consultation will be open until 5:00pm on **Wednesday 21 September 2016**. Written submissions are encouraged from the general public, community groups, local councils and all industry sectors. The release of this discussion paper demonstrates the commitment of the NSW Government to delivering better waste and recycling outcomes.

For more information, or to provide comment, contact the EPA or visit <http://www.epa.nsw.gov.au/waste/container-deposit-scheme.htm>

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1. Introduction

- 1.1. On 8 May 2016, the Premier, the Hon Mike Baird MP, and the Minister for the Environment, the Hon Mark Speakman SC MP, announced that a refund container deposit scheme (the Scheme) will be implemented in NSW by July 2017.
- 1.2. Introducing the Scheme is a key election commitment for the Government and its introduction will be a major step toward meeting the Premier's Priority goal to reduce the volume of litter in NSW by 40% by 2020. The Scheme is the single largest initiative ever undertaken to reduce litter in NSW.
- 1.3. The Government is now seeking feedback on the regulatory framework that will underpin the Scheme. In particular, the Government is seeking feedback on the draft Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016 (the Bill), which forms the cornerstone of the regulatory framework.
- 1.4. The regulatory framework will also include supporting regulations, administrative guidelines and contractual arrangements that will be made in accordance with enabling provisions established in the Bill and which will be created once the Bill has been passed.
- 1.5. The purpose of this discussion paper is to provide information for people to understand how the regulatory framework is expected to operate and therefore how the Scheme will work in practice. The discussion paper is also supported by the consultation notes in the draft Bill itself.
- 1.6. Feedback is welcome and encouraged on the framework as well as the Bill. The Government is interested to understand any concerns about how other parts of the framework might work, as well as suggestions for improving them, so that these views can be taken into consideration when those parts are formulated.

2. Overview of the regulatory framework

- 2.1. The proposed regulatory framework for the Scheme consists of four main parts:
 - The Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016 (the Bill)
 - The Regulation
 - Contractual arrangements
 - Administrative guidelines.
- 2.2. The Bill sets out the objectives and basic framework of the Scheme, and enables further details of the Scheme to be provided for under regulation. The Bill includes the obligations on beverage suppliers to participate in the Scheme. It also provides the power for the Minister to appoint by contract a Scheme Coordinator and one or more Network Operators, who will then deliver the Scheme on the ground. The Bill also provides a head of power for the Minister to set targets and to assign responsibility for achieving those targets.
- 2.3. The Bill is proposed to be an amendment to the *Waste Avoidance and Resource Recovery Act 2001* (WARR Act) and would insert a new Part 5 that contains the provisions relating to the Scheme. The WARR Act already includes objectives to

reduce waste and increase recycling, which are in line with the objectives of the Scheme.

- 2.4. Once the Bill is passed by the Parliament, then a new Regulation will be made under the amended Act to provide additional details of the Scheme. Key matters for inclusion in the Regulation will be, for example, the amount of the refund, the scope of containers to be covered by the Scheme, details of the refund marking to be required on eligible containers, the matters the Minister may consider in determining whether persons are fit and proper persons to be the Scheme Coordinator or a Network Operator, details to be considered in approving containers and matters to be included in public reporting.
- 2.5. The third part of the regulatory framework will be the contractual agreements that will be created between the Government and the Scheme Coordinator and between the Government and the Network Operators. These agreements will lay out the roles and responsibilities of each body to determine how the Scheme should work in practice. This will include, for example, obligations to achieve performance targets and to report on the outcome of that performance. The contracts will also include incentives for good performance, such as the ability to extend the contract, as well as penalties if requirements are not met, including if targets are not achieved.
- 2.6. Finally, the regulatory framework will also include administrative guidelines. Guidelines are proposed to provide, for example, a common and approved methodology for accurately estimating the number of eligible containers collected through co-mingled kerbside recycling systems. The guidelines would lay out the methodology and the process for applying the methodology.
- 2.7. Together, these four parts make up the regulatory framework that will govern the Scheme.
- 2.8. For a more detailed analysis of how the parts will work together, please refer to the table in Appendix 1.

3. Scheme structure

- 3.1. The Scheme will be delivered through a two part structure, namely:
 - A single Scheme Coordinator, responsible for ensuring that state-wide access and recovery targets are achieved and that refunds are paid for any eligible containers that are returned to a collection point. The Scheme Coordinator will enter agreements with suppliers, to ensure that funding is available for paying refunds and any necessary handling and administration fees, and with Network Operators to ensure there is an effective collection network for people to return their containers for the refund.
 - One or more Network Operators, who will directly run or contract for a network of collection points.

Scheme Coordinator

- 3.2. The Scheme Coordinator will be appointed under contract by the Minister for the Environment. When appointing the Scheme Coordinator, the Minister must consider whether the applicant is a fit and proper person and may consider any other matter the Minister considers relevant. The contract of appointment can be for a maximum of seven years, but the contract may provide for further extensions to a maximum of a 13 year term on an uncontested basis if the Coordinator demonstrates that it is delivering

an efficient and effective Scheme. The contract extension will be designed to provide a clear incentive to the Coordinator to deliver on the policy goal of the Scheme.

3.3. The Scheme Coordinator's role will be as follows:

- a) The Scheme Coordinator will be responsible for meeting the coverage/access and recovery targets set by the regulations. The consequences of failure to meet these targets will be set out in the contract of appointment and may include financial penalties.
- b) The Scheme Coordinator will be responsible for creating an open and competitive market for the recovery of eligible containers by Network Operators. The market will be created by the Scheme Coordinator setting a 'handling fee' to be paid to Network Operators for each eligible container collected.

The handling fee will be a fixed fee for all types of eligible containers, which will not be allowed to discriminate on the basis, for example, of the size, type or brand of an eligible container, or the identity of the Network Operator. However, the Government proposes to allow different fees for different geographical regions to ensure that state-wide access is achieved. It is possible that adjustments to the fee may also be allowed based on the system used by the Network Operator to verify the number of containers collected (see discussion below on *Verification and container ownership*). The handling fee or fees will have to be publicly available. These issues will be set out in the contract of appointment.

The contract of appointment will set out limits on the Scheme Coordinator's ability to change the fee once determined. The time frame for maintaining the set fee will need to balance the needs of Network Operators to have enough certainty to invest, while at the same time having enough flexibility for the Scheme Coordinator to manage the collection market to achieve its access and recovery targets, while also minimising the costs of operating the Scheme.

- c) The Scheme Coordinator will act as a financial clearing house by collecting fees from the suppliers (to cover the refund, the handling fee and any necessary administration fees) and paying handling fees and refunds to the Network Operators. The contract of appointment will require the Scheme Coordinator to meet specific governance, transparency and reporting requirements, and to have an equitable way to allocate costs to suppliers. Ideally, the contract will require the Coordinator to develop and use standard form agreements for the arrangements between individual suppliers and the Scheme Coordinator on the one hand and the Scheme Coordinator and individual Network Operators on the other. The contract of appointment will also require the Scheme Coordinator to have a process for handling confidential supplier information without giving advantage to or disadvantaging any particular supplier or suppliers.

The Scheme Coordinator will be entitled to recover from the suppliers an administration fee to fund its operations. Details relating to the calculation of the administration fee, and any limits on increases in that fee, will be set out in the contract of appointment.

Network Operator/s

- 3.4. Network Operators will be appointed by the Minister by entry into a contract with the Government. In determining whether to appoint a Network Operator, the Minister must consider whether the operator is a fit and proper person, and may consider any other matter the Minister considers relevant.
- 3.5. For Network Operator/s to compete in the market, they will each be required to set up and service a state-wide network of collection points to meet the state-wide

coverage/access target determined in accordance with the regulations. Compliance with the state-wide coverage/access target will be assessed by determining whether the collection points belonging to the Network Operator's collection network meet the requirements of the target. The consequences of a failure to meet the coverage/access target will be addressed through the contract with the Government.

- 3.6. A Network Operator may establish a collection network that satisfies the requirements of the coverage/access target by:
- setting up and operating their own collection points
 - entering into agreements with collection point operators under which they will agree to pay collection point operators the refund amount and a handling fee in relation to eligible containers redeemed at the collection point
 - entering into side agreements with another Network Operator (where there is more than one) to share one or more collection points belonging to the other Network Operator (see below)
 - any combination of the above.
- 3.7. For the purposes of meeting the coverage/access target, a shared collection point will count as part of the collection network of all Network Operators with a share in the collection point. How the containers collected by a shared collection point would be allocated to each of the Network Operators in such an arrangement would be determined by the agreement between the relevant Network Operators. Sharing collection points may be appropriate, for example, in rural or remote areas where servicing multiple collection points may be inefficient and costly.
- 3.8. Network Operators will be entitled to receive the determined handling fee and the refund amount from the Scheme Coordinator for each eligible container collected under their network. Where the Network Operator does not operate its own collection points, it would need to pass through the refund amount to the collection point operators and whatever part of the Scheme Coordinator handling fee that is agreed with the collection point operators for their collection service. The amount paid to the collection point operators is determined between the Network Operator and the collection point.
- 3.9. The aim of this Scheme structure is to create a self-correcting tension between the Scheme Coordinator and the Network Operators. Under this structure, the Scheme Coordinator will be expected to set the handling fee at the minimum level necessary to ensure there are enough Network Operators in the market to meet the coverage/access and recovery targets. By contrast, the Network Operators will be motivated to make their own collection points as convenient as possible so they can collect as many containers as possible, since they will be paid per container.
- 3.10. The Government will be interested in appointing anyone who is able to meet the Network Operator requirements so that there is a competitive market for the collection of containers. Competition for containers will drive Network Operators to place collection points in as convenient locations as possible to collect containers that may otherwise go to a competitor. Competition in the long run is likely to drive a balanced spread of collection points to maximise the Network Operator investment in the competitive market. Meanwhile, the set handling fee and the requirement to deliver a state-wide collection network will place a constraint on Network Operators so that only those that can deliver the service at a low cost will be able to compete in the market. This way a convenient and low cost collection network has the best chance of being delivered.
- 3.11. A person involved in running the Scheme Coordinator can also be a Network Operator, as long as the Scheme Coordinator treats them in the same way as all other Network

Operators. Further requirements may also be set in the Scheme Coordinator's contract of appointment.

Verification and container ownership

- 3.12. A key factor in this structure will be the verification of the number of containers collected. Without verification, it would be easy for collection points to inflate the number of containers collected from the public and for Network Operators to inflate the containers they collect from their networks in order to receive more money. It would also be possible for the Scheme Coordinator to inflate the containers collected under the Scheme to meet the recovery target. Such inflation of the numbers of containers collected will have direct financial impacts on suppliers and ultimately consumers, adding unnecessary cost to the Scheme without any environmental improvement. While there will be penalties for misreporting, without an effective verification process, incidents of misreporting may be very difficult to detect and prove. Furthermore, a lack of transparency and effectiveness in the verification process will potentially undermine confidence in the Scheme by all parties involved and ultimately the community.
- 3.13. Transparent verification of the container count will therefore be an important part of the Scheme and a key responsibility for both the Scheme Coordinator and Network Operators under the proposed structure. The making of false or misleading claims on the number of containers collected would attract significant penalties in the Scheme Coordinator and Network Operator contracts. It would also be grounds for potentially terminating the contract.
- 3.14. Network Operators will therefore need to have auditable systems in place to accurately record the numbers of containers collected at each collection point and an auditable trail for the containers as they move from the collection point to recycling. This will need to include a clearly defined point at which the containers are 'killed' (i.e. transformed sufficiently that another refund cannot be claimed) and confirmation that the containers have in fact been recycled.
- 3.15. The Scheme Coordinator will also need to have systems in place to verify that each Network Operator's system is sound and accurate. Depending on the systems employed by different Network Operators, there may be greater or lesser risks inherent in these systems that the Scheme Coordinator will need to manage. The Scheme Coordinator may be allowed to make adjustments to the handling fee paid per container to a Network Operator to reflect the level of risks in the particular system used by the Network Operator. This will only be allowed if the basis for adjustment is clearly defined and does not discriminate between Network Operators employing similar verification systems.
- 3.16. It will be the Scheme Coordinator that will have the ultimate responsibility for ensuring the accuracy of the container count, as it will be the Scheme Coordinator that has the responsibility to pay out refunds and handling fees to each Network Operator and to report on performance. At the same time, the Scheme Coordinator will need to ensure that its verification system is fair and reasonable and not overly restrictive to the point of undermining the policy objectives of the Scheme.
- 3.17. A related issue to verification is the issue of ownership of containers. Ultimately, the Scheme Coordinator could achieve a high level of certainty of the number of containers collected by each Network Operator by taking possession and ownership of all containers and physically counting them. However, this would add a significant amount of duplication into the logistics and handling of containers and therefore add to the overall costs of the Scheme, since Network Operators will already need to collect, count and verify containers collected at each of the collection points within their own networks.

- 3.18. By contrast, leaving the ownership of the containers with the Network Operators gives them an incentive to maximise the resource value of the containers they are collecting, which is likely to encourage good source separation practice at the collection points and drive down potential contamination.
- 3.19. Separating responsibilities for handling the containers from coordinating the overall Scheme will also help to differentiate the roles of the Scheme Coordinator and the Network Operators, allowing each to focus on their respective areas of expertise. It is expected that the Scheme Coordinator will have strong expertise in financial and data management and auditing and verification, while the Network Operators will have strong expertise in collection systems, material handling, logistics and recycling.
- 3.20. For the reasons above, it is intended that the Scheme Coordinator agreement will provide that the Network Operators will retain the ownership of containers under the network arrangements.

The Government is interested in feedback on:

- **An indication of an appropriate amount for the handling fee to be paid by the Scheme Coordinator to Network Operators.**
- **Whether the handling fee should be different:**
 - o **For containers collected in different geographical regions (e.g., metro, regional or remote areas),**
 - o **For different container materials,**
 - o **For different levels of verification oversight required by the Scheme Coordinator, or**
 - o **For any other factor.**
- **An appropriate verification process that will provide transparency on the number of containers actually redeemed and recycled.**
- **Whether the ownership of containers should remain with the Network Operators or be given to the Scheme Coordinator.**

Variation and termination of agreement

- 3.21. Under the Bill, a Scheme Coordinator and Network Operator contracts may be varied by agreement between the parties. Further, the Minister may vary or terminate the Scheme Coordinator or Network Operator agreement without consent if satisfied that the Scheme Coordinator or Network Operator has failed to meet the performance standards under the agreement or has failed to comply with any other provision of the agreement, or in any other circumstance authorised by the agreement or by the regulations.

4. Obligations on suppliers

- 4.1. The Bill will establish obligations on beverage suppliers in relation to the supply of beverages in eligible containers. Under the new Part 5 of the amended WARR Act:
- A supplier must not supply, or offer to supply, a beverage in a container unless:
 - o the container has been approved by the EPA
 - o the supplier has a supply arrangement with the Scheme Coordinator

- the container bears the required refund mark.

This prohibition only applies to the first supply of a beverage in a container into NSW, i.e. the manufacturer or the person importing the beverage into NSW.

- A supplier must not supply, or offer to supply, a beverage in a container unless the container bears the required refund mark. This prohibition applies to all other supplies.
- 4.2. 'Supply' includes supply by sale or otherwise in the course of carrying on a business. So, a business giving away beverages in containers as part of promotion will also be taken to be supplying beverages in a container for the purposes of the Scheme.
- 4.3. Beverage suppliers would have to apply to the EPA for the necessary container approvals and an application fee may apply. The EPA would need to respond to the application with either an approval or an explanation setting out the reasons the approval was denied. The EPA would aim to make this application process as easy as possible, such as through online electronic forms, where suppliers could register once and then prefill their company details into an electronic form to reduce the amount of information needed to be provided in subsequent applications.

Refund mark

- 4.4. The Bill sets out an obligation on suppliers that all eligible containers must have a refund mark on the container that indicates the refund amount for the container. The details of the mark will be prescribed in the Regulation.
- 4.5. The NSW Government is currently working with South Australia, the Northern Territory and other jurisdictions that have announced they intended to implement a CDS to agree on a common refund mark that suppliers will be able to use on containers supplied in all CDS jurisdictions, as well as non-CDS jurisdictions. It is also intended that the mark will be designed so that it will not need to be changed if other jurisdictions adopt CDS with the same refund amount in future. This will reduce future costs on industry.
- 4.6. It is likely that the resulting refund mark will require legislative changes in other CDS jurisdictions before it can be adopted as a common mark.
- 4.7. The NSW Government is considering the timing implications for these changes and whether a transition period will be needed for suppliers to clear existing stock and design and print new labels to include the refund mark. Members of the beverage industry and retail industries have suggested that honouring the existing South Australian/Northern Territory refund mark in NSW for a transition period could be a way to deal with this issue. They have suggested that it could take up to two years for existing stock to be cleared and that the existing refund mark should be honoured until then.

The Government is seeking feedback on:

- **the length of time industry will need before the requirement for the NSW refund mark is required.**

5. Obligations on collection point operators

- 5.1. Under the Bill, the operator of a collection point must pay the refund amount to any person who presents an eligible container to the collection point.

- 5.2. Collection point operators are defined as persons who have a collection point arrangement with a Network Operator to establish and operate a collection point or a Network Operator who has established and operates a collection point. Under the arrangement, the Network Operator will pay each collection point operator the refund amounts and an agreed handling fee for containers collected at their collection point. (The Network Operator can also own and operate collection points). The Network Operator will then claim these costs from the Scheme Coordinator under the relevant network arrangements.
- 5.3. A collection point operator may refuse to pay the refund amount for a container:
- If the container does not bear the refund mark.
 - If the collection point operator reasonably believes that:
 - the container was not acquired in NSW
 - the container was acquired before the commencement of the Scheme
 - a refund amount has previously been paid for the container at any collection point or by the Scheme Coordinator to a material recovery facility operator.
 - If the person presenting the container has refused to comply with a requirement by the operator to make a refund declaration in relation to the container. (Declarations would be required if more than a threshold number of containers are brought to the collection point for redemption. This is discussed in more detail in the 'Cross-border movement of empty containers' section below.)
 - In any circumstances prescribed in the Regulation. It is proposed that the Regulation will allow the refund amount to not be paid if the container is contaminated, if the refund mark cannot be read or scanned, if it is not a container approved by the EPA, or if the container is crushed to the point at which the refund mark cannot be read.
- 5.4. In addition, it will be an offence for a person or a collection point operator to claim the refund amount for a container if the person or operator knows or ought reasonably to know that:
- the container was not acquired in NSW
 - the container was acquired before the commencement of the Scheme
 - a refund amount has previously been paid for the container at any collection point or by the Scheme Coordinator to a material recovery facility operator.
- 5.5. Retailers will not be obliged to take back containers, although they could choose to enter into a contract be a collection point operator or apply to be a Network Operator.

Government is interested in feedback on:

- **Whether there should be a time delay in the provisions allowing collection point operators to refuse to pay the refund amount on containers that do not have the refund mark beyond a transition period required by the beverage and retail industries to clear existing stock (see discussion under 'Refund mark' above) and if so, how long.**
- **Whether there should be a time delay in the provisions allowing collection point operators to refuse to pay the refund amount on containers in specific circumstances, and a time delay in the offence for claiming the refund amount on a container acquired before the commencement of the Scheme, to incentivise the community to clean up littered containers from the environment and if so, how should this work and how long should the delay be in place before these provisions come into force.**

6. Interaction with kerbside collection services

- 6.1. Under the Bill, eligible containers collected through comingled kerbside recycling will be redeemable for the 10c refund. The Bill proposes a method for redeeming these containers without having to manually separate them from the recycling stream. This will avoid additional handling and cost for containers that are being recycled anyway.
- 6.2. Refunds for these containers will go to the final owner of the containers, which will usually be the material recovery facility responsible for managing and sorting the material in comingled recycling bins.

Process for counting containers in kerbside

- 6.3. The mixed recyclables in kerbside bins are usually collected and delivered to purpose-built 'material recovery facilities' (or MRFs), which have been set up to sort through and separate materials for recycling. These facilities represent substantial capital investments in industrial infrastructure.
- 6.4. Many of the MRFs in NSW have a high level of automation, which is aimed at separating recyclables by material, rather than by type of product. This automation is not designed to separate eligible containers from other items of the same material type—for example aluminium beverage cans from aluminium aerosol containers. To retrofit these MRFs to allow them to separate out individual containers would have a significant capital cost, as well as significant ongoing labour costs.
- 6.5. As a more cost-effective approach for capturing the value of eligible containers and to discourage additional handling and costs, MRF operators will be able to use an agreed auditing methodology (to be set by NSW EPA potentially in an administrative guideline) to estimate the number of containers coming through each material stream. The EPA would retain oversight of the counting and auditing processes, to ensure a robust and transparent system. The methodology may include a requirement that an independent third-party undertakes the audits, and that the EPA has the opportunity to spot check and review audits.
- 6.6. While potentially less accurate than physically separating and counting each container, this approach will eliminate the costly process of removing containers from the normal material recovery process, helping to achieve recovery outcomes at a lower cost. This would mean the MRF operators would not need to substantially change their existing recovery processes.
- 6.7. To help reduce costs further, the EPA may consider developing standard conversion factors based on audits from a representative sample of material recovery facilities across NSW. MRF operators may be able to rely on these standard conversion factors, unless they consider that their particular recycling stream is different than the standard, in which case they may choose to undertake site-specific audits (while still using the EPA methodology).
- 6.8. Once MRF operators have an estimate of the number of containers recycled, they would be entitled to the refund value for that number of containers, based on the methodology. MRF operators would need to provide evidence that the containers were sent for recycling, and not sent to landfill, in order to access the refunds.
- 6.9. Refunds would be paid directly by the Scheme Coordinator. The Bill will enable the Scheme Coordinator agreement to require the Scheme Coordinator to pay to MRF operators the refund amounts for containers processed by the operators for reuse or recycling. MRF operators would not need to go through a Network Operator to access

the refund. The Scheme Coordinator will be obliged to publicly report the number of containers redeemed by each MRF operator.

- 6.10. The Bill will also enable regulations to make provision with respect to payments and claims for payments, including to:
- specify which MRF operators or classes of MRF operators are eligible for these payments
 - specify the methodology for determining the amounts payable
 - set out the manner for a MRF operator to claim a payment
 - prohibit the landfill disposal of containers for which payments have been made.
- 6.11. MRFs will not be entitled to any additional handling fee for these containers or for compensation for the cost of undertaking the audits under the EPA methodology.
- 6.12. It is not proposed to affect the position agreed between the MRF operators and local councils in relation to the ownership of the containers processed by the MRF operators. We understand that, in general, the containers would remain the property of the MRF operators. The MRF operators would therefore be able to sell the materials for the commodity value and this value would be retained by the MRF operators.

Distribution of refund value

- 6.13. The regulatory framework will encourage MRF operators to share any windfall gain with the local governments that manage kerbside services, for community benefit.
- 6.14. Many local governments will have the opportunity to negotiate with material recovery facilities, either because contracts are up for renewal shortly after the introduction of the Scheme, or as their contracts already contain specific clauses related to the introduction of a Scheme. Competition between recycling facilities may help to ensure that some of the value of the redeemed containers is returned to councils, and ultimately the community.
- 6.15. For those councils that are locked in to long-term contracts with little or no ability to renegotiate, the regulations made in relation to refund payments for kerbside containers will include provisions for an incentive for the MRF operator and the local council to negotiate an equitable sharing arrangement. This will be achieved by making the right for the MRF operator to claim the refund dependent on both parties coming to an arrangement that satisfies both parties within a reasonable period of time (for example, within 18 months). If, after that time, the parties have either established a new contract or come to an arrangement that satisfies both parties or have dissolved their contract (e.g., where council finds a better supplier) then the right to claim the refund will continue unabated. If however, there is no agreement and the original contract from prior to the commencement of the Scheme is still in place, then the Scheme Coordinator will no longer be able to pass through the refund until both parties satisfy the EPA that an arrangement has been reached, at which point the right to claim the refund will be re-instated.
- 6.16. Demonstrating to the EPA that an agreeable arrangement has been reached could be provided, for example, through letters sent to the EPA and signed by the relevant local governments and the MRF operator stating that an arrangement has been reached. MRF operators that fail to provide this evidence will not be able to claim refunds from the Scheme Coordinator through the auditing methodology outlined above.

7. Other matters covered by the regulatory framework

7.1. The following matters are also covered in the regulatory framework:

Refund amount

- 7.2. The refund amount for each eligible container returned to a collection point will be 10 cents. The Bill provides a power to determine the refund amount by regulations and the regulations will prescribe the refund amount as 10c. This amount matches the South Australia (SA) and Northern Territory (NT) schemes and will help to manage the risk of cross-border movement of empty containers from those jurisdictions.
- 7.3. Any decision to change this refund amount would be made in consultation with other CDS jurisdictions. However, the NSW Government would retain the right to make decisions in relation to meeting the overarching policy objectives of the NSW Scheme and may make unilateral changes in the future should the policy need be pressing.

Scope of eligible containers

- 7.4. The scope of containers covered by the Scheme will be closely aligned with the scope of containers covered in the SA and NT schemes. This will help to reduce the risk of cross border arbitrage between NSW and those states. It will also reduce confusion for consumers moving between jurisdictions and reduce the costs to industry.
- 7.5. Containers between 150 millilitres and three litres will be covered by the NSW Scheme, with the same exclusions as the SA and NT schemes. These include exclusions for:
- plain milk and milk substitutes
 - wine and spirits in glass containers
 - flavoured milk, pure juice, cask wine and cask water one litre and above
 - containers made of cardboard and plastic, cardboard and foil or cardboard, plastic and foil (commonly known as casks or aseptic packs) designed to contain one litre or more of wine, wine-based beverage or water (including mineral water and spring water)
 - sachets of wine 250 millilitres and above,
 - concentrated cordials, concentrated fruit/vegetable juices
 - registered health tonics.
- 7.6. The only difference between the scope of containers in NSW on the one hand and SA and NT on the other is the introduction of a 150 millilitre minimum size. The 150 millilitre minimum size is set because only a small number of drink containers under 150 millilitre are found in the litter stream, while the 10-cent refund would add a very large amount to the overall cost of drinks of this size, resulting in a significant distortionary pricing effect.
- 7.7. Any decision to change to this scope of containers would be made in consultation with other CDS jurisdictions. Similar to the refund amount, the NSW Government would retain the right to act unilaterally should the policy need be pressing.

State-wide coverage/access target

- 7.8. The Scheme will have state-wide coverage, including in metro, regional and rural areas, such that anyone that wishes to return a container for a refund must have reasonable access to a collection point to be able to redeem their container. To ensure an adequate level of access is provided, the contract between the Government and the Scheme Coordinator will place an obligation on the Scheme Coordinator to ensure that the coverage/access target is achieved. Actual access will be provided by the Network Operators.
- 7.9. Access can have several aspects and it will be important that the coverage/access target covers off these aspects so that the Scheme delivers on the principle of accessibility. For example, access could mean that 1) there is a collection point within a reasonable distance 2) the collection point will be easy to reach and 3) that it will be open at times when most people can get to it.
- 7.10. The Government is currently considering metrics to measure access with the aim of setting a target that will ensure that the community has reasonable access to obtain refunds. Metrics currently being considered include:
- Distance: such as, a person should not have to go more than a set distance to reach a collection point. This may need to vary for metro, regional and remote areas.
 - Time: such as, the amount of time it will take to get to a collection point.
 - Population: such as, there must be at least one collection point per catchment based on population.
 - Opening hours: such as, the collection point must be open during certain hours on certain days to be considered to be meeting an access target.
 - Collection frequency: to ensure that collection points are not regularly 'full' or are consistently unable to take additional containers within a reasonable timeframe.

The Government is seeking feedback on:

- **These metrics, and also welcomes suggestions for appropriate levels for a coverage/access target that will ensure reasonable access to refunds across the state.**
- **Whether there should be a build-up period to full coverage/access, and if so, what should the build-up look like and how long should it take to reach full state-wide coverage/access.**

Recovery target

- 7.11. Recovery targets will be based on a proportion of the total number of containers redeemed compared to the total number supplied in NSW each year. Beverage suppliers are expected to provide data to the Scheme Coordinator including the total number of containers supplied each year in order to determine the number of containers required to achieve this target. The Scheme Coordinator will be obliged to publicly report these figures.
- 7.12. The recovery targets will work in conjunction with the coverage/access target to encourage the Scheme Coordinator to set a handling fee that will incentivise Network Operators to set up and run convenient collection services for the community.
- 7.13. Containers recovered through MRFs will be counted toward the overall recovery target. The aim is to reduce the number of containers that end up in the litter stream, not to favour one collection channel over another.

The Government is seeking feedback on:

- **The level of recovery that should be targeted to make a significant reduction in litter at a reasonable cost to the community.**
- **Whether there should be sub-targets for container materials or by beverage type and if so why and what amount.**
- **Whether it is possible to have regional recovery targets given the difficulties in measuring the number of containers supplied and consumed in a particular area, and if so, how.**
- **Whether a linkage can be made between the container recovery rate target and the beverage container litter rate, and if so what how should it work.**
- **Whether the recovery target should commence in year one, or whether the first year should be used to determine the starting recovery level.**
- **Whether there should be a ramp up period and if so from what level and how long it should take to reach the full target.**

CDS Advisory Committee

- 7.14. A CDS Advisory Committee will be established under the regulatory framework to advise the Minister on the appointment of the Scheme Coordinator and to provide advice on the ongoing operation and performance of the Scheme. The Minister may also appoint relevant sub-committees to help in the technical aspects of the selection process.
- 7.15. The Minister will appoint the members of the committee and will seek members with relevant technical expertise on issues such as finance, law and risk management, as well as members with knowledge of industry, local government, the waste industry and community groups. The committee will be chaired by the EPA.
- 7.16. The committee will continue to review and advise the Minister on the performance of the Scheme from time to time.

Offences and penalties

- 7.17. The draft Bill provides proposed fines for breaches of statutory obligations under the Bill.
- 7.18. Contractual penalties will also apply for breaches of obligations under the contracts with the Scheme Coordinator and the Network Operators. These penalties are expected to be in proportion to the potential financial gains that could be realised by avoiding costs and could be significant sums of money. The contract with the Scheme Coordinator is also likely to limit the ability of the Scheme Coordinator to pass on penalties to suppliers. It will be important that the Scheme Coordinator bears some of the risk for potentially failing to deliver on its responsibilities.
- 7.19. The Scheme Coordinator contract will also seek to incentivise and reward good performance in the effective and efficient management of the Scheme.

Cross-border movement of empty containers

- 7.20. With the announcement that the Queensland Government is committed to implementing a container deposit scheme and media reports that suggest that the ACT is considering following NSW in introducing a container deposit scheme, the risk of cross border movement of empty containers has significantly reduced. There will still be a risk from containers coming in over the Victorian border. The NSW Government

must therefore put in place measures to reduce the risk of cross-border arbitrage undermining the financial viability of the NSW Scheme.

- 7.21. The Bill proposes to make it an offence for any person to redeem an empty container that was purchased outside of NSW. It will also be an offence for a collection point operator to knowingly claim payment from the Scheme Coordinator (via a Network Operator) for an out of state container.
- 7.22. The Bill also provides collection point operators with the right to refuse paying the refund on containers they reasonable believe to be from out of state. Collection point operators may also ask any person presenting a container for the purpose of claiming the refund to make a refund declaration. The information required in a refund declaration will be set out in the Regulation, and would include:
- the name and address of the person claiming the refund
 - a statement that the container(s) was not acquired outside NSW or before the commencement of the Scheme and that a refund amount has not already been claimed in respect of the container.

(The reference to containers purchased prior to the commencement of the Scheme may be delayed at the start of the Scheme to encourage the community to bring in littered containers from the environment. See the consultation questions in the section on 'Collection operator obligations'.)

- 7.23. For larger numbers of empty containers, a collection point operator must require a refund declaration and proof of identity before paying the refund amount if the number of containers for which the refund amount is claimed is more than the number prescribed in the Regulation. It is proposed that the number prescribed in the Regulation is 500 for the first six months of the Scheme's operation. Thereafter, the number would be 1500 at any one time or 3000 within any 48-hour period.
- 7.24. The purpose of the refund declaration is to increase the chance that people trying to bring in significant numbers of empty containers from out of state will be caught.

The Government is seeking feedback on:

- **These provisions and also welcomes any further suggestions for reducing the risk of cross-border arbitrage.**

8. Implementation process

- 8.1. Following this consultation process, the feedback received will be considered and any necessary changes made to the draft Bill before it is tabled in Parliament. Once the Bill is enacted the Regulation will be made.
- 8.2. Once these parts of the regulatory framework are in place, the Minister will appoint the CDS Advisory Committee and commence the Scheme Coordinator and Network Operator selection processes. These will be competitive processes and the Scheme Coordinator process at least is expected to involve two stages. In the first stage, all interested parties would be invited to respond to a public expression of interest. Responses would be evaluated and eligible candidates shortlisted and invited to prepare to a second, more detailed proposal. The process for appointing Network Operators will not be aimed at choosing one Operator, but appointing multiple Operators.
- 8.3. The Scheme Coordinator and Network Operators will be appointed by and enter into a contract with the Minister for the Environment.

- 8.4. Once appointed, it is expected that the Scheme Coordinator will begin entering into contracts with suppliers and determining the handling fee to be offered to Network Operators.
- 8.5. Network Operators will determine if they wish to participate once the Scheme Coordinator announces the handling fee. If so, then they will commence setting up their collection point networks to meet the coverage/access target and commence collecting containers when the Scheme commences. The Government may run a prequalification process for Network Operators prior to the Scheme Coordinator determining the handling fee. This may help to speed the implementation process.
- 8.6. Concurrently, the EPA will commence developing the methodology to accurately estimate the number of containers in kerbside recycling systems. This will be done in consultation with the waste industry.
- 8.7. The EPA will begin its approval of beverage containers once the Scheme Coordinator and Network Operators are appointed.
- 8.8. The Government is committed to commencing the Scheme in July 2017.

Appendix 1 - Regulatory framework for refund container deposit scheme under Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Bill 2016

Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
General			
Refund marking	Power to prescribe marking or labelling that indicates the refund amount for the container.	Specific requirements for the refund marking.	
Refund amount	Amount to be prescribed by regulations.	Refund amount is 10c.	
Beverages subject to the Scheme	General definition of 'beverage' subject to exclusions in regulations.	The types of beverages excluded from the Scheme.	
Containers subject to the Scheme	General definition of 'container' subject to exclusions in regulations.	The types of containers excluded from the Scheme.	
Scheme arrangements	<p>A Scheme arrangement means one of the following:</p> <ul style="list-style-type: none"> • a network arrangement between the Scheme Coordinator and a network operator • a supplier arrangement between the Scheme Coordinator and a supplier • a collection point arrangement between a network operator and collection point operator. 		
Scheme participants	<p>A Scheme participant means:</p> <ul style="list-style-type: none"> • the Scheme Coordinator • a network operator 		

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Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
	<ul style="list-style-type: none"> a supplier who has a supply arrangement with the Scheme Coordinator a collection point operator who has a collection point arrangement. 		
Corresponding law	Power to declare in the regulations a law of another State or Territory to be a corresponding law for the purposes of the Scheme.	The laws of other States or Territories that are a corresponding law for the purposes of the Scheme.	
Scheme Coordinator			
Appointment of single Scheme Coordinator	<ul style="list-style-type: none"> Minister may enter into a Scheme Coordinator agreement with a person in connection to the management and administration of the Scheme. Invitations for applications to be made in any manner Minister considers appropriate. Minister to consider whether applicant is a 'fit and proper person' to enter into agreement. 	<ul style="list-style-type: none"> Application fee amount. The matters the Minister may consider in determining if applicant is a fit and proper person, for example, the character, technical competence and financial capacity of the applicant. 	
Performance targets	Power to make regulations for or with respect to performance targets to be included in a Scheme Coordinator agreement.	The performance targets to be included in the Scheme Coordinator agreement, including: <ul style="list-style-type: none"> coverage targets relating to the convenience for collection points for the Scheme recovery targets relating to the rate at which containers are to be collected under the Scheme. 	<ul style="list-style-type: none"> Obligation for the Scheme Coordinator to meet performance targets (mandatory). Metrics for meeting the targets . Penalties for failure to meet targets.
Mandatory requirements in a	A Scheme Coordinator agreement must have provisions requiring the Scheme Coordinator to enter and give effect to supplier arrangements and network arrangements.		

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Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
Scheme Coordinator agreement	<p>A Scheme Coordinator agreement must have such provisions that the Minister considers necessary to ensure:</p> <ul style="list-style-type: none"> • each Scheme arrangement required under the agreement specifies a methodology for determining the amounts payable under the arrangement • the Scheme Coordinator does not unreasonably discriminate against or in favour of any particular Scheme participant in negotiating, entering into or enforcing any Scheme arrangement. 		<p>See below in relation to Scheme arrangements for suppliers and network operators.</p>
	<p>A Scheme Coordinator agreement is for a term of up to 7 years plus up to 2 options to renew for 3 years. Total contract term must not exceed 13 years.</p>		
Other provisions that a Scheme Coordinator may include	<p>A Scheme Coordinator agreement may provide for such other matters as the Minister considers appropriate in relation to the management, administration or operation of the scheme.</p>		<p>For example, a Scheme Coordinator agreement may provide for the aggregation and verification of the containers collected by the network operators by the Scheme Coordinator, and a prohibition on the Scheme Coordinator from disposing of any such containers collected to landfill.</p>
	<p>Provisions of a Scheme Coordinator agreement may be enforced by financial penalties or in any other manner the agreement may provide.</p>		<p>Financial penalties or other consequences for failure to comply with provisions of the Scheme Coordinator agreement.</p>
	<p>Power to make regulations that provide for or with respect to any other matters to be included in a Scheme Coordinator agreement.</p>	<p>Other matters that are to be included in a Scheme Coordinator agreement.</p>	

Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
	A Scheme Coordinator agreement may contain provisions relating to the exercise by the Scheme Coordinator of similar functions under the laws of other States and Territories relating to container deposit schemes.		
Variation and termination of Scheme Coordinator agreement	<ul style="list-style-type: none"> • A Scheme Coordinator agreement may be varied by agreement in writing by the parties. • The Minister may vary or terminate a Scheme Coordinator agreement without the consent of the Scheme Coordinator: <ul style="list-style-type: none"> ▪ if satisfied that the Scheme Coordinator has failed to meet the performance standards under the agreement or has failed to comply with any other provision of the agreement ▪ in any other circumstances authorised by the agreement or by the regulations. 	Circumstances in which the Minister may vary or terminate the Scheme Coordinator agreement without the consent of the Scheme Coordinator.	Circumstances in which the Minister may vary or terminate the Scheme Coordinator agreement without the consent of the Scheme Coordinator.
Network operators			
Appointment of network operator(s)	<ul style="list-style-type: none"> • Minister may enter into network operator agreements with persons in connection with the establishment, management and administration of collection points • Invitations for applications to be made in any manner Minister considers appropriate. • Minister to consider whether applicant is a 'fit and proper person' to enter into agreement. 	<ul style="list-style-type: none"> • Application fee amount. • What matters the Minister may consider in determining if applicant is a fit and proper person, for example, the character, technical competence and financial capacity of the applicant. 	
Performance targets	Power to make regulations for or with respect to performance targets to be included in a network operator agreement.	The performance targets to be met by a network operator agreement, which is proposed be the same coverage targets to which the Scheme Coordinator is subject to under the Scheme Coordinator agreement.	<ul style="list-style-type: none"> • Obligation for the network operator to meet coverage targets (mandatory). • Metrics for meeting the targets.

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Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
Mandatory requirements for a network operator agreement	<p>A network operator agreement must have provisions requiring the network operator to enter into and give effect to collection point arrangements.</p>		
	<p>A network operator agreement must have such provisions that the Minister considers necessary to ensure:</p> <ul style="list-style-type: none"> • each collection point arrangement specifies a methodology for determining the amounts payable under the arrangement • the network operator does not unreasonably discriminate against or in favour of any particular Scheme participant in negotiating, entering into or enforcing any Scheme arrangement. 		<p>See below in relation to Scheme arrangements for collection point operators.</p>
Other provisions that a network operator agreement may include	<p>A network operator agreement may provide for such other matters as the Minister considers appropriate in relation to the management, administration or operation of the Scheme.</p>		
	<p>Provisions of a network operator agreement may be enforced by financial penalties or in any other manner the agreement may provide.</p>		<p>Financial penalties or other consequences for failure to comply with provisions of the network operator agreement.</p>
	<p>Power to make regulations that provide for or with respect to any other matters to be included in a network operator agreement.</p>	<p>Other matters that are to be included in a network operator agreement.</p>	

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Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
	<p>A network operator agreement may contain provisions relating to the exercise by the network operator of similar functions under the laws of other States and Territories relating to container deposit schemes.</p>		
<p>Variation and termination of network operator agreement</p>	<ul style="list-style-type: none"> • A network operator agreement may be varied by agreement in writing by the parties. • The Minister may vary or terminate a network operator agreement without the consent of the network operator: <ul style="list-style-type: none"> ▪ if satisfied that the network operator has failed to meet the performance standards under the agreement or has failed to comply with any other provision of the agreement, or ▪ in any other circumstances authorised by the agreement or by the regulations. 	<p>Circumstances in which the Minister may vary or terminate the network operator agreement without the consent of the network operator.</p>	<p>Circumstances in which the Minister may vary or terminate the network operator agreement without the consent of the network operator.</p>
<p>Scheme Coordinator arrangements with network operators</p>	<ul style="list-style-type: none"> • Scheme Coordinator agreement must require the Scheme Coordinator to enter into and give effect to arrangements with network operators who hold a network operator agreement. • Scheme Coordinator agreement must ensure that network arrangements specify a methodology for determining amounts payable under the arrangement. • Scheme Coordinator agreement must contain such provisions as the Minister considers necessary to ensure the Scheme Coordinator does not unreasonably discriminate against or in favour of any particular network operator in negotiating, entering into or enforcing any network operator arrangement. 	<p>Provisions for or with respect to the content of network operator arrangement.</p>	<ul style="list-style-type: none"> • Obligation to enter into and give effect to network operator arrangement. • Provisions to ensure network arrangement specifies a cost per container to be paid to each network operator in respect of containers collected by the network operator. The same cost per container must be specified for all network operators. • Provisions to ensure Scheme Coordinator does not unreasonably discriminate in negotiating, entering into or enforcing any network arrangement.
<p>Approval of network arrangements</p>	<ul style="list-style-type: none"> • A Scheme Coordinator agreement may require the Scheme Coordinator to apply to the EPA for the approval of a network operator arrangement before entering into the arrangement. 	<ul style="list-style-type: none"> • Requirement for Scheme Coordinator to apply for approval. • Procedure to apply for EPA approval. • Application and annual fees. 	

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Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
	<ul style="list-style-type: none"> The regulations may provide for and with respect to approvals, application for approvals, revocation of approvals, application fees and annual fees to be paid to the EPA by the Scheme Coordinator. 	<ul style="list-style-type: none"> Process to determine application including matter the EPA may take into account. Conditions that may be imposed on the approval. Circumstances in which the approval may be varied or revoked. 	
Suppliers			
Relevant definitions	<ul style="list-style-type: none"> A definition of 'supply' to mean supply, by way of sale or otherwise in the course of carrying a business. A definition of 'supplier' to mean a person who carries on a business that is or includes the supply of beverages in containers. 		
Sale and supply of beverages in containers	<ul style="list-style-type: none"> A prohibition on a supplier to supply (being the first supply) a beverage in a container unless: <ul style="list-style-type: none"> a supply arrangement is in force between the supplier and the Scheme Coordinator a container approval is in force in respect of a class of containers to which the containers belong the container bears the refund marking. A prohibition on a supplier to supply or offer to supply a beverage container unless the container bears a refund marking. 		
Scheme Coordinator arrangements with suppliers	<ul style="list-style-type: none"> A Scheme Coordinator agreement must require the Scheme Coordinator to enter into and give effect to arrangements with beverage suppliers. A Scheme Coordinator agreement must ensure that supplier arrangements specify a methodology for determining amounts payable under the arrangement. A Scheme Coordinator agreement must contain such provisions as the Minister considers necessary to ensure the Scheme Coordinator does not unreasonably discriminate against or in favour of any 	Provisions for or with respect to the content of supplier arrangements.	<ul style="list-style-type: none"> Obligation to enter into and give effect to supplier arrangement. Provisions to ensure supplier arrangement specifies a method for determining the total costs to the Scheme Coordinator of paying refund amounts under the Scheme and a method for allocating a proportion of those costs to the supplier. Provisions to ensure Scheme Coordinator does not unreasonably

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Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
	particular supplier in negotiating, entering into or enforcing any supplier arrangement.		discriminate in negotiating, entering into or enforcing any supplier arrangement.
Container approvals	<ul style="list-style-type: none"> The process for applying for an approval. The grounds on which the EPA may refuse an application. A right of merits review to the Civil and Administrative Tribunal for decisions of the EPA in relation to approvals. An offence for contravening a condition of approval. 	<ul style="list-style-type: none"> Application fees. Annual fees payable by holder. Conditions and duration of approval. Further grounds on which the EPA may refuse an application. Statutory conditions to which approvals are subject. Right of the EPA to suspend or revoke approval on certain grounds. 	
Collection points			
Collection of containers	<ul style="list-style-type: none"> Collection point operators must pay refund for eligible containers received at their collection point in cash or other manner prescribed by regulations. Collection point operators must not pay refund to a person redeeming a number of containers that exceeds prescribed threshold, unless the person has provided a refund declaration and proof of identity. This requirement does not apply to RVMs. 	<ul style="list-style-type: none"> Other manner of paying refunds Thresholds for number of containers redeemed above which a refund declaration is required. 	
Prohibition against claiming refund amount for a container not subject to the Scheme	<ul style="list-style-type: none"> A person must not claim a refund for a container that is not subject to the Scheme. A collection point operator must not claim from the network operator a refund amount payable under a collection point arrangement for a container that is not subject to the Scheme. 		Under the network operator agreement, a network operator must not claim from the Scheme Coordinator a refund amount payable under the network arrangement for a container that is not subject to the Scheme.
Network operator arrangements with	<ul style="list-style-type: none"> A network operator agreement must require network operator to enter into and give effect to arrangements with collection point operators. 	Provisions for or with respect to the content of collection point arrangements.	<ul style="list-style-type: none"> Obligation to enter into and give effect to collection point arrangements. Provisions to ensure collection point arrangement specifies the

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Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
collection point operators	<ul style="list-style-type: none"> A network operator agreement must ensure that collection point arrangements specify a methodology for determining amounts payable under the arrangement. 		methodology for determining payments from network operators to collection point operators.
Approval of collection point arrangements	<ul style="list-style-type: none"> A network operator agreement may require the network operator to apply to the EPA for the approval of a collection point arrangement before entering into the arrangement. The regulations may provide for and with respect to approvals, application for approvals, revocation of approvals, application fees and annual fees to be paid to the EPA by network operators. 	<ul style="list-style-type: none"> Requirement for network operator to apply for approval. Procedure to apply for EPA approval. Application and annual fees. Process to determine application including matter the EPA may take into account. Conditions that may be imposed on the approval. Circumstances in which the approval may be varied or revoked. 	
MRF operators			
Relevant definitions	Definition of material recovery facility operator means a person who has an agreement with a local council to provide services involving the processing for reuse or recycling of: domestic waste designated for recycling and collected by that or any other person during the course of domestic waste management services; or any other kind of waste prescribed by the regulations.	Other types of waste for the purposes of the definition of material recovery facility operator .	
Regulatory provisions enabling MRF operators to claim refunds	<ul style="list-style-type: none"> A Scheme Coordinator agreement may require the Scheme Coordinator to pay to material recovery facility operators refund amounts for containers that are collected during the course of waste management services and that are processed by operators for reuse or recycling. 	<ul style="list-style-type: none"> Details of classes of MRF operators who are eligible to make claims for payments from the Scheme Coordinator (it is intended that this will only be available to MRF Operators who hold an environment protection licence). Details of how the claim should be made. The methodology for determining the amount of the payments to be made a requirement that the methodology be 	<ul style="list-style-type: none"> An entitlement for eligible MRF operators to be paid the refund amount by the Scheme Coordinator in relation to eligible containers if a claim is made in a particular way. Penalty or other consequence for Scheme Coordinator for a failure to provide payments to MRF operators in the manner required under regulations.

Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
	<ul style="list-style-type: none"> • Power to make regulations to provide for or with respect to payments and claims for payments, including for or with respect to: <ul style="list-style-type: none"> ▪ the MRF operators, or classes of MRF operators, eligible for payments ▪ the methodology for determining the amounts payable ▪ the manner for claiming a payment ▪ prohibiting the landfill disposal of containers for which payments have been made. 	<p>applied by an independent third party, and limitations on how often claims may be made.</p> <ul style="list-style-type: none"> • Offence for a MRF operator to makes a false claim. • Offence for a MRF operator if a container that it has claimed a refund for is disposed of to landfill. 	
Monitoring review and reporting			
<p>Monitoring and compliance</p>	<p>Authorisation of the EPA and EPA authorised officers to exercise powers and other functions under Chapter 7 of the <i>Protection of the Environment Operations Act 1997</i> (POEO Act) for the purposes of:</p> <ul style="list-style-type: none"> • determining compliance with a Scheme Coordinator agreement, a network operator agreement or a Scheme arrangement • obtaining information or records for monitoring or audit of the activities of the parties under the agreement or arrangement. <p>If the agreement or arrangement provides for, or is required to provide for, the exercise of these powers and other functions by the EPA or EPA authorised officers in connection with the agreement or arrangement.</p>		<ul style="list-style-type: none"> • The monitoring, reporting and audit requirements to be included in a relevant Scheme arrangement. • The exercise of investigation powers under Chapter 7 of the POEO Act by the EPA and EPA authorised officers in connection with the Scheme Coordinator or network operator agreement. • Requirements for a Scheme arrangement to provide for the exercise of POEO Act investigation powers by the EPA and EPA authorised officers in connection with the arrangement.
<p>Performance audit and reviews</p>	<ul style="list-style-type: none"> • At the request of the Minister, the EPA may conduct a performance audit of the activities of the Scheme Coordinator at any time and provide a report to the Minister. • Minister is to review the Scheme to determine if the policy objectives of the Scheme remain valid and 		

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Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
	whether the relevant Act provisions remain appropriate to meet those objectives.		
Reports by Scheme Coordinator	Scheme Coordinator to prepare and submit annual report within 90 days after each financial year to Minister on performance against performance targets, amounts charged to suppliers and any other prescribed matter.	Other matters to be included in annual report.	
Miscellaneous			
Inconsistent provisions	<ul style="list-style-type: none"> • Any provision of the Scheme Coordinator agreement that is inconsistent with Division 3 of the Part is void. • Any provision of a Scheme arrangement that is inconsistent with the Scheme Coordinator agreement or the network operator agreement is void. 		
Advisory committees	<ul style="list-style-type: none"> • The Minister may appoint such advisory committees as the Minister considers appropriate for the purposes of advising the Minister in the exercise of the Minister's functions under the relevant Part of the Act, and may dissolve any such committee appointed. • The Minister is to ensure persons with the appropriate range of interests and expertise are appointed, and is to appoint one of the members as chairperson. • The Minister determines: <ul style="list-style-type: none"> ▪ the functions of a committee ▪ the term of office for members ▪ the fees and allowance payable to each member. • Subject to the regulations and any directions of the Minister, the committee determines the procedure of the committee. 	Any matter pertaining to the procedure of an advisory committee.	
Machinery provisions	<ul style="list-style-type: none"> • Exemption from certain provisions of Commonwealth and NSW competition laws for certain acts required or authorised under the new provisions relating to the Scheme. 		

Subject	Bill provides for:	Regulation provides for:	Scheme Coordinator/network operator Agreement (whichever applies) provides for:
	<ul style="list-style-type: none"> • Temporary exemption for 12 months of the Scheme from Commonwealth mutual recognition laws. • Exemption from requirements for regulatory impact statement for first principal regulation made in relation to the new Part 5. 		