

# Container Deposit and Recovery Scheme Bill 2011

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**Defined Terms**

Western Australia

LEGISLATIVE ASSEMBLY

*(Introduced by Mr Eric Ripper, MLA)*

## **Container Deposit and Recovery Scheme Bill 2011**

**A Bill for**

**An Act to establish a beverage container deposit and recovery scheme to be administered by the Waste Authority, to impose a levy as part of that scheme, and for related purposes.**

The Parliament of Western Australia enacts as follows:

## Part 1 — Preliminary

### 1. Short title

This is the *Container Deposit and Recovery Scheme Act 2011*.

### 2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) the rest of the Act — on the last day of the period of 12 months after assent day.

### 3. Terms used

***authorised collection depot*** means premises authorised by the Authority under section 12 to be an authorised collection depot;

***authorised transfer station*** means premises authorised by the Authority under section 13 to be an authorised transfer station;

***Authority*** means the Waste Authority established by the *Waste Avoidance and Resource Recovery Act 2007* section 8;

***BCEL Account*** means the Beverage Container Environmental Levy Account established under section 9;

***beverage*** means —

- (a) any carbonated or non-carbonated soft drink, fruit juice or water; or
- (b) liquor (as defined in the *Liquor Control Act 1988* section 3(1)) that is a liquid at 20° Celsius; or
- (c) milk, including animal milk, soy milk or processed milk; or
- (d) any other liquid intended for human consumption by drinking that is prescribed to be a beverage,

but does not include a beverage of a class that is prescribed not to be a beverage;

**beverage container** means a container, containing a beverage, that is produced for the sale of the beverage in a sealed form to the consumer, that has a capacity not exceeding 3 litres and that is —

- (a) a plastic or glass bottle; or
- (b) an aluminium or steel can; or
- (c) a liquid paperboard or composite carton; or
- (d) a composite container,

but does not include a beverage container of a class that is prescribed not to be a beverage container;

**beverage container environmental levy** means the levy imposed by this Act;

**import** means to bring, or cause to be brought, into Western Australia;

**label** includes emboss, paint or stamp;

**recognised jurisdiction** means a State or Territory that —

- (a) has a beverage container deposit and recovery scheme that is similar to the Scheme under this Act; and
- (b) is prescribed for the purposes of this definition;

**refund amount** means 10 cents, or any higher amount prescribed following a review conducted in accordance with section 18;

**Scheme** means the Beverage Container Deposit and Recovery Scheme established under section 4.

**Part 2 — Beverage Container Deposit and  
Recovery Scheme**

**4. Beverage Container Deposit and Recovery Scheme**

It is a function of the Authority to establish and administer a scheme called the Beverage Container Deposit and Recovery Scheme.

**5. Functions of the Authority**

(1) The functions of the Authority in administering the Scheme are to —

- (a) manage the operation of the Scheme having regard to the provision of environmentally sustainable uses of resources and best practice in waste management; and
- (b) collect the beverage container environmental levy; and
- (c) grant exemptions under section 16; and
- (d) authorise premises to be an authorised collection depot; and
- (e) authorise premises to be an authorised transfer station; and
- (f) enter into agreements with the operators of authorised collection depots and authorised transfer stations; and
- (g) facilitate and promote the Scheme; and
- (h) provide grants or other financial incentives to encourage the use of recyclable and reusable beverage containers and the increased use of recycled material from beverage containers; and
- (i) provide information and advice to the Minister in relation to the operation of the Scheme.

- 1       (2) Without limiting the generality of subsection (1), the Authority  
2       may use any available funds for any of the following  
3       purposes —
- 4           (a) market creation and support for collected beverage  
5           containers and materials;
- 6           (b) financial support for kerbside recycling services (that is,  
7           services involving the collection by or on behalf of local  
8           governments of beverage containers that have been  
9           separated for recycling by occupants of residences or  
10          businesses);
- 11          (c) further offsetting the costs of the collection industry  
12          from the operation of the Scheme;
- 13          (d) product development to improve the recyclability and  
14          reusability of beverage containers;
- 15          (e) assistance with supporting recycling of beverage  
16          containers in regional and remote communities;
- 17          (f) other activities and programmes connected with  
18          recycling of beverage containers which the Authority  
19          considers will facilitate environmentally sustainable use  
20          of resources and promote best practice in waste  
21          management.
- 22       **6.       Producer or importer of beverage containers liable to pay**  
23       **beverage container environmental levy**
- 24       (1) A person who produces a beverage container in Western  
25       Australia, or who imports a beverage container into Western  
26       Australia, for the purpose of sale within Western Australia is  
27       liable to pay a levy (the ***beverage container environmental***  
28       ***levy***) for each such beverage container.
- 29       (2) Subsection (1) does not apply to a person to the extent to which  
30       the person is exempt from the subsection under section 16.

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**7. Amount of beverage container environmental levy**

The beverage container environmental levy is (for each beverage container) —

- (a) 10 cents; or
- (b) if the regulations prescribe a higher amount for the purposes of this section, that amount.

**8. When beverage container environmental levy must be paid**

A person who is liable to pay a beverage container environmental levy must pay the levy to the Authority within 14 days after the end of the month in which the beverage container was sold by that person in Western Australia.

Penalty: a fine of \$50 000, and a daily penalty of \$5 000 for each day during which the offence continues.

**9. Beverage Container Environmental Levy Account**

(1) There is to be established and kept as an agency special purpose account established under the *Financial Management Act 2006* section 16 an account to be called the “Beverage Container Environmental Levy Account”.

(2) The BCEL Account is to be administered by the Authority.

(3) The BCEL Account is to be credited with —

- (a) any beverage container environmental levy paid; and
- (b) income derived from the investment of money forming part of the BCEL Account; and
- (c) any other money lawfully payable to the credit of the BCEL Account.

(4) Money held in the BCEL Account may be applied by the Authority —

- (a) for the purposes of section 5(2); and



- 1                   (b)    in payment of the costs of administering the BCEL  
2                                Account (including the costs of collecting the beverage  
3                                container environmental levy).
- 4       (5)    The provisions of the *Financial Management Act 2006* and the  
5               *Auditor General Act 2006* regulating the financial  
6               administration, audit and reporting of departments apply to and  
7               in relation to the BCEL Account.
- 8       (6)    The administration of the BCEL Account is for the purposes of  
9               the *Financial Management Act 2006* section 52 to be regarded  
10              as a service of the department of the Public Service principally  
11              assisting in the administration of this Act.
- 12   **10.       Beverage containers must be labelled as refundable**
- 13       (1)    A person must not sell a beverage container unless the container  
14               is labelled to the following effect: [X] refund at collection  
15               depots when sold in Western Australia.  
16               Penalty: a fine of \$15 000.
- 17       (2)    In subsection (1) —  
18               X means 10 cents or a higher amount prescribed under  
19               section 7.
- 20   **11.       Prescribed labelling requirements**
- 21               If any labelling requirements are prescribed in relation to  
22               beverage containers, a person must not sell a beverage container  
23               unless the container is labelled in accordance with the relevant  
24               prescribed labelling requirements.  
25               Penalty: a fine of \$15 000.
- 26   **12.       Authorised collection depots**
- 27       (1)    The Authority may authorise premises to be an authorised  
28               collection depot, and may amend or revoke such an  
29               authorisation.

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- 1       (2) The Authority may enter into an agreement with the operator of  
2       an authorised collection depot in respect of the location,  
3       operation and functions of the authorised collection depot.
- 4       (3) Without limiting the generality of subsection (2), an agreement  
5       may include provisions relating to the following —
- 6           (a) the delivery of sorted empty beverage containers to an  
7           authorised transfer station;
- 8           (b) the payment to the operator of the authorised collection  
9           depot of an amount equal to the refund amounts paid by  
10          the operator in a period;
- 11          (c) the keeping of records and the inspection of them;
- 12          (d) the payment of any penalty by the operator of the  
13          authorised collection depot for a failure to comply with  
14          the agreement.
- 15       (4) Without limiting the types of collection depots that may be  
16       authorised —
- 17           (a) collection depots may involve manual or mechanised  
18           handling facilities, including reverse vending machines;  
19           and
- 20           (b) any of the following may be authorised as collection  
21           depots —
- 22               (i) local government sites;
- 23               (ii) community centres and community-based  
24               facilities;
- 25               (iii) shopping centres and centre car parks;
- 26               (iv) service stations or other retailers;
- 27               (v) schools;
- 28               (vi) “drive through” recycling centres;
- 29               (vii) authorised transfer stations.

1     **13.     Authorised transfer stations**

- 2         (1)   The Authority may authorise premises to be an authorised  
3             transfer station, and may amend or revoke such an authorisation.
- 4         (2)   The Authority may enter into an agreement with the operator of  
5             an authorised transfer station in respect of the location,  
6             operation and functions of the authorised transfer station.
- 7         (3)   Without limiting the generality of subsection (2), an agreement  
8             may include provisions relating to the following —
- 9             (a)   the receiving and processing of empty beverage  
10                containers;
- 11            (b)   the payment to the operator of the authorised transfer  
12                station of an amount equal to the refund amounts paid  
13                by the operator in a period;
- 14            (c)   the sale of processed materials;
- 15            (d)   the keeping of records and the inspection of them;
- 16            (e)   the submission of a monthly report to the Authority on  
17                the number and types of empty beverage containers  
18                received and processed;
- 19            (f)   the payment of any penalty by the operator of the  
20                authorised transfer station for a failure to comply with  
21                the agreement.
- 22         (4)   After the period of 12 months from the commencement of this  
23             Act, an agreement may include, or may be amended to include,  
24             provisions relating to accepting and paying a refund on crushed  
25             and broken empty beverage containers using an estimate of the  
26             refund amount due.

27     **14.     Offence to claim refund on beverage container purchased**  
28         **outside Western Australia or a recognised jurisdiction**

- 29         (1)   A person must not present to an authorised collection depot or  
30             authorised transfer station for the purpose of claiming the refund  
31             amount a beverage container which the person knows or has

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- 1           reason to believe was not purchased in Western Australia or a  
2           recognised jurisdiction.
- 3           Penalty: a fine of \$30 000.
- 4       (2)   Subject to subsection (3), the operator of an authorised  
5           collection depot or authorised transfer station may request any  
6           person presenting a beverage container for the purpose of  
7           claiming the refund amount to complete a declaration in the  
8           prescribed form stating that the person has no reason to believe  
9           that the beverage container was not purchased in Western  
10          Australia or a recognised jurisdiction.
- 11       (3)   Subject to subsection (6), if within any period of 48 hours a  
12           person presents 3000 or more beverage containers to an  
13           authorised collection depot or authorised transfer station for the  
14           purpose of claiming the refund amount, the operator of the  
15           authorised collection depot or authorised transfer station must  
16           request the person to complete the declaration referred to in  
17           subsection (2).  
18          Penalty: a fine of \$15 000.
- 19       (4)   The operator of an authorised collection depot or authorised  
20           transfer station must not pay the refund amount to a person who  
21           has not complied with a request made under subsection (2)  
22           or (3).  
23          Penalty: a fine of \$15 000.
- 24       (5)   The operator of an authorised collection depot or authorised  
25           transfer station must —  
26           (a)   keep any declaration made under this section for a  
27               period of 3 years after it is made; and  
28           (b)   have the declaration readily available for inspection at  
29               any reasonable time by an authorised officer.  
30          Penalty: a fine of \$50 000.
- 31       (6)   Subsection (3) does not apply in respect of beverage containers  
32           returned to a reverse vending machine.

1     **15.     Authorised collection depot or authorised transfer station to**  
2     **pay refund**

3         (1)   A person who accepts the return of an unbroken empty beverage  
4             container at an authorised collection depot or authorised transfer  
5             station must pay the person who returns it the refund amount.

6         (2)   Subject to subsections (3) and (5), the operator of an authorised  
7             collection depot must not unreasonably refuse to accept any  
8             unbroken empty beverage container labelled in accordance with  
9             section 10 that is returned to the authorised collection depot.

10         Penalty: a fine of \$5 000.

11         (3)   The operator of an authorised collection depot may refuse to  
12             accept the return of a beverage container if —

13             (a)   the beverage container is in an unsafe condition; or

14             (b)   the operator has reason to believe that the beverage  
15             container was not sold in Western Australia or a  
16             recognised jurisdiction; or

17             (c)   a request to complete a declaration under section 14 in  
18             respect of the beverage container has not been complied  
19             with.

20         (4)   The capacity of an operator of an authorised collection depot to  
21             refuse to accept the return of a beverage container that is in an  
22             unsafe condition is subject to an agreement under section 13(4).

23         (5)   A reverse vending machine may be operated so as to not accept  
24             the return of a beverage container in a condition which prevents  
25             the reverse vending machine from reading the label referred to  
26             in section 10.

27     **16.     Exemption from section 6**

28         (1)   A person may apply to the Authority, in the form approved by  
29             the Authority, to be wholly or partly exempt from section 6(1).

30         (2)   The Authority must within the prescribed period grant an  
31             exemption to the person if the Authority is satisfied that the

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- 1 criteria and considerations prescribed for the purposes of this  
2 section apply in respect of the person.
- 3 (3) The Authority must within the prescribed period advise the  
4 applicant in writing —
- 5 (a) as to the decision of the Authority; and  
6 (b) if the Authority grants the exemption, as to the terms  
7 and conditions applying to the exemption; and  
8 (c) if the Authority refuses to grant the exemption, of the  
9 reasons for refusing to grant the exemption.
- 10 (4) If any of the criteria and considerations prescribed for the  
11 purposes of this section cease to apply in respect of a holder of  
12 an exemption, the Authority —
- 13 (a) may by notice in writing to the holder of the exemption  
14 revoke the exemption; and  
15 (b) if the exemption is revoked, must specify in the  
16 notice —
- 17 (i) the reason for revoking the exemption; and  
18 (ii) a reasonable period of time by the end of which  
19 the person will need to comply with this Act.
- 20 (5) If an exemption is revoked under subsection (4), the person who  
21 held the exemption need not comply with this Act during the  
22 period specified in the notice under subsection (4)(b)(ii).
- 23 **17. Records and enforcement**
- 24 (1) A person liable to pay the beverage container environmental  
25 levy must keep the records necessary to substantiate the amount  
26 of levy paid or payable by the person.  
27 Penalty: a fine of \$50 000.
- 28 (2) Records under subsection (1) in relation to a levy amount need  
29 not be kept for more than 3 years after the last day on which the  
30 levy amount must be paid under section 8.

- 1       (3)   The *Waste Avoidance and Resource Recovery Act 2007* Part 8  
2       has effect as if this Act were part of that Act and as if premises  
3       that are or were authorised collection depots or authorised  
4       transfer stations were premises to which Division 1 of that Part  
5       applied.

6       **18.     Review of refund amount**

- 7       (1)   The Authority must review the refund amount at least once  
8       every 5 years after the commencement of this Act.
- 9       (2)   In conducting that review, the Authority must have regard to the  
10      minimum refund amount necessary to maintain the appropriate  
11      level of incentive —
- 12           (a)   for producers, distributors and consumers of beverages  
13           in beverage containers to reuse or recycle beverage  
14           containers; and
- 15           (b)   to ensure high rates of recovery of beverage containers;  
16           and
- 17           (c)   to reduce litter and litter-related costs; and
- 18           (d)   to reduce waste, disposal and recycling costs; and
- 19           (e)   to conserve resources.

**Part 3 — General provisions**

**19.       Relationship with aspects of the *Waste Avoidance and Resource Recovery Act 2007***

This Act does not prevent —

- (a) a product stewardship plan in relation to beverage containers from being registered under the *Waste Avoidance and Resource Recovery Act 2007*; and
- (b) the implementation and operation of extended producer responsibility schemes under the *Waste Avoidance and Resource Recovery Act 2007* that deal with containers not covered by the Scheme.

**20.       Protection from liability for wrongdoing**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.

**21.       Regulations**

- (1) The Governor may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out this Act.
- (2) The *Waste Avoidance and Resource Recovery Act 2007* section 97(1), (3) and (4) and section 98 apply with respect to regulations made under this Act.



1   **22.    Transitional provision — Act does not extend to existing**  
2       **beverage containers**

3       This Act does not apply to beverage containers produced in or  
4       imported into Western Australia before this Act came into  
5       operation.

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**Defined Terms**

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined Term	Provision(s)
assent day.....	2
authorised collection depot.....	3
authorised transfer station.....	3
Authority.....	3
BCEL Account .....	3
beverage.....	3
beverage container .....	3
beverage container environmental levy .....	3, 6(1)
import .....	3
label .....	3
recognised jurisdiction.....	3
refund amount.....	3
Scheme .....	3
X .....	10(2)