

CDL Bill and refund amount

Summary of written submissions



Aim

This report is prepared by the Environment Protection Authority (EPA) to provide a summary of submissions received as part of the public consultation on the draft Environment Protection (Beverage Containers) Amendment Bill 2006 (the draft Bill).

Submissions that are not relevant to the draft Bill or the related issue of the refund amount for beverage containers have not been recorded in this report.

Background

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

The main purpose of the draft Bill is to promote the equitable regulation of all relevant stakeholders and address interstate rorting of the system.

The draft Bill proposes to equitably regulate CDL stakeholders by requiring that super collectors hold an approval to operate, as is currently the practice for collection depots.

The draft Bill proposes to make it an offence to present an empty container purchased interstate, and on which no deposit has been paid, to a collection depot or super collector in South Australia for the purpose of obtaining a refund. This will address the movement of refund-labeled 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.

Finally the draft Bill proposes amendments to improve the functioning of the beverage container refund system.

On 25 October 2006 the Premier and the Minister for Environment and Conservation released the draft Bill for public comment and also announced that the Government was seeking to increase the current 5 cent deposit on drink containers to possibly as much as 20 cents. The Government released an explanatory paper and launched an on-line consultation forum seeking comments on the draft Bill and refund amount by 22 December 2006, providing an 8-week consultation period. A public consultation meeting was held on 16 November 2006 at the Pilgrim Center Flinders Street, Adelaide.

Consultation responses

Written submissions

A total of 47 written submissions were received in response to the draft Bill and refund amount issues. All of the written submissions commented on the refund amount however only 16 commented on the draft Bill.

Of the 47 written submissions 21 submissions were from individuals, 11 from industry groups, nine from individual industries, three from Local Government, two from environmental groups, and one from an interstate government agency.

29 submissions opposed the increase in the refund amount, 15 supported the increase and three did not state a position.

The written submissions that commented on the draft Bill generally supported the Bill, however, they raised issues about particular amendments that are discussed later in this document.

On-line consultation

In addition to the written submissions, there were 61 replies to questions about the refund amount received on the EPA on-line consultation forum. A summary of these responses has been placed on the EPA website.

Written Submissions and Responses

Preamble

This section presents a summary of issues raised in the written submission. As it is not possible in this summary to deal with all the subtleties emerging from such variations, an attempt has been made to group similar comments together. No subjective weighting has been given to any submission for reasons of its origin or any other factor that would give cause to elevate the importance of any submission above another.

Submissions re the draft Bill

1 New outline of the Beverage Containers Division

Four written submissions were received regarding the adequacy of the scope and content of matters considered in the proposed new outline of the Beverage Containers Division of the Act two submissions were from industry groups, one was from an environmental group and one from a Local Government organisation. All submissions supported the proposed amendments to the legislation as stated in the new outline for the Division. However, one submission from an industry group stated that it was unconvinced as to whether the proposed changes will achieve the objectives of efficiency and equity.

2 Amendment of definitions

2.1 *New definition of 'approved collection depot'*

Three submissions were received regarding the proposed new definition of 'approved collection depot', one from an industry group, one from an

environmental group, and one from an interstate government agency. All supported the new definition.

2.2 *New definition of 'approved refund marking'*

Three submissions were received regarding the proposed new definition of 'approved refund marking', one from an industry group, one from an environmental group and one from an interstate government agency.

The environment group provided general support for the new definition for 'approved refund marking'. The industry group supported the new definition and made comments about improving the CDL labeling. The interstate government agency supported the definition for the purpose of ensuring the CDL system operates under a uniform standard.

2.3 *Amended definition of 'beverage'*

Four submissions were received regarding the proposed new definition of 'beverage', and all supported the new definition. One submission was received from an industry group, one from an individual industry, one from an environmental group and one from an interstate government agency. The submission from an individual industry questioned the need for the definition of wine-based beverage and sprit based beverage and glass containers in the Act.

2.4 *Amended definitions of 'category A container & category B container'*

Four submissions were received regarding the proposed new definitions of 'category A container & category B container'. One submission was received from an industry group which supported the new definitions. One submission from an individual industry made a general comment about category A containers.

In addition there was one submission received from an industry group on an issue related to category A containers. The submissions expressed concern about retailers being required to take back category A containers. A submission was received from an interstate government agency that submitted that in the interest of simplicity the category A and category B containers be deleted from the CDL system.

2.5 *Amended definition of 'container'*

Three submissions were received about the amended definition of 'container'. One submission was received regarding the proposed new definition of container from an industry group that supported the new definition. One submission from an environmental group made comment about the need to dissuade mixed material containers from entering the market. One submission from an interstate government agency supported the amended definition.

2.6 *Removal of 'collection area' definition*

Three submissions were received regarding the proposed removal of 'collection area' definition. One from an environmental group and one from an interstate government agency both supported the removal of the definition, and one from an industry group agreed the definition was out of date and made comment about the need to control admission of collection depots.

2.7 *Amended definition of 'collection depot'*

Five submissions were received regarding the proposed amended definition of 'collection depot'. All five submissions provided general support for the amended definition of collection depot, which would allow Reverse Vending Machines (RVMs) to be approved as collection depots. One submission was received from an individual who sought the placement of depots in shopping centres, one submission was received from an environmental group who supported the new definition. Two submissions were received from industry groups, one industry group sought a restriction on who may apply for an approval to operate a RVM such that only collection depots could operate them. The other industry group sought clarification that payment of a refund by a RVM includes cash, credit or other forms of exchange. One submission was received from an interstate government agency that supported the amendment of the definition.

2.8 *New definition of 'super collector'*

Four submissions were received regarding the proposed new definition of 'super collector', three from industry groups and one from an interstate government agency. Two submissions from the industry groups and the submission from the interstate government agency supported the amended definition, and one submission, the third industry group, sought to expand the definition to include an organisation that represents manufacturers or distributors in the recycling cycle.

2.9 *New definition of 'waste management arrangement'*

Two submissions were received regarding the proposed new definition of 'waste management arrangement', one from an industry group and the other from an interstate government agency. The submission from the industry group supported the amended definition, but sought that the definition go further in defining the waste management arrangement to also include the efficiency of handling that class of container. The submission from the interstate government agency supported the new definition.

3 Approval system for 'classes of containers'

Six submissions were received regarding the proposed new approval system for 'classes of containers', one from an individual industry, three from industry groups, one from an interstate government agency and one from an environmental group. The submission from the individual industry sought amendment to the proposed new section 68(9)(a)(i) of the Act so that in the process of approving a class of containers as category A or category B the approval would recognise, at a minimum, the names of the manufacturer or distributor plus one of the other factors. The other five submissions supported the clause of the Bill.

4 Approvals for depots and super collectors

Two submissions were received from industry groups, both supporting the proposed approvals for depots and super collectors.

4.1 *Regulation of super collectors*

Five submissions were received regarding the proposed new regulation of super collectors, with the related issue of the definition of super collector receiving four submissions as discussed above in section 2.8. Of the five submissions received two were from industry groups, two were from individual industries and one was from an interstate government agency. Comments from the individual industries supported the proposed new regulation of super collectors, one of the submissions made further comment about the regulation of super collectors that an increase in the super collector numbers would increase inefficiency in the system and stated that there should not be an application fee for super collectors. The submission from the interstate government agency supported the introduction of the regulation of super collectors and an appropriate application fee. The other individual submission requested an expansion of the definition of super collector as proposed above in section 2.8 of this report. One of the two submissions from industry groups supported the new definition. The other did not commit to a position, however it made general comments about super collectors not having power over collection depots as stated in the Explanatory Report.

4.2 *Strengthened approvals system*

Three submissions were received regarding the proposed strengthened approvals system. One submission was received from an environmental group that made the general comment that the regulation of a super

collector by itself will not simply lead to improved dispute resolution. One submission was received from an industry group that supported the strengthening of the system. One submission from an interstate government agency sought amendment to require monthly reports to the EPA from collection depots and super collectors declaring quantities and types and quality control issues.

4.3 Conditions of approval

Two submissions were received regarding the proposed new conditions of approval. One submission was received from an individual industry and one was from an industry group. Both submissions supported the proposed new conditions of approval.

4.4 Improved appeal rights

Two submissions were received regarding the proposed new improved appeal rights. The submissions were from an industry group and an interstate government agency, and both supported the improved appeal rights.

4.5 Sustainable waste management system

Three submissions were received regarding the proposed new sustainable waste management system provisions. One submission from an individual industry submitted that, when considering approval of super collectors or collection depots, the EPA should not take into consideration the sustainable waste management system as the market will “work this out”. A submission from an industry group supported the sustainable waste management system provision, however submitted that a sustainable waste management system was predicated on bulking and the viability of the collection depot network. One submission from an interstate government agency submitted that super collectors should be required to increase efficiency and effectiveness of the system.

4.6 Dispute resolution process

Four submissions were received regarding the proposed new requirements for dispute resolution processes. The submission from an individual industry opposed the proposal that the EPA have regard to a process for resolving disputes between parties when considering approval of a collection depot or super collector, and opposed compliance with a dispute resolution process as a condition of approval. The submission from an industry group, while generally supporting the proposed new dispute resolution provisions, submitted that, if a dispute occurs, the EPA must be sure that it can intervene to achieve an equitable outcome that protects the viability and efficiency of the container deposit system. The submission from an environmental group recommended that the new dispute resolution process appoint an independent arbitration group to assist in resolving long term disputes. The submission from an interstate government agency asked the EPA to re-examine the condition of collection depot approval to reduce the potential for disputes.

4.7 Annual fees and reports

Five submissions were received regarding the proposed new annual fees and reporting requirements. Three submissions supported the proposal, one from an environmental group, one from an industry group, and one from an interstate government agency, and two submissions opposed the proposal, one from an industry group and one from an individual industry. The submission from the interstate government agency suggested the establishment of annual general meetings with industry.

4.8 Service of documents

Two submissions were received regarding the proposed new service of documents provision, one from an industry group which noted the new section and one from an interstate government agency that sought an amendment to the Bill to include a power to delegate the delivery of documents power.

5 Amendments to penalties

Seven submissions were received regarding the proposed amendments to penalties in the Beverage Container provisions of the Act. Three submissions were received from industry groups, two from individual industries, one from an interstate government agency and one from an individual. Opposition to the proposed increase in penalties came from an industry group and an individual industry, while the other submissions supported the proposal. The individual industry that opposed the increase made particular reference to the proposed increase in penalty for retailers who sell a beverage without the approved refund marking or sell a prohibited container. The submission stated that retailers do not have control over the manufacturing packaging and labeling of proprietary beverage containers.

6 Interstate containers

11 submissions were received regarding the proposed new offence and procedures to stop interstate roting. Nine submissions supported the proposed amendments and two made general comment. Of the nine supportive submissions, six sought an increase in the penalty of \$4,000 proposed for the offence of claiming a refund on beverage containers purchased outside the State in the proposed new section 69C of the Act.

These submissions called for increases ranging from \$20,000 to \$60,000 such that the fine was more than the amount that a person could obtain illegally from the refund of a trailer load of containers. An individual industry submission quoted that a semi trailer load of 5 cent aluminum cans (20 tones) equates to a deposit value of \$6,500.

Another concern raised in the submissions by industry groups concerned the proposal that a collection depot may require a statutory declaration be signed by a person to verify that containers presented for a refund were purchased in the State. It was submitted that if the value of the deposit exceeds \$100 or \$150 a retailer or collection depot or super collector *must* require a person to sign a statutory declaration verifying that containers presented by the person for refund amounts were purchased in the State. Further it was submitted that this amount should be increased if the refund amount is increased. Some of the submissions from industry groups also expressed

concern about the administrative burden of requiring a statutory declaration and suggested a more simplified process similar to the Australian Taxation Office requirements for GST.

Some of the submissions expressed concern that the EPA would not provide adequate resources to police the interstate rorting. Observations were also made in the submissions that the problem of interstate rorting would be exacerbated by an increase in the refund amount.

The problem of parallel importing was also raised and is discussed in section 11 of the report below.

A submission from an interstate government agency sought provision in the Bill for redemption of deposit in South Australia of containers purchased in another CDL participating jurisdiction.

7 Schedule 1

Two submissions were received about the proposed amendments to schedule 1 of the Act that supported the amendments. The submissions were from an industry group and an interstate government agency.

8 Transitional arrangements

Two submissions were received about the draft transitional provisions that supported the proposal. The submissions were from an industry group and an interstate government agency.

9 Refund Amount

9.1 Support and opposition to an increase in refund amount

In summary 47 written submissions have been received (including three written records of telephone submissions) regarding the possible increase in refund amount. 21 were from individuals, 11 from industry groups, nine from individual industries, three from Local Government, two from environmental groups and one from an interstate Government agency.

26 submissions opposed the increase in the refund amount, 15 supported the increase and six did not state a position.

Of the 21 submissions from individuals nine supported the increase, 10 opposed and two did not commit to a position, but made general comments.

Of the 11 submissions from industry groups two supported the increase and nine opposed the increase.

All nine submissions from individual industries opposed the increase.

All three of the submissions from Local Government supported the increase.

Both of the submissions from environmental groups supported the increase.

The submission from an interstate government agency did not support or oppose an increase, but suggested a uniform refund amount with any jurisdiction, that in the future, implements a CDL system.

9.1.1 *Adequacy of 5 cent refund to encourage litter reduction and recycling*

11 submissions were received commenting about the adequacy of the 5 cent refund to encourage litter reduction and recycling, four from individual industries, four from individuals, two from an industry group and one from an environmental group. Six submissions thought that the 5 cents refund was adequate and four submitted that 5 cents was not adequate and suggested an increased in refund amount to encourage litter reduction and recycling. All individual industries thought 5 cents was adequate, one of the individual submissions thought that 5 cents was adequate, one industry group thought 5 cents was adequate and one thought it was not, the while environmental group thought that 5 cents was not adequate.

9.1.2 *Impact of an increase in the refund amount*

33 submissions were received that commented on the impacts that an increased refund amount would have on them. The submissions identified financial, social and environment impacts. The most common impact stated was a negative financial impact on manufacturers and on consumers.

Submissions by individual industries expressed concern that they will bear a negative financial impact of an increase in the refund amount as they will not be able to pass on the increase to consumers due to the operating arrangements in the retail sector.

9.1.3 *Lead-in time for new deposit level*

10 submissions were received commenting on the appropriate lead-in time to allow the beverage industry sufficient time to ensure its labelling reflects any new deposit level. Five submissions were received from individual industries and the time submitted ranged from nine months to four years, three submissions were received from industry groups and the time specified ranged from three months to four years, one submission was received from Local Government that submitted six months to a year, and the one submission form an individual made general comments but did not specify a time.

9.1.4 *Community education*

Eight submissions were received that responded to the question about an appropriate lead-in time to allow education of the community of any new deposit level. Three submissions were received from individual industries that specified times ranging from one to four years. Three submissions were received from

industry groups that nominated times ranging from three months to four years, one submission was received from an individual that stated that no time was required, and a submission from Local Government supported education, but did not nominate a preferred timeframe.

9.1.5 *Tiered deposit scheme for South Australia*

15 submissions were received in response to the question as to whether there should be a tiered deposit system in SA. 13 submissions opposed the introduction of a tiered deposit system and two supported such a system. Those submissions opposed to the tiered system were received from four industry groups, four individual industries, two individuals and one environmental group. The comments that opposed a tiered deposit refund scheme stated that it would add significantly to sorting, handling and audit costs of the system with minimal environmental or social benefit, and that it would confuse consumers. One individual industry and one individual supported a tiered system.

9.1.6 *Consistency with proposed Western Australian CDL system*

Although the consultation did not seek comment as to whether the SA refund amount should be consistent with a WA CDL system, five submissions were received that commented on the proposed WA system and whether there needed to be consistency with what WA may impose in their CDL system. Two submissions stated that there did not need to be consistency of the refund amount, wanted the SA amount to remain at 5 cents and submitted that that SA would still be different to most other States. These submissions were from individual industries. The three submissions that stated that consistency with WA should be implemented were received from an industry group, an individual industry and an interstate government agency. The individual industry commented that the same refund amount and marking was required to avoid separate product development and distribution for each state, which would be unnecessarily complex and costly for suppliers, retailers and, ultimately, consumers. The interstate government agency stated that a single refund amount is preferable and may assist with the implementation of container deposit schemes in other Australian jurisdictions.

10 Other Comments

10.1 Expansion of CDL

Although the consultation did not seek comments on the expansion of containers subject to CDL, 17 submissions provided comment recommending that the CDL system be expanded. Of these submissions six specifically mentioned that wine should be included, six sought the inclusion of fast food containers, three suggested all containers be

included, one suggested all glass be included and one requested a review of the exemptions.

10.2 Parallel Importing

Seven submissions were received that expressed concern about the practice of the parallel importation of products by retailers, where national retailers may purchase stock for non-SA markets on which no allowance has been made for deposits, and transfer them to SA without declaring them to the super collectors. The original supplier is still required to cover the costs of the container recovery, despite not having that in the sale price to the retailer. Three submissions were received from industry groups, three were from individual industries and one from an environmental group.

It was submitted by several bodies that the problem of parallel importing would increase if the refund amount was increased, as it would be more of an incentive not to pay the CDL on the sale of the product.

Submissions from an industry group and an individual industry also identified that parallel importing put local companies at a competitive disadvantage as their produce did contain the CDL refund amount.

10.3 Bulking

One submission was received from an industry group that sought inclusion in the Bill of a power for the EPA to require bulking for aluminium and glass. The submission indicated that, unless this was to occur, the industry group would not support the Bill and would lobby for the EPA to become an independent coordinator of the system.

10.4 Periodical Review

One submission was received from an interstate agency that submitted that there should be a periodical review of the CDL system and that stakeholders should be advised of the results.

FURTHER INFORMATION

Legislation

Legislation may be viewed on the internet at: <www.legislation.sa.gov.au>

Copies of legislation are available for purchase from:

Service SA Government Legislation Outlet 101 Grenfell Street Adelaide SA 5000	Telephone: 13 23 24 Facsimile: (08) 8204 1909 Internet: < shop.service.sa.gov.au > Email: < servicesa@saugov.sa.gov.au >
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