

Legislative Council—No 113A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 22 July 2008

South Australia

**Environment Protection (Miscellaneous)
Amendment Bill 2008**

A BILL FOR

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

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Environment Protection (Miscellaneous) Amendment Act 2008*.

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 16—Proceedings of Board

Section 16(1)—delete "12" and substitute:

11

5—Insertion of section 50B

15 Before section 51 insert:

50B—Special conditions not exhaustive

This Division does not limit the requirements that may be imposed as conditions of environmental authorisations.

6—Insertion of section 54C

20 After section 54B insert:

54C—Conditions requiring approval of certain works and processes

- 25 (1) The Authority may, by conditions of an environmental authorisation, require the holder of the environmental authorisation to seek the Authority's approval in relation to—
- 30 (a) the construction or alteration of a building or structure, or the installation or alteration of plant or equipment, for use for an activity carried on under the environmental authorisation; or
 - (b) a change in a process undertaken under the environmental authorisation.

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- (2) If conditions of an environmental authorisation (whether imposed before or after the commencement of this section) require the holder of the environmental authorisation to seek the Authority's approval in relation to a matter of a kind referred to in subsection (1)(a) or (b), an application for such approval must—
- (a) be made in a manner and form determined by the Authority; and
- (b) be accompanied by the prescribed fee.
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- (3) If the Authority requires further information to determine the application, the Authority may, by notice in writing served on the applicant no later than 2 months after the application is made, require the applicant to furnish further specified information in writing.
- 15
- (4) If further information is required in respect of an application, the application is to be taken not to have been duly made until the information is furnished as required by the Authority.

7—Insertion of section 64E

Before section 65 insert:

64E—Outline of Division

- 20
- (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;
- 25
- (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;
- 30
- (d) the operators of collection depots and persons carrying on business as 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.
- 35
- (2) This Division also, for the protection of the environment, prohibits the sale or supply of beverages in certain containers.

8—Amendment of section 65—Interpretation

- 40
- (1) Section 65, definitions of *beverage*, *category A container*, *category B container*, *collection area*, *collection depot* and *container*—delete the definitions 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 specified by the Authority as a condition of an approval under section 68 for containers of that class indicating the refund amount for the containers;

5 **beverage** means a liquid intended for human consumption by drinking but does not include a liquid of a kind excluded from the ambit of this definition by the regulations;

10 **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;

15 **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 a facility or premises of a kind prescribed by regulation;

container means—

20 (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

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

corresponding law means a law of another State or a Territory of the Commonwealth declared by the regulations to be a corresponding law for the purposes of this Division;

Food Standards Code has the same meaning as in the *Food Act 2001*;

30 (2) Section 65, definition of **refund marking**—delete the definition

(3) Section 65, definitions of **spirit-based beverage** and **wine-based beverage**—delete the definitions and substitute:

spiritous liquor means—

35 (a) a liqueur or other alcoholic beverage produced by distillation (for example, brandy, gin, rum, vodka or whisky); or

(b) a beverage of a kind prescribed by regulation,

but does not include—

(c) a pre-mixed beverage containing a beverage referred to in paragraph (a) or (b) and another beverage; or

40 (d) a pre-mixed beverage of a kind excluded from the ambit of this definition by the regulations;

super collector means—

(a) a person who, whether personally or through an agent, collects, handles and delivers for reuse, recycling or other disposal, containers received from collection depots; or

(b) a person who carries on activities 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 means—

(a) a beverage produced by fermentation of grapes (whether or not with additives permitted under Standard 2.7.4 of the *Food Standards Code*); or

(b) a beverage that is a blend of a beverage referred to in paragraph (a) and other grape products; or

(c) a beverage of a kind prescribed by regulation,

but does not include—

(d) a pre-mixed beverage containing a beverage referred to in paragraph (a), (b) or (c) and another beverage that is not a grape product; or

(e) a pre-mixed beverage of a kind excluded from the ambit of this definition by the regulations.

9—Amendment of section 66—Division not to apply to certain containers

Section 66—delete " other than glass containers made for the purpose of containing a wine-based or spirit-based beverage"

10—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 (whether by a manufacturer, distributor or retailer of containers) 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.

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- (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 specified by the Authority for containers of that class;
 - (ii) that the holder of the approval must have in place an effective and appropriate waste management arrangement in relation to containers of that class;
 - (iii) in the case of an approval in relation to category B containers—that the waste management arrangement must require the holder of the approval to provide specified super collectors with a declaration in the form determined by the Authority in relation to each sale of such containers by the holder of the approval as soon as practicable after the sale; 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 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, effective and appropriate 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, it 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 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 the manufacturer or distributor of the containers and any 1 or more of the following:
 - (A) product name;
 - (B) container contents when full;
 - (C) container capacity;
 - (D) container material;
 - (E) any other factor considered relevant by the Authority;
 - (ii) the conditions of the approval; and
 - (b) may contain transitional provisions as to the operation of this Division in relation to containers that are—
 - (i) held by manufacturers, distributors 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—
- (a) operate a collection depot; or
 - (b) carry on business as a super collector,
- without the approval of the Authority.
- 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 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.
- 5 (3) The Authority may, in determining—
- (a) an application for an approval under this section; 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—
- 10 (c) ongoing, effective and appropriate 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.
- 15 (4) An approval under this section 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 under this section, the Authority must give the applicant written notice of the refusal and the reasons for the refusal.
- 20 (6) The Authority may, on its own initiative or on application, by notice in the Gazette, vary an approval under this section or impose, vary or revoke a condition of an approval.
- (7) The Authority may, by notice in the Gazette, revoke an approval under this section if satisfied that a condition of the approval has been contravened.
- 25 (8) Before the Authority acts on its own initiative under subsection (6) or acts under subsection (7), the Authority must—
- (a) notify the holder of the approval in writing of its proposed action specifying reasons for the proposed action; and
- 30 (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.
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69A—Annual fees and returns for collection depots and super collectors

- (1) The holder of an approval to operate a collection depot or carry on business as a super collector must—
- 5 (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
- 10 (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.
- 15 (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.
- 20 (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.
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69B—Sale and supply of beverages in containers

- (1) A retailer must not sell a beverage in a container unless the container—
- 30 (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—
- 35 (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 is a category A or category B container and bears the approved refund marking for containers of that class.
- 40 Penalty: Division 6 fine.
Expiation fee: Division 6 fee.

- (3) A person must not—
- (a) supply a beverage in a container bearing a refund marking to a distributor or retailer for sale by the distributor or retailer;
or
 - (b) sell a beverage in a container bearing a refund marking for consumption,

knowing that there is no waste management arrangement in place in relation to the container.

Penalty: Division 3 fine.

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

- (1) A person must not present to a retailer, the operator of a collection depot or a person carrying on business as a super collector, for the purpose of claiming refund amounts, containers that the person knows or has reason to believe were not purchased in this State or a jurisdiction in which a corresponding law is in force.

Penalty: Division 3 fine.

- (2) Subject to subsection (3), a retailer, the operator of a collection depot or a person carrying on business as a super collector may request any person presenting containers for the purpose of claiming refund amounts to complete a declaration in the form prescribed by regulation for the purposes of this section stating that the person has no reason to believe that the containers were not purchased in this State or a jurisdiction in which a corresponding law is in force.

- (3) If, within any 48 hour period, a person presents to a retailer or the operator of a collection depot 3 000 or more containers for the purpose of claiming refund amounts, the retailer or operator must request the person to complete a declaration of a kind referred to in subsection (2).

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

- (4) A retailer, the operator of a collection depot or a person carrying on business as a super collector must—

(a) keep each declaration made under this section (or copy of the declaration) at his or her place of business in the State for 3 years from the date of the declaration; and

(b) have the document readily available for inspection at all reasonable times by an authorised officer.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

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.

11—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, or a former 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 or fail 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 this State or in a jurisdiction in which a corresponding law is in force; or

(c) the retailer or person acting on the retailer's behalf has made a request for a declaration under section 69C(2) or (3) in respect of the container and the request has been refused.

12—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, or a former 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 or fail 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 this State or in a jurisdiction in which a corresponding law is in force; or
- (d) the operator of the collection depot or a person acting on his or her behalf has made a request for a declaration under section 69C(2) or (3) in respect of the container and the request has been refused.

71A—Manner of payment of refund amounts

A person who is required under this Division to pay a refund amount for a container must pay the amount—

- (a) in the case of a refund amount dispensed from a reverse vending machine—
 - (i) in cash; or
 - (ii) by way of credit note redeemable for cash; or
 - (iii) in a manner prescribed by regulation; or
- (b) in any other case—in cash.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

13—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.

14—Repeal of Part 8 Division 3

Part 8 Division 3—delete the Division

15—Amendment of section 94—Registration of environment protection orders in relation to land

Section 94(4a)—after "the Authority" insert:

5 or, if the order was registered by another administering agency, that administering agency

16—Amendment of section 101—Registration of clean-up orders or clean-up authorisations in relation to land

(1) Section 101(1)—after "the Authority" insert:

10 or, if the order was registered by another administering agency, that administering agency

(2) Section 101(3)(b)(i)(B)—after "the Authority" insert:

or other administering agency

(3) Section 101(4)(a)—delete paragraph (a) and substitute:

15 (a) application by the Authority or another administering agency under subsection (1) or the Authority under subsection (2); and

(4) Section 101(5)(d)—after "the Authority" insert:

or, if the order was issued by another administering agency, that administering agency,

(5) Section 101(5a)—after "the Authority" insert:

20 or, if the order was issued by another administering agency, that administering agency,

(6) Section 101(6)—delete "An owner or occupier" and substitute:

A person

(7) Section 101(7) and (8)—delete subsections (7) and (8) and substitute:

25 (7) The Registrar-General must—

(a) on application by the Authority, cancel the registration of a clean-up order or clean-up authorisation that has been registered in relation to land; or

30 (b) if a clean-up order that has been registered in relation to land was issued by another administering agency, on application by the administering agency, cancel the registration of the clean-up order,

35 and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as he or she thinks fit.

- 5 (8) The Authority or another administering agency may, if it thinks fit, apply to the Registrar-General for cancellation of the registration of a clean-up order or clean-up authorisation that has been registered in relation to land on the application of the Authority or other administering agency (as the case may be), and must do so—
- (a) on revocation of the order or authorisation; or
 - (b) in relation to—
 - (i) an order—
 - 10 (A) on full compliance with the requirements of the order; or
 - (B) where the Authority or other administering agency takes action under this Division to carry out the requirements of the order—on payment to the Authority or other administering agency of the amount recoverable by the Authority or other administering agency under this Division in relation to the action so taken; or
 - 15 (ii) an authorisation—on payment to the Authority of the amount recoverable by the Authority under this Division in relation to the action taken in pursuance of the authorisation.
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17—Amendment of section 102—Action on non-compliance with clean-up order

- 25 (1) Section 102(1)—after "the Authority" insert:
or, if the order was issued by another administering agency, that administering agency
- (2) Section 102(2)—delete subsection (2) and substitute:
- 30 (2) Any action to be taken by the Authority or another administering agency under subsection (1) may be taken by an authorised officer acting on behalf of the Authority or other administering agency or by other persons authorised by the Authority or other administering agency for the purpose.
- (3) Section 102(3)(a)—after "Authority" insert:
- 35 or other administering agency

18—Amendment of section 103—Recovery of costs and expenses

- (1) Section 103(1)—delete subsection (1) and substitute:
- 40 (1) The reasonable costs and expenses incurred by the Authority or another administering agency in taking action on non-compliance with a clean-up order may be recovered by the Authority or other administering agency (as the case may be) as a debt from the person who failed to comply with the requirements of the order.

(2) Section 103(2a)—delete subsection (2a) and substitute:

(2a) Subject to subsection (2b), where—

(a) a clean-up order or clean-up authorisation has been registered in relation to land under section 101; or

(b) the registration of a clean-up order or clean-up authorisation in relation to land has been cancelled under that section,

the Authority or, in the case of an order that was registered on the application of another administering agency, that administering agency may recover, as a debt from the person whose contravention gave rise to the issuing of the order or authorisation, an amount prescribed by regulation in respect of the registration or cancellation (as the case may be).

(3) Section 103(2b)—after "the Authority" insert:

or another administering agency

(4) Section 103(3)—after "the Authority" first occurring insert:

or another administering agency

(5) Section 103(3)(a) and (b)—after "the Authority" wherever occurring insert:

or other administering agency

19—Amendment of section 106—Appeals to Court

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

(cb) 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;

(cc) 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;

20—Substitution of section 115

Section 115—delete the section and substitute:

115—Delegations

(1) The Authority may, by instrument in writing, delegate a power or function under this Act—

(a) to a specified public authority; or

(b) to a particular person or committee; or

(c) to the person for the time being performing particular duties or holding or acting in a particular position.

- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the Authority to act in any matter; and
 - (c) is revocable at will.

21—Amendment of section 118—Service

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

or a beverage container approval

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

- (1) Schedule 1, Part A, clause 3(3)(e)(i)(A)—delete subparagraph (A)
- (2) Schedule 1, Part A, 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 carry on business as a super collector under section 69; or
- (3) Schedule 1, Part A, clause 3(3)(h)—after "bearing" insert:

an approved

Schedule 1—Transitional provisions

1—Interpretation

In this Schedule—

principal Act means the *Environment Protection Act 1993*.

2—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 clause 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 clause 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.

3—Refund markings approved under repealed provisions

5 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 clause will, on that commencement, continue as if it were a marking specified by the Authority as a condition of approval 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.

4—Continuation of collection depot approvals

10 An approval of a collection depot in force under Part 8 Division 2 of the principal Act immediately before the commencement of this clause will, on that commencement, continue 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.

5—Super collectors

15 A person who carried on a business as a super collector immediately before the commencement of this clause 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 carry
20 on business as a super collector subject to conditions determined by the Authority.