Explanatory Report

Environment Protection (Beverage Containers) Amendment Bill 2006

October 2006

Government of South Australia

EPA South Australia

Call for Comments

The draft Environment Protection (Beverage Containers) Amendment Bill 2006 has been released for public comment.

This explanatory report has been prepared to accompany the Bill and outlines its objectives, its development background and explains the proposed amendments to the Environment Protection Act 1993.

Your comments are also sought on the separate issue of whether the refund amounts in the CDL system are adequate.

Your comments on the draft bill are invited. You can respond online via the EPA's consultation web site (www.epacomments.sa.gov.au), or you can email comments to the project manager at sally.jackson@epa.sa.gov.au

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Submissions close at 5.00 pm on 22 December 2006

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Foreword from the Minister

The container deposit legislation (CDL) in the *Environment Protection Act 1993* gives South Australia an important environmental and social tool to encourage recycling, and to reduce litter and the number of beverage containers that go to landfill.

The draft Environment Protection (Beverage Container) Amendment Bill 2006 has been developed to improve the efficiency of the CDL system by addressing a number of systemic issues. The main purpose of the Bill is to promote the equitable regulation of all relevant stakeholders and address concerns that refunds are being sought on a large scale for containers that have not been sold in South Australia.

The draft Bill has been released for public consultation to enable your comments to be considered and the draft Bill to be amended as necessary.

There is broad community support for CDL. A survey in June 2004 showed that 92% of South Australians surveyed supported the CDL system (EPA Community awareness and acceptance of Container Deposit Legislation survey). The improvements to the CDL system proposed in this Bill will further advance this valuable environmental and social tool.

It is also timely to consider the adequacy of the deposit amount, which is prescribed by regulation rather than embodied in the Act, and is therefore a separate issue from those contained in the Bill. An amendment to the refund amount would require an amendment to the Environment Protection (Beverage Container) Regulations 1995. However adequacy of refund amounts is topical given the current interest in introducing container deposit systems interstate and overseas, and the fact that the sum has not changed since inception of South Australia's ground-breaking initiative to implement CDL. I therefore wish to take the opportunity to use consultation on the Bill as a forum for discussion about CDL refunds. I welcome your comment on the adequacy of the refund amounts as part of the Bill's consultation process.

As Minister for Environment and Conservation, I invite you to consider the Bill and encourage your written submissions. You can respond online via the EPA's consultation web site (www.epacomments.sa.gov.au).

HON GAIL GAGO MLC
MINISTER FOR ENVIRONMENT AND CONSERVATION

21/10/06

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Introduction

Amendments to the *Environment Protection Act 1993* (the Act) contained in the draft Environment Protection (Beverage Containers) Amendment Bill 2006 (the Bill) are intended to address a number of systemic issues with the current beverage container refund system.

The paper explains the proposed amendments and why they are needed, and includes a copy of the draft Bill and a document to show how sections of the Act would look if the proposed amendments were adopted.

The paper seeks comments on the Bill so that it can be improved before Parliament considers the amendments. All submissions are public documents, unless clearly marked 'confidential' and may be made available to other interested parties, subject to the provisions of the Freedom of Information Act 1991.

It is not the role of the Bill to consider any amendment of the refund amounts, as this does not need an Act amendment. A change to refund amounts could be achieved through regulation. However, this paper welcomes your comment on the adequacy of the refund amounts as part of the consultation process. The South Australian Government will consider comments and also observe the progress of the proposed new CDL system in Western Australia when assessing the CDL refund amounts in South Australia.

The paper explains the current refund amounts and poses questions to generate discussion on the amount of the CDL refund and the impact that amending the amount would have on the general public, industry and local government.

Background

In the 1970s, when non-refillable containers were introduced by the beverage industry without a return system, they became a visible part of the litter scene and posed a threat to the environment. The South Australian Government responded quickly and, in 1975, introduced the Beverage Container Act 1975 to deal with container litter. The current beverage container provisions substantially replicate the former provisions of the Beverage Container Act.

Part 8, Division 2 of the Act provides a framework for the South Australian beverage container recycling system and is referred to as container deposit legislation (CDL). CDL uses a refund model; consumers redeem containers for a five-cent refund on each container at collection depots approved by the Environment Protection Authority (EPA). Containers to which CDL apply are distinguished from other containers by a refund marking approved by the EPA. The refund reads, '5 cents refund at collections depots when sold in South Australia'. The system also allows for a refund of 10 cents when containers are returned to the point of sale, although very few containers are returned in this manner.

CDL was introduced to control litter, and has worked well, changing community behaviour, promoting recycling, providing valuable recyclables, as well as

supporting resource recovery infrastructure. South Australia has the highest container return rate of all Australian states, with industry sources reporting that as many as 85% of containers in the CDL scheme are returned for recycling. 'Container Deposit' litter makes up less than 1% of all litter in South Australia.

In January 2003, significant extensions to the CDL captured a wider range of beverages and containers, including flavoured milk and fruit juice in containers of less than one litre, and all non-carbonated soft drinks in containers of three litres or less. Some exemptions were also repealed.

The extension of the CDL system in 2003 followed extensive industry consultation on litter from these types of containers, and ensured a more uniform application of the legislation.

Further improvement of the CDL system arose from the need to address concerns including:

- inequitable regulation of stakeholders and resulting power imbalances
- industry disputes over sorting, depot efficiency, handling fees and contractual responsibilities. These disputes disrupt the stability of the beverage container refund system and its ability to meet its environmental objectives
- the movement of containers bearing the South Australian refund marking, but on which no deposit has been paid, from other states into South Australia
- provisions of the Act that could be improved to enable the beverage container refund system to function more effectively.

Aims

The main aim of the Bill is to equitably regulate CDL stakeholders. Thus the Bill proposes that super collectors be obliged to hold an approval to operate, as is currently the practice for collection depots. 'Super collectors' is a term applied to the industry sector established primarily to act as agents for beverage manufacturers and product distributors to coordinate (on behalf of the manufacturers):

- collection and aggregation of containers from depots
- remuneration of depots for refunds paid to consumers
- payment of handling fees to depots
- coordination of end recycling markets for collected containers.

The Bill proposes amendments to improve the functioning of the beverage container refund system. Furthermore, it will provide greater certainty that the provisions of the Act will address possible future legal challenges.

Another objective of the Bill is to stop the movement of refund-labelled containers from other states into South Australia, thereby limiting the potential

liability for collection depots and super collectors to pay refunds on products not sold in the state, and on which no deposit has been paid.

Finally, the Bill recognises that although the beverage container refund system was originally introduced to manage beverage container litter (and this remains its primary focus), the system has demonstrated dual benefits for both litter and recycling, and has evolved in the context of increasing awareness of environmental sustainability.

1 New outline of the Beverage Containers Division

The proposed insertion of an outline of the Beverage Containers Division of the Act recognises the benefits of the beverage container refund system for litter management and also for the promotion of waste management systems. The outline also sets out the general features of the Division, being:

- the prohibition from selling beverage containers in the State unless approved by the EPA or exempted
- a system whereby empty 'category A' containers bearing an approved refund marking are returnable to retailers of such containers for a refund, and empty 'category B' containers bearing an approved refund marking are returnable to collection depots for a refund
- a requirement whereby the operators of collection depots, and super collectors, must be approved by the EPA
- an approvals system whereby the EPA has the power to attach conditions to approvals to ensure the reuse, recycling or other appropriate disposal of returned containers
- the prohibition of selling or supplying of beverages in certain containers in order to protect the environment.

2 Amendment of definitions

Section 65 of the Act defines terms used in the Beverage Containers Division of the Act (Part 8 Division 2). New definitions are proposed to clarify existing terms that are not currently defined and provide for new terms to support other amendments.

2.1 New definition: approved collection depot

A new term 'approved collection depot' is proposed in addition to the current term 'collection depot' in the Act, which is to be amended (see discussion later in the document). An 'approved collection depot' is a collection depot which is approved under the proposed new section 69 of the Act. In the past, some depots have begun operating without the knowledge or approval of the EPA, in a manner prejudicial to the overall scheme. The definition of 'approved collection depot' ensures that provisions of the Act that benefit approved collection

depots do not apply to those operating without approval, thus encouraging those wishing to undertake recycling activities to seek approval.

2.2 New definition: approved refund marking

A new term 'approved refund marking' is proposed in addition to the current term 'refund marking'. The proposed definition of 'approved refund marking' is a marking approved by the EPA under the proposed new section 68 for containers of that class, indicating the refund amount for the containers. The legislation currently requires collection depots to pay refunds on all containers bearing a refund marking, even if that marking is false or erroneous due to the beverage supplier having no financial arrangement for collection and recycling, and no deposit having been paid by the consumer. The change to 'approved refund marking' will help to eliminate the 'free riders' who simply label the containers without a financial arrangement, and create a liability for the collection depots and super collectors who are required to pay refunds on containers.

2.3 Amended definition of beverage

It is proposed to simplify the definition of beverage to: 'a liquid intended for human consumption by drinking but does not include a liquid of a kind prescribed by regulation'.

This allows a regulation to be made that provides a consolidated list of the beverages that are not considered to be a beverage for the purpose of CDL.

2.4 Amended definitions of category A container & category B container

It is proposed that the definitions of 'category A container' and 'category B container' be amended to include an explanation of where the container may be presented for a refund, which is the essential basis for the two categories. It avoids the need to refer to another section of the Act to determine the difference between categories. The proposed new definitions are:

- **category A container** — means a container of a class approved by the Authority under section 68 as category A containers, being a container that may, subject to this Division, be presented for a refund at a place in the state where beverages are sold by retail in containers of that class
- **category B container** — means a container of a class approved by the Authority under section 68 as category B containers, being a container that may, subject to this Division, be presented at a collection depot for a refund.

2.5 Amended definition of container

The proposed new definition of 'container' will allow a regulation to be made to prescribe a container for the purpose of the CDL system in order to deal with

innovations in container types that contribute to the litter stream. The proposed definition for 'container' is:

(a) a container that –

(i) is made for the purpose of containing a beverage; and

(ii) when filled with the beverage, is sealed for the purposes of storage, transport and handling prior to its sale or delivery for the use or consumption of its contents; or

(b) a container of a kind prescribed by regulation.

2.6 Removal of 'collection area' definition

The definition of 'collection area' has been removed as it is now redundant.

Sections 68(3) and (4) of the Act refer to collection areas in South Australia. The system originally envisaged that depots would be established to service well defined collection areas and that depots would not draw from the same or an overlapping customer base, thereby compromising the viability of individual depots and the overall scheme. Collection areas for individual depots have not been used and therefore an amendment is proposed to remove sections 68(3) and (4) of the Act and the definition of 'collection area' in section 65 of the Act.

This amendment is consistent with the recommendation of the review by the Department for Environment and Heritage of the CDL provisions between 1999 and 2002. The then Department for Environment, Heritage and Aboriginal Affairs National Competition Policy Review of the Act included the CDL provisions and recommended that section 68(3) of the Act be reviewed for relevance, as it divides the state into collection areas that are no longer used.

2.7 Amended definition of 'collection depot'

Collection depots are approved by the EPA under section 69 of the Act as locations where consumers can return beverage containers to obtain a refund. Depots sort containers in preparation for delivery to super collectors, who in turn audit and process the containers and seek markets for the scrap material.

An amended definition of 'collection depot' is proposed that includes all businesses that act as depots and have been approved by the EPA. The definition has also been expanded to include a facility, as well as premises, to clarify that a reverse vending machine, being a facility for collecting and handling category B containers, could be approved as a collection depot. Reverse vending machines accept containers and, in return, give consumers a refund. Pursuant to the proposed new definition: 'collection depot – means a facility or premises for the collection and handling of category B containers delivered to the facility or premises in consideration of the payment of refund amounts, and includes facilities or premises of a kind prescribed by regulation'.

2.8 New definition of 'super collector'

It is proposed that a definition of 'super collector' be included in the Act, consequential to the regulation of super collectors by an approvals system.

'Super collector' means a facility or premises where containers received from collection depots are collected, handled and delivered for reuse, recycling or other disposal. It includes facilities or premises of a kind prescribed by regulation.

The proposed regulation of super collectors is discussed later in this document.

2.9 New definition of 'waste management arrangement'

The proposed new definition of waste management arrangement will be used in sections 68 and 69 of the Act. Sections 68 and 69 of the Act establish the processes for approving a class of container and a collection depot or super collector.

The definition is proposed to state:

> waste management arrangement, in relation to containers of a particular class, means an arrangement for the collection, sorting and aggregation of containers of that class when empty and their reuse, recycling or other disposal.

3 Approval system for 'classes of containers'

Currently, the Act states that containers must be approved in 'classes'. However, there has been some uncertainty in the system of approving a 'class of container'. The EPA has had particular difficulty approving containers as belonging to a particular class without linking the approval to the filler of the container. This must be done so that the EPA can fulfil its obligations under section 69(3) of the Act, which provides that the EPA must be assured that a satisfactory collection system operates for each product on the market.

The current approvals system has produced a situation in which approvals are made on a case-by-case basis, with each container forming its own class. This is contrary to the 'classes of containers' currently exempted from the system in the Environment Protection (Beverage Container) Regulations 1995. Amendments to the Act would ensure that the Act provides jurisdiction to approve containers by linking these to their manufacturer or distributor.

The proposed new section 68(9) of the Act states that an approvals notice must specify the class of containers to which the approval relates by referring to one or more of five factors, i.e. product name, manufacturer or distributor, container contents when full, container capacity, container material and/or anything else considered relevant by the EPA. Thus, approvals could be made by referring to any combination of the above.

In determining if a container is subject to the beverage container refund system, the EPA also takes into account the type of material used for the label

of a container. Label material is an essential determinant of a container's recyclability or its suitability for a reuse or aggregation program. The variety of combinations of packaging and labelling materials being used can cause contamination problems in recycling streams.

A proposed new section 68(4) of the Act has been drafted in recognition that the approvals provisions should also refer to the labelling material of a container and specify that the labelling material of a container is a constraint on its suitability for approval. This provision allows the EPA to refuse an approval application if satisfied that the container material is unsuitable for recycling, reuse or other disposal considered appropriate by the EPA, or if the manner of application of the labelling or refund marking is likely to render the containers unsuitable for recycling, reuse or other disposal considered appropriate by the EPA. Furthermore, the EPA may refuse an approval application if there is not an ongoing and effective waste management arrangement in place for the class of containers.

4 Approvals for depots and super collectors

4.1 Regulation of super collectors

The need to amend the CDL provisions results from the disputes between regulated (depots) and unregulated (super collectors) parties.

Historically, super collectors were created by industry to ensure that each manufacturer's containers were returned by a collector that specifically collected containers on its behalf. Super collectors are no longer closely allied with a particular manufacturer, so are not necessarily restricted to collecting containers sold by one company. Super collectors also compete for clients other than their 'parent' manufacturer. They now predominantly act as companies in their own right.

Currently, depots are approved pursuant to section 68 of the Act, while super collectors are not subject to regulation. Super collectors thus act as free agents to negotiate contracts with depots. The contracts specify sorting requirements, handling fees, insurance, payment for refunds and other matters.

Regulatory controls are applied to approved depots and, to a lesser extent, manufacturers and retailers, while super collectors have no similar statutory obligations, despite their central role in the recycling system, thus creating inequities. This has resulted in super collectors exercising influence on the industry (particularly over disputes) and having the potential to diminish the benefits of a largely self-regulated industry.

Super collectors influence depots when negotiating operating contracts; arrangements between these parties may become inequitable if depots are unable to negotiate effectively. These arrangements result in depot operators being price takers, and super collectors being price setters. Super collectors also set the recycling system price for beverage manufacturers that wish to sell their products in the state.

The South Australian Government proposes that activities in the beverage container recycling system be regulated equitably by requiring both super collectors and collection depots to hold an approval pursuant to Part 8 Division 2 of the Act.

As stated above, a definition of super collector has been included in the interpretations section 65 of the Act.

The inclusion of super collectors in the approvals system appears in the new section 69 of the Act. This section includes a new offence: if a person operates a super collector without an approval, a maximum penalty of $60,000 for a body corporate or $30,000 for natural person may apply. This new offence and penalty also applies if a person operates a collection depot without an approval.

4.2 Strengthened approvals system

The current system of depot approvals is to be improved so that collection depot and super collector approvals are similar to environmental authorisations (i.e. licences) both in the power given to the EPA and in the protection of approval holders. The amendment will also clarify the approvals process for collection depots. Key aspects of the new approvals system are explained below.

4.3 Conditions of approval

The proposed amendments to section 68 of the Act require that an approval must be granted subject to the condition that the approval holder must have in place an effective waste management arrangement for the class of container which they are handling. An effective waste management arrangement for containers of a particular class is defined in the proposed new section 68(10) as 'an arrangement for the collection, sorting and aggregation of containers of that class when empty and their reuse, recycling or other disposal'.

The Bill proposes the creation of a formal process whereby the EPA can impose conditions of approval and a new offence in section 69D if a person contravenes a condition of a beverage container approval, attracting a maximum penalty of $4000 fine or $300 expiation fee. The proposed system is similar to environmental authorisations (licences) under the Act. However, in view of the lower potential for environmental harm from the type of activities conducted in the depots, the proposed penalty for non-compliance is considerably lower than that associated with licences. The penalties are still sufficiently high to reflect the nature and scope of conditions, whose purpose is to achieve good operating practice for the protection of customers and the environment.

4.4 Improved appeal rights

The Bill proposes an amendment to section 106 of the Act to allow certain appeals to be made to the Environment, Resources and Development Court. The amendments will allow a person who has applied for a beverage container

approval to appeal to the Court against a decision of the EPA refusing to grant the approval, or imposing a condition of the approval. Further, the holder of a beverage container approval may appeal to the Court against a decision of the EPA to vary the approval, or vary or impose a condition of the approval, or revoke the approval. A beverage container approval includes an approval to operate as a super collector or collection depot. These amendments allow appeal rights for approval holders, as the approval process involves a number of administrative decisions that have the capacity to affect the livelihood of parties within the system.

4.5 Sustainable waste management system

The proposed new section 69 of the Act requires the EPA to consider the need for a sustainable waste management system for containers when assessing an application for an approval to operate a collection depot, or super collector, or the conditions of such an approval. This allows for flexibility in the contractual arrangements a depot may make for diversion of a particular container into an alternative recycling stream, provided that the objects of the Act and the beverage container provisions are being met to the satisfaction of the EPA.

4.6 Dispute resolution process

Since the inception of the scheme in 1975, depots have had to negotiate contracts with individual super collectors to ensure that they are reimbursed for refunds paid to consumers, and receive handling fees for doing so. Although the financial underpinning of the scheme (refunds and handling fees) is initiated by the manufacturer, the super collectors broker payments to depots, and decide the handling fee paid by manufacturers and how much is paid to depots. This remains a constant source of dispute between super collectors and depots.

Industry disputes have occurred throughout the operation of the system as a result of contractual negotiations over handling fees and the responsibilities of each party. It is highly undesirable that frequent disputes continue, as this may affect the community's ability to obtain refunds. Ultimately, the lack of an effective return system renders the sale of a beverage in breach of the legislation, thus it could result in a manufacturer being unable to sell its products in the state.

Currently, contracts between super collectors and depots include dispute resolution provisions whereby disputes are referred to conciliation and arbitration processes. However, continuing disputes indicate that an additional driver is needed to resolve such disputes to avoid wholesale disruption of the system.

The Bill proposes that, when considering approval of a depot or super collector and the conditions of the approval, the EPA may have regard for the need for a sustainable waste management system. In consideration of this, the EPA may take into account the need for ongoing and effective waste management arrangements and effective processes for resolving disputes between the parties

to the agreement. The EPA may require compliance with the dispute resolution processes as a condition of approval.

4.7 Annual fees and reports

New requirements are proposed to be placed on an approval to operate a collection depot or a super collector. The proposed new section 69A of the Act requires the approval holder to pay annual fees (to be prescribed by regulation). The ability to prescribe annual fees aligns with government policy to reduce the cost to central funding of administration of legislation, and ascribe more to the sector being regulated. On that basis, should annual fees be prescribed, they would be set at levels that recognise the roles and activities of depots and super collectors, relative to other activities regulated by the EPA.

The proposed new section 69A of the Act also requires the approval holder to lodge an annual return containing the reporting information required by the EPA by condition of the approval or by notice in writing. Examples of reporting requirements include figures on aggregated numbers of containers and their total weight by material type, handled within a prescribed period of time (e.g. three months). The intention is to provide EPA with information that allows it to evaluate the overall success and trends in the operation of the legislation.

4.8 Service of documents

A consequential amendment to the strengthening of the beverage container approvals system is the amendment of section 118 of the Act. This section details how a notice, order or other document may be given or delivered to the holder of an environmental authorisation, and now the holder of a beverage container approval. The Bill proposes that notification of a holder of a beverage container approval may be made by:

> (i) posting it to the person at the address last provided to the Authority by the person for that purpose; or
>
> (ii) by transmitting it to the person by facsimile transmission to the number last provided to the Authority by the person for that purpose.

5 Amendments to penalties

An increased penalty is proposed for the offence of a retailer failing to pay a refund amount for certain category A containers. Currently the maximum penalty is a $2000 fine or $200 expiation. This would increase to a maximum $4000 fine or $300 expiation fee under the proposed amendments to section 70 of the Act.

Additionally, an increased penalty is proposed for the offence of a retailer selling a beverage that is not in a Category A or B container, or does not bear the approved refund marking for containers of that class. The penalty would be

increased from a maximum $2000 fine or $200 expiation to a $4000 fine or $300 expiation fee under the proposed new section 69B of the Act.

An increase in penalty is proposed for the offence of a retailer selling a beverage in a prohibited container. Currently the maximum penalty is $2000 with no expiation fee available for this offence. Amendment to section 72(3) of the Act proposes to increase the maximum fine to $4,000 and create an expiation fee of $300 for the offence.

The offence of a person supplying a beverage in a prohibited container to a retailer or selling a beverage in a prohibited container for consumption attracts a maximum penalty of $4,000. There is no expiation fee available for this offence. Amendment to section 72(4) of the Act is proposed to provide an expiation fee of $300 for the offence that may be imposed as an alternative to the maximum $4,000 fine.

The proposed amendments to the penalties create a consistency of penalties for similar contraventions in the beverage container provisions of the Act. The increase in penalties is consistent with the increase in penalties in other parts of the Act as introduced in the Statutes Amendment (Environment Protection) Act 2002 and the Environment Protection (Miscellaneous) Amendment Act 2005 and is expected to be an increased deterrent to potential offenders.

6 Interstate containers

Allegations have been made that refunds have been sought for containers that have not been sold in South Australia. The current approved refund marking reads '5 cents refund at collection depots when sold in South Australia', but as most containers are labelled for a national market, the refund marking appears on containers sold across Australia and it is impossible to differentiate containers sold in other states from those sold in South Australia.

Further, where depots accept containers that have not been sold in South Australia and claim reimbursement for these from super collectors, a concern is that super collectors might refuse to accept the containers on the basis that they may have originated from interstate.

This is a serious issue, as deposits have not been paid for these containers, which means that the system is not adequately financially underpinned.

Legislative amendments would make rorting an offence under the Act, empowering the EPA to undertake its own investigation and enforcement.

It should be noted that the South Australian beverage container refund system is permanently exempted from the provisions of the Mutual Recognition Act (SA) 1992, which aims to recognise section 92 of the Australian Constitution by enabling the free and unfettered movement of products and services between Australian states. The exemption acknowledges that the environmental outcomes achieved through the beverage container refund system are sufficient to warrant a refund scheme applying to South Australia only.

The proposed amendments do not impose any obligations or requirements on interstate manufacturers or distributors, who would be able to continue current labelling practices. The proposed amendments do not attempt to adjust the relative market positions of any manufacturers or distributors (whether interstate or intrastate) or address the competitive advantage held by national distributors, who can amortise the costs of the beverage containers refund system across their product range.

The amendments protect South Australian collectors, as well as protecting super collectors from paying refund amounts and handling fees on interstate containers. The exclusion of containers sold interstate is permissible where the law is appropriate and adapted to the achievement of environmental objectives in South Australia, and where the impacts on interstate trade are incidental and not disproportionate to the achievement of the environmental objectives. The proposed amendment is intended to ensure that money paid by consumers in good faith to fund the operation of the CDL system is not being illegally appropriated from the scheme. Proposed amendments aim to increase the effectiveness of the beverage container refund system in reducing South Australia's litter, conserve its energy resources and promote recycling to reduce waste going to landfills.

To ascertain whether the proposed amendments are permissible, alternative means of achieving their objectives should be investigated. At this point there are no alternatives to achieving the environmental objectives of the beverage container refund system. For example, an offence which provides that a person may not dispose of a beverage container other than through a collection depot would be impractical and unenforceable.

The South Australian Government contends that measures to ensure the exclusion of interstate containers for which no deposit has been paid from South Australia's beverage containers deposit refund system is necessary to ensure the effective operation of an environmental initiative that operates in one state only. Therefore, to preserve the integrity of the South Australian system, exclusion of interstate containers is necessary until CDL systems operate interstate making the point of sale of the empty container irrelevant.

A proposed new section 69C of the Act creates an offence to claim a refund on beverage containers purchased outside the state of South Australia. As such, a person must not present to a retailer or the operator of a collection depot or super collector, for the purpose of claiming refund amounts, containers purchased outside the state. The maximum penalty proposed for this offence is a $4000 fine or $300 expiation fee.

A retailer or operator of a collection depot or super collector may request a person to sign a statutory declaration verifying that containers presented by the person for refund amounts were purchased in this state. A condition of depot approval may require that a declaration should be requested where the refund to be obtained exceeds $50. This represents no additional burden on customers presenting such quantities, as that level of financial transaction already requires provision of personal details to depot operators for GST purposes. Where

possible, the statement should include an option for consumers to indicate that they have collected the containers from public places, such as roadsides.

There are also consequential amendments to this new offence appearing in the proposed new section 70(2) of the Act, so that a retailer may refuse to accept delivery of a container if they believe that it was not purchased in the state, or if the retailer's requests for a statutory declaration under section 69(c) of the Act has been refused.

Section 71 of the Act covers the responsibilities of collection depots in the beverage container refund system. The proposed new section 71(2) of the Act sets out circumstances whereby a collection depot may refuse to accept delivery of a container if they believe that the container was not purchased in the state, or if the person requesting the refund refuses to make a statutory declaration when so asked by the operator of the collection depot.

The EPA may impose, as a condition of approval, a reporting requirement obliging the operator of a collection depot to notify the EPA of circumstances in which the operator refuses to accept containers which may have originated from interstate, or on becoming aware that a person is, or may be, bringing containers from interstate. A condition of approval may also preclude a depot or super collector receiving interstate containers. Pursuant to the proposed new section 69(7) of the Act, the EPA may revoke an approval if satisfied that a condition has been contravened.

7 Schedule 1

Currently a person operating a collection depot that contains beverage containers bearing refund markings under Division 2 of Part 8 of the Act is required to hold an environmental authorisation pursuant to Subclause 3(3)(e)(i)(A) of Schedule 1 to the Act or be an approved depot for beverage containers under Division 2 of Part 8. Therefore, if a collection depot does not have an approval, it is an offence pursuant to section 36 of the Act to operate a collection depot without an environmental authorisation.

The proposed new more stringent approvals system will contain an offence for operating a collection depot without approval. Thus, the penalty for failing to hold an approval imposed by utilising the failure to hold an environmental authorisation in section 36 will not be required. Therefore, the Bill proposes that subsection 3(3)(e)(i)(A) of Schedule 1 of the Act be deleted.

A further amendment proposed is the amendment of clause 3(3)(g) of Schedule 1, which currently states that the conduct of a depot for the reception, storage or treatment or disposal of waste requires an environmental authorisation, unless a depot is approved as a collection depot for beverage containers under Division 2 of Part 8. The amendment proposes a rewording so that the collection and handling of beverage containers by the holder of an approval to operate a collection depot under the new section 69, does not require an environmental authorisation. The intention of the change is to clarify that, if a person operates a collection depot on a site and also operates a waste depot on that site, the operator of the collection depot would not need an environmental authorisation

for the collection depot activity, but they may require an authorisation to operate the waste depot on the site.

A further subclause 3(3)(ga) is proposed so that the holder of an approval to operate a super collector under the new section 69 of the Act does not require an environmental authorisation for the collection, handling and delivery for reuse, recycling or other disposal of beverage containers.

8 Transitional arrangements

The entry of new classes of containers to the beverage container refund system in January 2003 demonstrated the need for transitional arrangements. The Bill proposes transitional arrangements in clauses 14, 15, 16, 17 and 18 of the Bill for classes of containers approved under repealed provisions, refund markings approved under repealed provisions, continuation of collection depot approvals and super collectors. Therefore, approvals given to a class of containers, or a refund marking, or collection depot, immediately before the commencement of the Bill as an amendment Act will, on the commencement of the Bill as an amendment Act, continue to be approved under the new sections of the Act.

Additionally, a person who was the operator of a super collector immediately before the commencement of the Bill as an amendment Act is, if they have made an application and paid the fee, entitled to the grant, on that commencement, of an approval to operate the super collector for a term and subject to conditions determined by the EPA.

9 Refund amount

The refund for most containers in the CDL system is 5 cents; these are referred to as category B containers and are returned through the network of collection depots across the State. The system also allows for a refund of 10 cents when some containers are returned to the point of sale; these are referred to as category A containers. Very few beverage distributors choose to have their containers refunded in this manner.

The refund amounts are prescribed in the *Environment Protection (Beverage Container) Regulations 1995* and appear in clause 5 of the regulation and schedule 1.

There are no conclusive reports available to indicate a statistically significant decline in the containers returned in South Australia pursuant to the CDL system. However, Hudson Howell ('Collection Industry Arrangements for Used Beverage Containers Under CDL' 2005) stated:

> "It is critical to recognise that recycling rates are likely to steadily decline in future years in the absence of new recovery and market development initiatives. The reasons for this include the maturation of the current collection system and the declining relative value of deposit amounts."

In June 2004 the EPA commissioned a survey that was carried out with the participation of 803 respondents from both metropolitan and regional South

Australia to determine, amongst other things, whether the current refund amount is sufficient to act as an incentive to consumers to return their empty containers, or whether it should be increased[1]. A full report of the survey results may be viewed on the EPA website at <www.epa.sa.gov.au/pdfs/cdl_survey.pdf> and relevant extracts are copied below.

The results as they relate to the perceived refund amount and whether this is sufficient to encourage the return of containers were as follows:

- almost two thirds (62%) stated that the current refund of 5 cents was sufficient to encourage return of containers to collection depots
- among those respondents who felt the refund was insufficient, the majority (83%) said the refund amount should be increased, with three quarters (77%) indicating that this increase should be to 10 cents.

The results as they relate to the implications of increasing the refund or leaving it the same were as follows:

- 80% of respondents said that if an increase in the refund amount resulted in an increase in the price of beverages, it would have no effect on the number of beverages they would buy each week
- six in ten (60%) of those surveyed thought that increasing the refund would result in an increased number of beverage containers returned to collection/recycling depots
- a similar proportion (55%) of respondents felt that leaving the refund amount the same would have no effect on the number of beverage containers returned for refund.

The results as they relate to the level of agreement with statements about CDL were as follows:

- more than half (57%) of respondents agreed that they would be more likely to return beverage containers if the deposit amount was 10 cents or more
- more than half (55%) disagreed with the premise that they used to return more containers than they do now.

EPA has interpreted these results as indicating that slightly more than 60% of South Australians have recognised the social and environmental benefits the deposit system provides to reduce litter and waste, and to increase resource recycling. A modest financial incentive has been sufficient for them to maintain this environmentally positive behaviour. Nevertheless, 38% of the public believes that a greater incentive is warranted to increase public participation.

In considering the refund amounts in the CDL system your comments are welcomed on the following questions:

[1] *The EPA* Community awareness and acceptance of Container Deposit Legislation

Prepared for the Environment Protection Authority by McGregor Tan Research to report on the community's awareness and acceptance of Container Deposit Legislation (CDL) and the extension to the legislation in January 2003

1 Do you consider the CDL refund amount of 5 cents for category B containers and 10 cents for category A containers to be adequate to encourage litter reduction and recycling? If not, do you consider a refund amount of 10 or 20 cents to be preferable, and why?

2 What impact would an increase in the refund amounts have on you as an individual or as part of an affected industry sector including beverage manufacturers, distributors, retailers and those in the collection and recycling industry, or a local government organisation?

3 It is recognised that any change in the refund level will require industry to undertake a re-labeling process and that collection depots will need to provide for higher cash turnover. If a refund amount was to be changed what do you consider to be an appropriate lead-in time to allow the beverage industry sufficient time to ensure its labelling reflects the new deposit level?

4 If a refund amount was to be changed what is an appropriate lead-in time to allow education of the community?

Another issue that the community may wish to consider is whether the CDL system should adopt different refund amounts for different sized containers in a tiered deposit system. A tiered deposit system is implemented in the State of California in the United States of America. The refund amount was originally 1 cent for all containers and was amended in 1990 to 2.5 cents for containers holding less than 24 oz (710 ml) and 5 cents for each container holding 24 oz more. To encourage greater participation in recycling the value of beverage containers was further increased on 1 January 2004 to 4 cents for each container less than 24 ounces and 8 cents for each container holding 24 ounces or greater. The differential reflects, in part, the higher resource value of the greater mass in larger containers.

5 Do you believe the Government should consider a tiered deposit scheme for South Australia?

The Western Australian Government is in the process of considering the adoption of a CDL system. The South Australian Government will consider any comments received from this consultation process and also observe the progress of the CDL system in Western Australia when considering the issue of the refund amount.

Appendix 1 Consolidated Amendments

DRAFT
ENVIRONMENT PROTECTION (BEVERAGE CONTAINERS) AMENDMENT BILL 2006

Provisions of the *Environment Protection Act 1993*
as they would appear following amendment by the Bill

Please note this is not an official or authorised version of the current provisions of the *Environment Protection Act 1993* or a formal consolidation of actual amendments to those provisions. For official purposes you must refer to the current South Australian legislation published by authority of the South Australian Attorney General. This consolidation, showing how various sections of the *Environment Protection Act 1993* would appear if the amendments proposed in the draft Environment Protection (Beverage Containers) Amendment Bill 2006 were made, has been prepared by the Environment Protection Authority for illustrative purposes only.

Legend

Standard Black Font	-Text retained in the Act
Shaded Italics Font	-Text to be added to the Act
~~Strike-through Font~~	-Text to be removed from the Act

3—Interpretation

(1) In this Act, unless the contrary intention appears—

activity includes the storage or possession of a pollutant;

administering agency—see Division 1A of Part 3;

air includes any layer of the atmosphere;

amenity value of an area includes any quality or condition of the area that conduces to its enjoyment;

appointed member, in relation to the Board, means a member appointed by the Governor;

associate—see subsection (2);

authorised officer means a person appointed to be an authorised officer under Division 1 of Part 10;

the Authority means the Environment Protection Authority established under Division 1 of Part 3;

~~***beverage container approval*** means an approval for the purposes of Division 2 of Part 8;~~

beverage container approval*—means an approval under Division 2 of Part 8;*

…

Division 2—Beverage containers

64E—Outline of Division

(1) This Division establishes a litter control and waste management system for beverage containers through a regulatory scheme that has the following general features:

(a) beverage containers are prohibited from sale in the State unless approved by the Authority as category A or category B containers or exempted;

(b) empty category A containers bearing an approved refund marking are returnable to retailers of such containers for a refund;

(c) empty category B containers bearing an approved refund marking are returnable to collection depots for a refund;

(d) the operators of collection depots and super collectors must be approved by the Authority under this Division;

(e) the Authority has power to attach conditions to approvals under this Division to ensure the reuse, recycling or other appropriate disposal of returned containers.

(2) This Division also, for the protection of the environment, prohibits the sale or supply of beverages in certain containers.

65—Interpretation

In this Division—

~~***beverage*** means—~~

~~(a) brandy, gin, rum, whisky, cordials containing spirits, wine, cider, perry, mead, ale, porter, beer or any other spiritous, malt, vinous or fermented liquors; or~~

~~(b) any carbonated soft drink or waters; or~~

~~(c) any other liquid intended for human consumption by drinking declared by regulation to be a beverage for the purposes of this Division;~~

approved collection depot, *means a collection depot in respect of which an approval under section 69 is in force;*

approved refund marking, *in relation to containers of a particular class, means a marking approved by the Authority under section 68 for containers of that class indicating the refund amount for the containers;*

beverage *means a liquid intended for human consumption by drinking but does not include a liquid of a kind prescribed by regulation;*

~~***category A container*** means a container of a class approved under this Division as category A containers;~~

~~***category B container*** means a container of a class approved under this Division as category B containers;~~

~~***collection area***, in relation to containers of a particular class, means an area comprising a part of the State approved under this Division as a collection area for containers of that class;~~

~~***collection depot***, in relation to containers of a particular class, means a collection depot approved under this Division for containers of that class~~;

category A container *– means a container of a class approved by the Authority under section 68 as category A containers, being a container that may, subject to this Division, be presented for a refund at a place in the State where beverages are sold by retail in containers of that class;*

category B container *– means a container of a class approved by the Authority under section 68 as category B containers, being a container that may, subject to this Division, be presented at a collection depot for a refund;*

collection depot *means a facility or premises for the collection and handling of category B containers delivered to the facility or premises in consideration of the payment of refund amounts, and includes facilities or premises of a kind prescribed by regulation;*

container *means –*

(a) a container that –

(i) is made for the purpose of containing a beverage; and

(ii) when filled with the beverage, is sealed for the purposes of storage, transport and handling prior to its sale or delivery for the use or consumption of its contents; or

(b) a container of a kind prescribed by regulation;

~~a container of any kind made for the purpose of containing a beverage, being a container that when filled with the beverage is sealed for the purposes of storage, transport and handling prior to its sale or delivery for the use or consumption of its contents;~~

glass container means a container made of glass whether alone or in combination with any other substance or thing;

refund amount, in relation to a container of a particular class, means an amount prescribed as the refund amount for containers of that class;

refund marking, in relation to a container, means marking or labelling the container by any method (including embossment) with a statement of, and other marks or features as to, the refund amount for the container;

retailer means a person whose business is or includes that of selling a beverage for the purpose of the use or consumption of that beverage and, in the case of such sale by means of a vending machine, includes the owner of that vending machine unless the owner has let out the machine on hire to some other person, in which case the expression includes that other person;

spirit-based beverage means a beverage that—

(a) contains any spirit; and
(b) contains less than the prescribed percentage of alcohol;

super collector *means a facility or premises for the collection, handling and delivery for reuse, recycling or other disposal of containers received from collection depots, and includes facilities or premises of a kind prescribed by regulation;*

waste management arrangement, in relation to containers of a particular class, means an arrangement for the collection, sorting and aggregation of containers of that class when empty and their reuse, recycling or other disposal.

wine-based beverage means a beverage that—

(a) contains wine; and

(b) contains less than the prescribed percentage of alcohol.

66—Division not to apply to certain containers

This Division does not apply to glass containers made for the purpose of containing wine or spiritous liquor other than glass containers made for the purpose of containing a wine-based beverage or spirit-based beverage.

67—Exemption of certain containers by regulation

The Governor may, by regulation, exempt containers of a specified class from the application of this Division, or specified provisions of this Division, either unconditionally or subject to conditions specified in the regulations.

~~**68—Approvals, markings etc required before sale or supply of beverages in containers**~~

~~(1) A retailer must not sell a beverage in a container unless—~~

~~(a) the Authority has approved a class of containers to which the container belongs as category A containers or category B containers or both; and~~

~~(b) the Authority has approved the refund marking for a class of containers to which the container belongs and the container bears the refund marking so approved.~~

~~Penalty: Division 7 fine.~~

~~Expiation Fee: Division 7 fee.~~

~~(2) A person must not—~~

~~(a) supply a beverage in a container to a retailer for sale by the retailer; or~~

~~(b) sell a beverage in a container for consumption,~~

~~unless the requirements of subsection (1) have been satisfied in respect of a class of containers to which the container belongs.~~

~~Penalty: Division 6 fine.~~

~~Expiation Fee: Division 6 fee.~~

~~(3) A retailer must not sell a beverage in a category B container unless—~~

~~(a) the retailer's premises are situated within a collection area for which a collection depot has been approved by the Authority for containers of a class to which the container belongs; and~~

~~(b) if the retailer has been requested by the Authority, by notice in writing, to do so the retailer has a sign (in a form specified by the Authority) prominently displayed in the retailer's premises so as to be readily visible to purchasers stating the location of the collection depots so approved.~~

~~Penalty: Division 7 fine.~~

~~Expiation fee: Division 7 fee.~~

~~(4) In proceedings for an offence against subsection (3), an allegation in the complaint that specified premises were not at a specified time situated within a collection area for which a collection depot had been approved by the Authority for containers of a specified class is, in the absence of proof to the contrary, proof of the matters so alleged.~~

68- Approval of classes of containers as category A or category B containers

(1) An application may be made to the Authority for approval of a class of containers as category A containers or category B containers.

(2) An application for an approval under this section –

(a) must be made in a manner and form determined by the Authority; and

(b) must be accompanied by the prescribed fee; and

(c) must, on request by the Authority, be accompanied by additional information to enable the Authority to determine the application.

(3) An approval under this section –

(a) must be granted subject to the following conditions:

(i) that containers of the class to which the approval relates must bear the refund marking approved by the Authority for containers of that class;

(ii) that the approval holder must have in place an effective waste management arrangement in relation to containers of that class; and

(b) may be granted subject to any other conditions the Authority thinks fit; and

(c) must be notified in the Gazette.

(4) Without limiting the grounds on which the Authority may refuse an application for an approval under this section, the Authority may refuse such an application if the Authority is satisfied that -

(a) the container material (including the labelling or refund marking) is unsuitable for recycling, reuse or other disposal considered appropriate by the Authority; or

(b) the manner of application of the labelling or refund marking proposed in respect of the class of containers is likely to render the containers unsuitable for recycling, reuse or other disposal considered appropriate by the Authority; or

(c) there is no ongoing and effective waste management arrangement in place in relation to the class of containers.

(5) If the Authority refuses an application for an approval under this section, the Authority must give the applicant written notice of the refusal and the reasons for the refusal.

(6) The Authority may, on its own initiative or on application, by notice in the Gazette, vary an approval under this section or vary or revoke a condition of such an approval or impose a condition or further condition.

(7) The Authority may, by notice in the Gazette, revoke an approval under this section in respect of a class of containers if satisfied that a condition of the approval has been contravened.

(8) Before the Authority revokes an approval under subsection (7), the Authority must-

(a) give the holder of the approval written notice of its proposed action specifying reasons for the proposed action; and

(b) allow the holder of the approval at least 14 days within which to make submissions to the Authority in relation to the proposed action.

(9) A notice under this section –

(a) must, in the case of a notice of approval, specify -

(i) the class of containers to which the approval relates by reference to one or more of the following:

(A) product name;

(B) manufacturer or distributor;

(C) container contents when full;

(D) container capacity;

(E) container material;

(F) any other factor considered relevant by the Authority; and

(ii) the conditions of the approval; and

(b) may contain transitional provisions as to the operation of this Division in relation to containers in respect of which an approval under this section applies, whether the containers are-

(i) held by manufacturers, distributors, wholesalers or retailers for sale; or

(ii) sold but remaining to be returned as empty containers under this Division; and

(c) has effect from the date of publication of the notice or a future date specified in the notice.

~~**69—Grant, variation or revocation of approvals**~~

~~(1) An application for an approval for the purposes of this Division must be made to the Authority in such manner and form as is determined by the Authority and must be accompanied by the prescribed fee.~~

~~(2) An applicant for an approval must, if so required by the Authority, provide the Authority with such further information as it may require to determine the application.~~

~~(3) The Authority may refuse to grant an approval in respect of a class of containers unless satisfied that proper arrangements have been made under which empty containers of that class would, after being returned in consideration of payment of refund amounts under this Division, be aggregated and reused or their materials recycled or otherwise disposed of in a manner that the Authority considers appropriate having regard to the objects of this Act and any relevant environment protection policy.~~

~~(4) If the Authority refuses an application for an approval, the Authority must give written notice to the applicant of the reasons for the refusal.~~

~~(5) An approval *a beverage container approval*~~

~~(a) must be notified in the Gazette; and~~

~~(b) is subject to such conditions as the Authority considers appropriate and specifies in the notice of approval.~~

~~(6) The Authority may, by notice in the Gazette, vary an approval, or vary or revoke any condition of an approval, or impose a condition or further condition.~~

~~(7) The Authority must, on application by the person for the time being operating a collection depot, by notice in the Gazette, revoke the approval of the depot.~~

~~(8) The Authority may, by notice in the Gazette, revoke an approval in respect of a class of containers if satisfied that a condition of the approval has been contravened in respect of containers of that class.~~

~~(9) A notice under subsection (7) or (8) varying or revoking an approval or the conditions of an approval, or imposing a condition or further condition of an approval –~~

~~(a) has effect from the date of publication of the notice or a future date specified in the notice; and~~

~~(b) may contain requirements or provisions of a transitional nature (which will have effect according to their terms) as to the operation of this Division in relation to containers held by retailers for sale, or sold but remaining to be returned as empty containers under this Division.~~

69 Approval of collection depots and super collectors

(1) A person must not operate a collection depot or super collector without an approval under this section.

Penalty: If the offender is a body corporate – Division 1 fine.
If the offender us a natural person – Division 3 fine.

(2) An application for an approval to operate a collection depot or super collector -

(a) must be made in a manner and form determined by the Authority; and
(b) must be accompanied by the prescribed fee; and
(c) must, on request by the Authority, be accompanied by additional information to enable the Authority to determine the application.

(3) The Authority may, in determining -
(a) an application for an approval to operate a collection depot or super collector; or
(b) what should be the conditions of such an approval,

have regard to the need for a sustainable waste management system for containers and, in particular, for that purpose, the need for –

(c) ongoing and effective waste management arrangements in relation to the classes of containers proposed to be handled under the approval; and
(d) effective processes for resolving disputes between the parties to those arrangements.

(4) An approval to operate a collection depot or super collector may be granted unconditionally or subject to conditions and must be notified (together with any conditions) in the Gazette.

(5) If the Authority refuses an application for an approval to operate a collection depot or super collector, the Authority must give the applicant written notice of the refusal and the reasons for the refusal.

(6) The Authority may, on its own initiative or on application, by notice in the Gazette, vary an approval to operate a collection depot or super collector or impose, vary or revoke a condition of an approval.

(7) The Authority may, by notice in the Gazette, revoke an approval to operate a collection depot or super collector if satisfied that a condition of the approval has been contravened.

(8) Before the Authority acts under this section, the Authority must-

(a) notify the holder of the approval in writing of its proposed action specifying reasons for the proposed action; and

(b) allow the holder of the approval at least 14 days within which to make submission to the Authority in relation to the proposed action.

(9) A notice under this section has effect from the date of publication of the notice in the Gazette or a future date specified in the notice.

69A Annual fees and returns for collection depots and super collectors

(1) The holder of an approval to operate a collection depot or super collector must-

(a) in each year lodge with the Authority, before the date fixed by regulation, an annual return containing the information required by the Authority by condition of the approval or by notice in writing; and

(b) in each year (other than a year in which the approval is due to expire) pay to the Authority, before the date fixed by regulation, the fee fixed by regulation.

(2) If a person fails to lodge a return or pay a fee in accordance with this section, the Authority may, by notice in writing, require the person to make a good default and, in addition, to pay to the Authority the amount fixed by regulation as a penalty for default.

(3) If a person fails to comply with the notice within 14 days after the giving of the notice, the approval is suspended until the notice is complied with.

(4) If a person fails to comply with the notice within 6 months after the giving of the notice, the approval is revoked.

(5) The Authority must cause written notice of the suspension or revocation under this section to be given to the person.

(6) An annual fee (including a penalty for default) payable under this section is recoverable by the Authority as a debt due to the Authority.

69B—Sale or supply of beverages in containers

(1) A retailer must not sell a beverage in a container unless the container—

(a) is a category A or category B container; and

(b) bears the approved refund marking for containers of that class.

Penalty: Division 6 fine.
Expiation fee: Division 6 fee.

(2) A person must not—

(a) supply a beverage in a container to a retailer for sale by the retailer; or

(b) sell a beverage in a container for consumption,

unless the container—

(c) is a category A or category B container; and

(d) bears the approved refund marking for containers of that class.

Penalty: Division 6 fine.
Expiation fee: Division 6 fee.

69C – Offence to claim refund on beverage containers purchased outside State

(1) A person must not present to a retailer or the operator of a collection depot or super collector, for the purpose of claiming refund amounts, containers purchased outside the State.

Penalty: Division 6 fine.
Expiation fee: Division 6 fee.

(2) A retailer or operator of a collection depot or super collector may request a person to sign a statutory declaration verifying that containers presented by the person for refund amounts were purchased in this State.

69D – Offence to contravene condition of beverage container approval

The holder of a beverage container approval must not contravene a condition of the approval.

Maximum penalty: Division 6 fine.
Expiation fee: Division 6 fee.

70—Retailers to pay refund amounts for certain empty category A containers

(1) Subject to subsection (2), a retailer who sells a beverage in category A containers of a particular class must not refuse or fail, or permit a person acting on the retailer's behalf to refuse or fail—

(a) to accept delivery of empty containers of that class that bear the ~~refund marking approved by the Authority~~ *approved refund marking* for containers of that class; or

(b) in respect of each such container, to pay to the person delivering that container the refund amount for that container.

~~Penalty: Division 7 fine.~~

~~Expiation Fee: Division 7 fee~~.

Penalty: Division 6 fine.
Expiation fee: Division 6 fee.

~~(2) A retailer is not required by subsection (1) to accept delivery of any container that is in an unclean condition.~~

(2) A retailer or a person acting on the retailer's behalf may refuse to accept delivery of a container if-

(a) the container is in an unclean condition; or

(b) he or she reasonably believes the container was not purchased in the State; or

(c) the retailer or person acting on the retailer's behalf has made a request for a statutory declaration under section 69C(2) in respect of the container and the request has been refused.

(3) In proceedings for an offence against subsection (1), an allegation in the complaint that the retailer sells beverages in containers of a particular class is, in the absence of proof to the contrary, proof of the matter so alleged.

~~**71—Collection depots to pay refund amounts for certain empty category B containers**~~

~~(1) Subject to subsection (2), the person operating or in charge of a collection depot must not refuse or fail, or permit a person acting on his or her behalf, to refuse or fail—~~

~~(a) to accept delivery of empty category B containers of a class for which the collection depot is approved, being containers that bear the refund marking approved by the Authority for containers of that class; or~~

~~(b) in respect of each such container, to pay to the person delivering that container the refund amount for that container.~~

~~Penalty: Division 7 fine.~~

~~Expiation Fee: Division 7 fee.~~

~~(2) A person is not required by subsection (1) to accept delivery of any container that is in an unclean condition.~~

71—Collection depots to pay refund amounts for certain empty category B containers

(1) Subject to subsection (2), the operator of an approved collection depot must not refuse or fail, or permit a person acting on his or her behalf, to refuse or fail—

(a) to accept delivery of empty category B containers that bear the approved refund marking for containers of that class; or

(b) in respect of each such container, to pay to the person delivering that container the refund amount for that container.

Penalty: Division 6 fine.
Expiation fee: Division 6 fee.

(2) The operator of an approved collection depot or a person acting on his or her behalf may refuse to accept delivery of a container if-

(a) the approval of the operator of the depot is subject to a condition limiting the operation of the depot to the receipt of category B containers of a specified class and the container does not belong to that class; or

(b) the container is an unclean condition; or

(c) he or she reasonably believes that container was not purchased in the State; or

(d) if the operator of the collection depot or a person acting on his or her behalf has made a request for a statutory declaration under section 69C(2) in respect of the container and the request has been refused.

72—Certain containers prohibited

(1) In this section—

prohibited container means—

(a) a sealed container (commonly known as a "ring pull container") that is wholly or mainly constructed of metal (whether or not of more than one kind of metal) and capable of being opened, without the aid of any instrument, by the removal of portion of the container in such a manner as results or may result in severance from the body of the container of the portion so removed; or

(b) a sealed glass container of a prescribed kind in which the contents are held under pressure; or

(c) a plastic container of a class prescribed as prohibited containers.

(2) The Governor may not make a regulation prescribing a class of plastic containers as prohibited containers for the purposes of paragraph (c) of the definition of ***prohibited container*** in subsection (1) unless satisfied that an effective system of recovery, recycling, reprocessing or reuse of the containers—

(a) is not assured in advance of introduction of the containers to the market; or

(b) has not been established or maintained following the introduction of the containers to the market.

(3) A retailer must not sell a beverage in a prohibited container.

~~Penalty: Division 7 fine.~~

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

(4) A person must not—

(a) supply a beverage in a prohibited container to a retailer for sale by the retailer; or

(b) sell a beverage in a prohibited container for consumption.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

....

Part 13—Appeals to Court

106—Appeals to Court

(1) The following appeals may be made to the Environment, Resources and Development Court:

(a) a person who applied for a works approval or licence may appeal to the Court against a decision of the Authority—

(i) refusing to grant the approval or licence; or

(ii) determining the term of the approval or licence; or

(iii) imposing a condition of the approval or licence;

(b) an applicant for the transfer of a works approval or licence may appeal to the Court against a decision of the Authority to refuse to approve the transfer;

(c) the holder of a works approval or licence may appeal to the Court against a decision of the Authority—

(i) determining the term of the approval or licence on application for its renewal; or

(ii) varying or imposing a condition of the approval or licence or determining a matter in relation to such a condition (including a matter relating to a financial assurance lodged with the Authority); or

(iii) suspending or cancelling the approval or licence or imposing a disqualification on the holder; or

(iv) refusing to approve the surrender of the approval or licence;

(ca) the holder of a licence may appeal to the Court against a decision of the Authority to renew the licence of its own initiative and without application by the holder of the licence;

(d) a person to whom an environment protection order, information discovery order or clean-up order has been issued may appeal to the Court against the order or any variation of the order.

(e) a person who applied for a beverage container approval may appeal to the Court against a decision of the Authority—
(i) refusing to grant the approval; or
(ii) imposing a condition of the approval;

(f) the holder of a beverage container approval may appeal to the Court against a decision of the Authority -

(i) varying the approval or varying or imposing a condition of the approval; or

(ii) revoking the approval.

(2) An appeal must be made in a manner and form determined by the Court, setting out the grounds of the appeal.

(3) Subject to this section, an appeal must be made—

(a) in the case of an appeal against an environment protection order, information discovery order or clean-up order or variation of such an order—within 14 days after the order is issued or the variation is made;

(b) in any other case—within two months after the making of the decision.

(4) The Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by this section.

(5) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the appeal).

....

118—Service

(1) A notice, order or other document required or authorised by this Act to be given to or served on a person by the Minister, the Authority, another administering agency or an authorised officer may be given or served—

(a) by delivering it personally to the person or an agent of the person; or

(b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or

(c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

(2) Without limiting the effect of subsection (1), a notice, order or other document required or authorised to be given to or served on a person may—

(a) if the person is the holder of an environmental authorisation *or a beverage container approval* —be given to or served on the person—

(i) by posting it to the person at the address last provided to the Authority by the person for that purpose; or

(ii) by transmitting it to the person by facsimile transmission to the number last provided to the Authority by the person for that purpose; or

(b) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth—be given or served on the person in accordance with that Act.

....

Schedule 1—Prescribed activities of environmental significance

Part A—Activities

....

3—Waste Treatment and Disposal

….

(3) **Waste or Recycling Depots**

the conduct of a depot for the reception, storage, treatment or disposal of waste other than—

(a) temporary storage at the place at which the waste (not being tyres or tyre pieces) is produced while awaiting transport to another place; or

(b) storage, treatment or disposal of domestic waste at residential premises; or

(c) receipt or storage by a council or hospital of medical waste produced in the course of—

(i) medical practice other than—

(A) the practice of pathology; or

(B) medical practice at a hospital; or

(ii) dental practice other than at a hospital; or

(iii) nursing practice other than at a hospital; or

(iv) operating a nursing home; or

(v) veterinary practice; or

(vi) operating a hospital with a capacity of less than 40 beds; or

(vii) operating an immunisation clinic; or

(d) receipt or storage by a pharmacy of medical waste produced in the course of a domestic activity; or

(e) the handling of waste solely for recycling or reuse where—

(i) the waste handled does not consist of or include—

~~(A) beverage containers bearing refund marking under Division 2 of Part 8; or~~

(B) substances or things listed in Part B of this Schedule; or

(C) waste oil in quantities exceeding 5 000 litres per year; or

(D) waste lead acid batteries in quantities exceeding 500 batteries per year; or

(E) waste tyres or tyre pieces in quantities exceeding 5 tonnes per year; and

(ii) the quantities of waste handled do not exceed 100 tonnes per year; or

(f) the handling and disposal of waste tyres or tyre pieces in a manner approved by the Authority; or

~~(g) a depot approved as a collection depot for beverage containers under Division 2 of Part 8; or~~

(g) the collection and handling of beverage containers by the holder of an approval to operate a collection depot under section 69; or

(ga) the collection, handling and delivery for reuse, recycling or other disposal of beverage containers by the holder of an approval to operate a super collector under section 69; or

(h) the handling for charitable or non-profit purposes only of beverage containers bearing refund marking under Division 2 of Part 8; or

(i) a depot that the Authority is satisfied will be conducted for such limited purposes that requirement of an environmental authorisation under Part 6 would not be justified.

….

Part 3 of the Environment Protection (Beverage Containers) Amendment Bill 2006 —Transitional provisions

Clause 14—Interpretation

In this Part—

principal Act *means the Environment Protection Act 1993.*

Clause 15—Classes of containers approved under repealed provisions

(1) An approval of a class of containers as category A containers in force under Part 8 Division 2 of the principal Act immediately before the commencement of this Act will, on that commencement, continue as an approval of the class of containers as category A containers under section 68 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

(2) An approval of a class of containers as category B containers in force under Part 8 Division 2 of the principal Act immediately before the commencement of this Act will, on that commencement, continue as an approval of the class of containers as category B containers under section 68 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

Clause 16—Refund markings approved under repealed provisions

An approval of a refund marking in relation to a class of containers in force under Part 8 Division 2 of the principal Act immediately before the commencement of this Act will, on that commencement, continue as an approval of the refund marking in relation to that class of containers under

section 68 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

Clause 17—Continuation of collection depot approvals

An approval of a collection depot in force under Part 8 Division 2 of the principal Act immediately before the commencement of this Act will, on that commencement, continue in force, as an approval in respect of the collection depot under section 69 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

Clause 18 – Super collectors

A person who was the operator of a super collector immediately before the commencement of this Act is, if the person has made an application under Part 8 Division 2 of the Environment Protection Act 1993 as amended by this Act and paid the appropriate fee, entitled to the grant, on that commencement, of an approval under section 69 of the Environment Protection Act 1993 as amended by this Act to operate the super collector for a term and subject to conditions determined by the Authority.

Appendix 2 Draft Environment Protection (Beverage Containers) Amendment Bill 2006

Draft for comment

South Australia

Environment Protection (Beverage Containers) Amendment Bill 2006

A BILL FOR

An Act to amend the *Environment Protection Act 1993*.

Contents

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Environment Protection (Beverage Containers) Amendment Act 2006*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Environment Protection Act 1993*

4—Amendment of section 3—Interpretation

Section 3(1), definition of ***beverage container approval***—delete the definition and substitute:

beverage container approval—means an approval under Division 2 of Part 8;

5—Insertion of section 64E

Before section 65 insert:

64E—Outline of Division

(1) This Division establishes a litter control and waste management system for beverage containers through a regulatory scheme that has the following general features:

(a) beverage containers are prohibited from sale in the State unless approved by the Authority as category A or category B containers or exempted;

(b) empty category A containers bearing an approved refund marking are returnable to retailers of such containers for a refund;

(c) empty category B containers bearing an approved refund marking are returnable to collection depots for a refund;

(d) the operators of collection depots and super collectors must be approved by the Authority under this Division;

(e) the Authority has power to attach conditions to approvals under this Division to ensure the reuse, recycling or other appropriate disposal of returned containers.

(2) This Division also, for the protection of the environment, prohibits the sale or supply of beverages in certain containers.

6—Amendment of section 65—Interpretation

(1) Section 65, definition of ***beverage***—delete the definition and substitute:

approved collection depot, means a collection depot in respect of which an approval under section 69 is in force;

approved refund marking, in relation to containers of a particular class, means a marking approved by the Authority under section 68 for containers of that class indicating the refund amount for the containers;

beverage means a liquid intended for human consumption by drinking but does not include a liquid of a kind prescribed by regulation;

(2) Section 65, definitions of ***category A container***, ***category B container***, ***collection area***, ***collection depot*** and ***container***—delete the definitions and substitute:

category A container—means a container of a class approved by the Authority under section 68 as category A containers, being a container that may, subject to this Division, be presented for a refund at a place in the State where beverages are sold by retail in containers of that class;

category B container—means a container of a class approved by the Authority under section 68 as category B containers, being a container that may, subject to this Division, be presented at a collection depot for a refund;

collection depot means a facility or premises for the collection and handling of category B containers delivered to the facility or premises in consideration of the payment of refund amounts, and includes facilities or premises of a kind prescribed by regulation;

container means—

(a) a container that—

(i) is made for the purpose of containing a beverage; and

(ii) when filled with the beverage, is sealed for the purposes of storage, transport and handling prior to its sale or delivery for the use or consumption of its contents; or

(b) a container of a kind prescribed by regulation;

(3) Section 65—after the definition of ***spirit-based beverage*** insert:

super collector means a facility or premises for the collection, handling and delivery for reuse, recycling or other disposal of containers received from collection depots, and includes facilities or premises of a kind prescribed by regulation;

waste management arrangement, in relation to containers of a particular class, means an arrangement for the collection, sorting and aggregation of containers of that class when empty and their reuse, recycling or other disposal.

7—Substitution of sections 68 and 69

Sections 68 and 69—delete the sections and substitute:

68—Approval of classes of containers as category A or category B containers

(1) An application may be made to the Authority for approval of a class of containers as category A containers or category B containers.

(2) An application for an approval under this section—

(a) must be made in a manner and form determined by the Authority; and

(b) must be accompanied by the prescribed fee; and

(c) must, on request by the Authority, be accompanied by additional information to enable the Authority to determine the application.

(3) An approval under this section—

(a) must be granted subject to the following conditions:

(i) that containers of the class to which the approval relates must bear the refund marking approved by the Authority for containers of that class;

(ii) that the approval holder must have in place an effective waste management arrangement in relation to containers of that class; and

(b) may be granted subject to any other conditions the Authority thinks fit; and

(c) must be notified in the Gazette.

(4) Without limiting the grounds on which the Authority may refuse an application for an approval under this section, the Authority may refuse such an application if the Authority is satisfied that—

(a) the container material (including the labelling or refund marking) is unsuitable for recycling, reuse or other disposal considered appropriate by the Authority; or

(b) the manner of application of the labelling or refund marking proposed in respect of the class of containers is likely to render the containers unsuitable for recycling, reuse or other disposal considered appropriate by the Authority; or

(c) there is no ongoing and effective waste management arrangement in place in relation to the class of containers.

(5) If the Authority refuses an application for an approval under this section, the Authority must give the applicant written notice of the refusal and the reasons for the refusal.

(6) The Authority may, on its own initiative or on application, by notice in the Gazette, vary an approval under this section or vary or revoke a condition of such an approval or impose a condition or further condition.

(7) The Authority may, by notice in the Gazette, revoke an approval under this section in respect of a class of containers if satisfied that a condition of the approval has been contravened.

(8) Before the Authority revokes an approval under subsection (7), the Authority must—

(a) give the holder of the approval written notice of its proposed action specifying reasons for the proposed action; and

(b) allow the holder of the approval at least 14 days within which to make submissions to the Authority in relation to the proposed action.

(9) A notice under this section—

(a) must, in the case of a notice of approval, specify—

(i) the class of containers to which the approval relates by reference to one or more of the following:

(A) product name;

(B) manufacturer or distributor;

(C) container contents when full;

(D) container capacity;

(E) container material;

(F) any other factor considered relevant by the Authority; and

(ii) the conditions of the approval; and

(b) may contain transitional provisions as to the operation of this Division in relation to containers in respect of which an approval under this section applies, whether the containers are—

(i) held by manufacturers, distributors, wholesalers or retailers for sale; or

(ii) sold but remaining to be returned as empty containers under this Division; and

(c) has effect from the date of publication of the notice or a future date specified in the notice.

69—Approval of collection depots and super collectors

(1) A person must not operate a collection depot or super collector without an approval under this section.

Penalty: If the offender is a body corporate—Division 1 fine.

If the offender is a natural person—Division 3 fine.

(2) An application for an approval to operate a collection depot or super collector—

(a) must be made in a manner and form determined by the Authority; and

(b) must be accompanied by the prescribed fee; and

(c) must, on request by the Authority, be accompanied by additional information to enable the Authority to determine the application.

(3) The Authority may, in determining—

(a) an application for an approval to operate a collection depot or super collector; or

(b) what should be the conditions of such an approval,

have regard to the need for a sustainable waste management system for containers and, in particular, for that purpose, the need for—

(c) ongoing and effective waste management arrangements in relation to the classes of containers proposed to be handled under the approval; and

(d) effective processes for resolving disputes between the parties to those arrangements.

(4) An approval to operate a collection depot or super collector may be granted unconditionally or subject to conditions and must be notified (together with any conditions) in the Gazette.

(5) If the Authority refuses an application for an approval to operate a collection depot or super collector, the Authority must give the applicant written notice of the refusal and the reasons for the refusal.

(6) The Authority may, on its own initiative or on application, by notice in the Gazette, vary an approval to operate a collection depot or super collector or impose, vary or revoke a condition of an approval.

(7) The Authority may, by notice in the Gazette, revoke an approval to operate a collection depot or super collector if satisfied that a condition of the approval has been contravened.

(8) Before the Authority acts under this section, the Authority must—

(a) notify the holder of the approval in writing of its proposed action specifying reasons for the proposed action; and

(b) allow the holder of the approval at least 14 days within which to make submissions to the Authority in relation to the proposed action.

(9) A notice under this section has effect from the date of publication of the notice in the Gazette or a future date specified in the notice.

69A—Annual fees and returns for collection depots and super collectors

(1) The holder of an approval to operate a collection depot or super collector must—

(a) in each year lodge with the Authority, before the date fixed by regulation, an annual return containing the information required by the Authority by condition of the approval or by notice in writing; and

(b) in each year (other than a year in which the approval is due to expire) pay to the Authority, before the date fixed by regulation, the fee fixed by regulation.

(2) If a person fails to lodge a return or pay a fee in accordance with this section, the Authority may, by notice in writing, require the person to make good the default and, in addition, to pay to the Authority the amount fixed by regulation as a penalty for default.

(3) If a person fails to comply with the notice within 14 days after the giving of the notice, the approval is suspended until the notice is complied with.

(4) If a person fails to comply with the notice within 6 months after the giving of the notice, the approval is revoked.

(5) The Authority must cause written notice of the suspension or revocation under this section to be given to the person.

(6) An annual fee (including a penalty for default) payable under this section is recoverable by the Authority as a debt due to the Authority.

69B—Sale and supply of beverages in containers

(1) A retailer must not sell a beverage in a container unless the container—

(a) is a category A or category B container; and

(b) bears the approved refund marking for containers of that class.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

(2) A person must not—

(a) supply a beverage in a container to a retailer for sale by the retailer; or

(b) sell a beverage in a container for consumption,

unless the container—

(c) is a category A or category B container; and

(d) bears the approved refund marking for containers of that class.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

69C—Offence to claim refund on beverage containers purchased outside State

(1) A person must not present to a retailer or the operator of a collection depot or super collector, for the purpose of claiming refund amounts, containers purchased outside the State.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

(2) A retailer or operator of a collection depot or super collector may request a person to sign a statutory declaration verifying that containers presented by the person for refund amounts were purchased in this State.

69D—Offence to contravene condition of beverage container approval

The holder of a beverage container approval must not contravene a condition of the approval.

Maximum penalty: Division 6 fine.

Expiation fee: Division 6 fee.

8—Amendment of section 70—Retailers to pay refund amounts for empty category A containers

(1) Section 70(1)(a)—delete "refund marking approved by the Authority" and substitute:

approved refund marking

(2) Section 70(1), penalty provision—delete the penalty provision and substitute:

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

(3) Section 70(2)—delete subsection (2) and substitute:

(2) A retailer or a person acting on the retailer's behalf may refuse to accept delivery of a container if—

(a) the container is in an unclean condition; or

(b) he or she reasonably believes the container was not purchased in the State; or

(c) the retailer or person acting on the retailer's behalf has made a request for a statutory declaration under section 69C(2) in respect of the container and the request has been refused.

9—Substitution of section 71

Section 71—delete the section and substitute:

71—Collection depots to pay refund amounts for certain empty category B containers

(1) Subject to subsection (2), the operator of an approved collection depot must not refuse or fail, or permit a person acting on his or her behalf, to refuse or fail—

(a) to accept delivery of empty category B containers that bear the approved refund marking for containers of that class; or

(b) in respect of each such container, to pay to the person delivering that container the refund amount for that container.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

(2) The operator of an approved collection depot or a person acting on his or her behalf may refuse to accept delivery of a container if—

(a) the approval of the operator of the depot is subject to a condition limiting the operation of the depot to the receipt of category B containers of a specified class and the container does not belong to that class; or

(b) the container is in an unclean condition; or

(c) he or she reasonably believes the container was not purchased in the State; or

(d) the operator of the collection depot or a person acting on his or her behalf has made a request for a statutory declaration under section 69C(2) in respect of the container and the request has been refused.

10—Amendment of section 72—Certain containers prohibited

(1) Section 72(3), penalty provision—delete the penalty provision and substitute:

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

(2) Section 72(4), penalty provision—delete the penalty provision and substitute:

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

11—Amendment of section 106—Appeals to Court

Section 106(1)—after paragraph (d) insert:

(e) a person who applied for a beverage container approval may appeal to the Court against a decision of the Authority—

(i) refusing to grant the approval; or

(ii) imposing a condition of the approval;

(f) the holder of a beverage container approval may appeal to the Court against a decision of the Authority—

(i) varying the approval or varying or imposing a condition of the approval; or

(ii) revoking the approval.

12—Amendment of section 118—Service

Section 118(2)(a)—after "environmental authorisation" insert:

or a beverage container approval

13—Amendment of Schedule 1—Prescribed activities of environmental significance

(1) Schedule 1, clause 3(3)(e)(i)(A)—delete subsubparagraph (A)

(2) Schedule 1, clause 3(3)(g)—delete paragraph (g) and substitute:

(g) the collection and handling of beverage containers by the holder of an approval to operate a collection depot under section 69; or

(ga) the collection, handling and delivery for reuse, recycling or other disposal of beverage containers by the holder of an approval to operate a super collector under section 69; or

Part 3—Transitional provisions

14—Interpretation

In this Part—

principal Act means the *Environment Protection Act 1993*.

15—Classes of containers approved under repealed provisions

(1) An approval of a class of containers as category A containers in force under Part 8 Division 2 of the principal Act immediately before the commencement of this Act will, on that commencement, continue as an approval of the class of containers as category A containers under section 68 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

(2) An approval of a class of containers as category B containers in force under Part 8 Division 2 of the principal Act immediately before the commencement of this Act will, on that commencement, continue as an approval of the class of containers as category B containers under section 68 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

16—Refund markings approved under repealed provisions

An approval of a refund marking in relation to a class of containers in force under Part 8 Division 2 of the principal Act immediately before the commencement of this Act will, on that commencement, continue as an approval of the refund marking in relation to that class of containers under section 68 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

17—Continuation of collection depot approvals

An approval of a collection depot in force under Part 8 Division 2 of the principal Act immediately before the commencement of this Act will, on that commencement, continue in force, as an approval in respect of the collection depot under section 69 of the principal Act as amended by this Act, subject to the provisions of the principal Act as amended by this Act.

18—Super collectors

A person who was the operator of a super collector immediately before the commencement of this Act is, if the person has made an application in a manner and form determined by the Authority, accompanied by the prescribed fee and any information requested by the Authority, entitled to the grant, on that commencement, of an approval under section 69 of the principal Act as amended by this Act to operate the super collector subject to conditions determined by the Authority.