

House of Assembly—No 34

As laid on the table and read a first time, 30 October 2008

South Australia

**Environment Protection (Product Deposit Scheme)
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 (Product Deposit Scheme) Amendment Act 2008*.

5 2—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*

3—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *owner* insert:

PDS collection depot approval means an approval under section 77;

5 4—Substitution of heading to Part 8 Division 2

Heading to Part 8 Division 2—delete the heading to Division 2 and substitute:

Division 2—Beverage container deposit scheme

5—Amendment of section 64E—Outline of Division

(1) Section 64E(1)(c)—delete "collection depots" and substitute:

10 beverage container collection depots

(2) Section 64E(1)(d)—after "collection depots" insert:

taking category B containers

6—Amendment of section 65—Interpretation

(1) Section 65, definition of *approved collection depot*—delete the definition

15 (2) Section 65—after the definition of *beverage* insert:

beverage container collection depot means—

(a) a facility or premises for the collection and handling of category B containers that are delivered to the facility or premises in consideration of the payment of refund amounts; or

20 (b) a facility or premises of a kind prescribed by regulation, in respect of which an approval under section 69 is in force;

(3) Section 65, definition of *category B container*—delete "collection depot" and substitute:

beverage container collection depot

25 (4) Section 65, definition of *collection depot*—delete the definition

(5) Section 65, definition of *super collector*—delete "collection depots" and substitute:

beverage container collection depots

7—Amendment of section 69—Approval of collection depots and super collectors

30 Section 69(1)(a)—delete paragraph (a) and substitute:

(a) operate a facility or premises for the collection and handling of category B containers that are delivered to the facility or premises in consideration of the payment of a refund amount; or

8—Amendment of section 69A—Annual fees and returns for beverage container collection depots and super collectors

Section 69A(1)—delete "to operate a collection depot or" and substitute:

in respect of a beverage container collection depot or an approval to

5 **9—Amendment of section 69C—Offence to claim refund on beverage containers purchased outside State or corresponding jurisdiction**

Section 69C—delete "collection depot" wherever occurring and substitute in each case:

beverage container collection depot

10 **10—Amendment of section 71—Beverage container collection depots to pay refund amounts for certain empty category B containers**

(1) Section 71(1) and (2)—delete "an approved collection depot" wherever occurring and substitute in each case:

a beverage container collection depot

15 (2) Section 71(2)(a)—delete "of the operator of the depot is subject to a condition limiting the operation of the depot" and substitute:

in respect of the collection depot is subject to a condition limiting the operation of the collection depot

11—Insertion of Part 8 Division 3

20 Part 8—after Division 2 insert:

Division 3—Product deposit scheme

74—Outline of Division

25 This Division establishes a product deposit scheme (*PDS*) requiring the payment of prescribed refund amounts on disused PDS products for the purposes of encouraging their return, recycling or reuse and reducing the disposal of such products as litter or landfill.

75—Interpretation

In this Division—

PDS collection depot means—

- 30 (a) a facility or premises for the collection and handling of PDS products that are delivered to the facility or premises in consideration of the payment of refund amounts; or
- (b) a facility or premises of a kind prescribed by regulation,

in respect of which an approval under section 77 is in force;

35 *PDS product* means a product (other than a beverage container within the meaning of Division 2) of a class declared by regulation to be a PDS product for the purposes of the product deposit scheme established under this Division;

prescribed refund amount, in relation to a PDS product of a particular class, means an amount prescribed as the refund amount for PDS products of that class;

5 *prescribed refund marking*, in relation to a PDS product of a particular class, means the refund marking, or refund marking of a kind, prescribed by regulation for PDS products of that class indicating the refund amount for products of that class;

10 *retailer*, in relation to PDS products, means a person whose business is or includes that of selling PDS products by retail, 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.

76—Exemption of certain PDS products by regulation

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

77—Approval of collection depots

- 20 (1) A person must not operate a facility or premises for the collection and handling of PDS products that are delivered to the facility or premises in consideration of the payment of refund amounts without the approval of the Authority.

 Penalty:

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

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

- 30 (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.
- 35 (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,
- 40 have regard to the need for sustainable arrangements for the collection, sorting and aggregation of PDS products and their reuse, recycling or other disposal and, in particular, for that purpose, the need for—

(c) ongoing, effective and appropriate arrangements in relation to the classes of PDS products proposed to be handled under the approval; and

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

(4) An approval under this section may be granted unconditionally or subject to conditions and must be notified in the Gazette.

(5) A notice of approval under subsection (4) must specify—

(a) the classes of PDS products for which the collection depot is approved; and

(b) the conditions of the approval.

(6) 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.

(7) 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.

(8) 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.

(9) Before the Authority acts on its own initiative under subsection (7) or acts under subsection (8), 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.

(10) 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.

78—Offence to contravene condition of approval

The holder of a PDS collection depot approval must not contravene a condition of the approval.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

78A—Annual fees and returns for PDS collection depots

(1) The holder of a PDS collection depot approval 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.
- 5 (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.
- 10 (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.
- 15 (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.

78B—Sale and supply of PDS products

- (1) A retailer must not sell a PDS product of a particular class unless—
- 20 (a) the product bears the prescribed refund marking for the class of PDS products to which the product belongs; and
- (b) —
- 25 (i) the product when sold is accompanied by written information indicating the locations of PDS collection depots approved for products of that class; or
- (ii) the retailer has a sign prominently displayed in the retailer's premises so as to be readily visible to purchasers stating the location of PDS collection
- 30 depots approved for products of that class.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

- (2) A person must not supply a PDS product of a particular class to a retailer for sale by the retailer unless it bears the prescribed refund marking for the class of PDS products to which the product belongs.
- 35

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

78C—Retailers to pay prescribed refund amounts for certain disused PDS products

- 5 (1) Subject to subsection (2), a retailer who sells a PDS product of a class prescribed by regulation for the purposes of this section must not refuse or fail, or permit a person acting on the retailer's behalf to refuse or fail—
- (a) to accept delivery of disused PDS products of that class that bear the prescribed refund marking, or a former prescribed refund marking, for products of that class; or
- 10 (b) in respect of each such product, to pay to the person delivering that product the prescribed refund amount for that product.

Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

- 15 (2) A retailer or a person acting on the retailer's behalf may refuse or fail to accept delivery of a product if the product is in an unclean condition.
- (3) In proceedings for an offence against subsection (1), an allegation in the complaint that the retailer sells PDS products of a particular class is, in the absence of proof to the contrary, proof of the matter so
- 20 alleged.

78D—PDS collection depots to pay prescribed refund amounts for certain disused PDS products

- 25 (1) Subject to subsection (2), the operator of a PDS 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 disused PDS products of a class for which the collection depot is approved, being a product that bears the prescribed refund marking, or a former prescribed
- 30 refund marking, for products of that class; or
- (b) in respect of each such product, to pay to the person delivering that product the prescribed refund amount for that product.

Penalty: Division 7 fine.

Expiation fee: Division 7 fee.

- 35 (2) The operator of a PDS collection depot or a person acting on that person's behalf may refuse or fail to accept delivery of a product if the product is in an unclean condition.

78E—Manner of payment of refund amounts

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

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- (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.

10 Penalty: Division 6 fine.

Expiation fee: Division 6 fee.

12—Amendment of section 93—Environment protection orders

Section 93(1)(a)(iv)—after "beverage container approval" insert:

or a PDS collection depot approval

13—Amendment of section 106—Appeals to court

15 Section 106(1)(cb) and (cc)—after "beverage container approval" wherever occurring insert in each case:

or a PDS collection depot approval

14—Amendment of section 109—Public register

20 Section 109(3)—after paragraph (g) insert:

- (ga) details of PDS collection depot approvals and applications for PDS collection depot approvals;

15—Amendment of section 118—Service

Section 118(2)(a)—delete " or a beverage container approval" and substitute:

25 , a beverage container approval or a PDS collection depot approval

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

- (1) Schedule 1, Part A, clause 3(3)(g)—delete "to operate a collection depot" and substitute:

30 in respect of a beverage container collection depot

- (2) Schedule 1, Part A, clause 3(3)—after paragraph (ga) insert:

(gab) the collection and handling of PDS products by the holder of a PDS collection depot approval; or

- (3) Schedule 1, Part A, clause 3(3)—after paragraph (h) insert:

35 (ha) the handling for charitable or non-profit purposes only of PDS products bearing prescribed refund marking under Part 8 Division 3;