

Serial 76  
Environment Protection (Beverage Containers and Plastic Bags) Legislation  
Amendment Bill 2014  
Mr Chandler

A Bill for an Act to amend the *Environment Protection (Beverage Containers and Plastic Bags) Act* and the *Environment Protection (Beverage Containers and Plastic Bags) Regulations*



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# NORTHERN TERRITORY OF AUSTRALIA

Act No. [ ] of 2014

An Act to amend the *Environment Protection (Beverage Containers and Plastic Bags) Act* and the *Environment Protection (Beverage Containers and Plastic Bags) Regulations*

[Assented to [ ] 2014]  
[Second reading [ ] 2014]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Environment Protection (Beverage Containers and Plastic Bags) Legislation Amendment Act 2014*.

### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

## Part 2 Amendment of Environment Protection (Beverage Containers and Plastic Bags) Act

### 3 Act amended

This Part amends the *Environment Protection (Beverage Containers and Plastic Bags) Act*.

**4 Section 3 amended**

Section 3(a)(i), after "waste"

*insert*

by providing communities throughout the whole of the Territory, as far as practicable, with access to facilities for the collection of empty containers and the payment of refund amounts

**5 Section 4 amended**

(1) Section 4, definitions *CDS principles* and *CEO*

*omit*

(2) Section 4

*insert (in alphabetical order)*

*approved*, in relation to a waste management arrangement, means the arrangement has been approved under section 23A.

*approved form* means a form approved under section 85.

*Commonwealth CCA* means the *Competition and Consumer Act 2010* (Cth).

*contaminated*, in relation to a container, means the container:

- (a) is unclean; or
- (b) is affected by a contaminant, including, for example, oil, paint, sand and stones.

*coordinator arrangement* means a waste management arrangement made between CDS coordinators.

*material type*, of an approved container, see section 8A.

*NT EPA* means the Northern Territory Environment Protection Authority established by section 6 of the *Northern Territory Environment Protection Authority Act*.

*operator arrangement* means a waste management arrangement made between an operator of an approved collection depot and a CDS coordinator.

*quarter* means each 3 month period during a financial year.

**supplier** means a CDS participant who holds a supply approval.

**supplier arrangement** means a waste management arrangement made between a supplier and a CDS coordinator.

**supplier barcode document**, see section 24A(1)(b)(i).

**supplier sales document**, see section 24A(1)(b)(ii).

(3) Section 4, definitions **occupier**, **on place** and **premises**

*omit*

section 61

*insert*

section 60

(4) Section 4, definition **reverse vending machine**, note

*omit*

## **6 Section 8A inserted**

After section 8

*insert*

### **8A Meaning of *material type***

- (1) The **material type**, of an approved container, is the type of material from which the container is manufactured, including, for example, plastic, aluminium, glass and liquid paper board.
- (2) A reference in this Act to the material type of an approved container includes a reference to a category of the material type, including, for example:
  - (a) coloured plastic and clear plastic; and
  - (b) coloured glass and clear glass.

**7            Part 2, Division 2 replaced**

Part 2, Division 2

*repeal, insert*

**Division 2            Establishment of CDS and waste management arrangements**

**10            CDS established**

- (1) This Part establishes a container deposit scheme (the *CDS*).
- (2) The matters covered by the CDS to achieve the object of minimising environmental pollution in the ways mentioned in section 3(a)(i) and (ii) include the following:
  - (a) the prohibition of the supply in the Territory of regulated containers unless they are approved containers;
  - (b) the sorting, by operators of approved collection depots, of empty approved containers of any beverage products:
    - (i) by material type; and
    - (ii) regardless of the product names displayed on the containers;
  - (c) the approval of waste management arrangements between CDS participants that are appropriate for the CDS;
  - (d) the granting of CDS approvals and the imposition of conditions on those approvals;
  - (e) the delivery, by any members of the community, of empty approved containers to approved collection depots throughout the Territory for a refund of the refund amount for the containers;
  - (f) the acceptance by operators of approved collection depots of empty approved containers delivered to the depots and the method of payment of refund amounts for the containers;
  - (g) the acceptance by CDS coordinators of empty approved containers of any beverage products:
    - (i) delivered to the coordinators by operators of approved collection depots; and

- (ii) sorted by the operators before delivery by material type, regardless of the product name displayed on the containers;
  - (h) the payments to be made by CDS coordinators to operators of approved collection depots in relation to empty approved containers accepted by the coordinators.
- (3) The CDS does not require beverage retailers to:
  - (a) accept delivery of empty containers; or
  - (b) pay the refund amount in exchange for delivered containers.

*Note for subsection (3)*

*A beverage retailer may, however, obtain a collection approval to operate a collection depot, for example, a reverse vending machine at the retailer's premises for the payment of refund amounts for containers.*

## 11 Waste management arrangements generally

- (1) A **waste management arrangement** is a written arrangement that:
  - (a) is made between 2 or more CDS participants; and
  - (b) relates to approved containers or regulated containers, or both, as appropriate to the particular participants.
- (2) A waste management arrangement must include provisions dealing with the following matters, as relevant to the particular CDS participants:
  - (a) the collection, sorting, aggregation and transportation of the containers when empty;
  - (b) the reuse, recycling or other appropriate disposal of the containers when empty;
  - (c) the minimisation of the handling and sorting of the containers when empty;
  - (d) payments of the refund amount and other amounts to be made by a CDS coordinator to an operator of a collection depot in relation to the containers accepted by the coordinator;
  - (e) payments to be made by a supplier to a CDS coordinator in relation to dealing with the containers accepted by the coordinator;



- (f) a dispute resolution process for settling disputes between the parties to the arrangement;
  - (g) matters prescribed by regulation.
- (3) A waste management arrangement may include provisions dealing with other matters.
- (4) However, a provision in a waste management arrangement that is contrary to a provision of this Act is of no effect.

## **12            Coordinator arrangement**

- (1) Each CDS coordinator must make a waste management arrangement with each other CDS coordinator.
- (2) A coordinator arrangement may be made by:
- (a) all of the CDS coordinators entering into one arrangement; or
  - (b) any of the CDS coordinators entering into an arrangement with any of the other coordinators in a way that ensures all of the arrangements have the effect of one arrangement between all of the coordinators.
- (3) A coordinator arrangement must include provisions that contain the agreements specified in the Schedule.
- (4) An agreement made as specified in the Schedule is taken to form part of the coordinator arrangement.
- (5) For section 51(1)(d)(i) of the Commonwealth CCA and with reference to section 51(1C)(e) of that Act, CDS coordinators are authorised to:
- (a) make a coordinator arrangement; and
  - (b) include in the coordinator arrangement provisions that:
    - (i) deal with the matters mentioned in section 11(2); and
    - (ii) contain the agreements specified in the Schedule; and
  - (c) give effect to the coordinator arrangement.

*Note for subsection (5)*

*The effect of this subsection is that anything mentioned in paragraphs (a) to (c) that is done by a CDS coordinator is not to be regarded in deciding whether the coordinator has contravened Part IV of the Commonwealth CCA.*

(6) This section does not limit section 11.

**8            Section 17 amended**

Section 17(8), definition *bulk quantity*, paragraph (a)

*omit*

500

*insert*

1 500

**9            Sections 18 to 20 replaced**

Sections 18 to 20

*repeal, insert*

**18          Acceptance of empty approved containers by operator of collection depot**

(1) Subject to subsections (4) and (6), the operator of an approved collection depot must accept an empty container, delivered to the depot by a person for claiming the refund amount, if the container:

- (a) is an approved container; and
- (b) was purchased in the Territory, or a corresponding jurisdiction, after the start of the CDS.

Maximum penalty:      50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (4) The operator is not required to accept an empty container delivered to the collection depot if any of the following circumstances apply:
  - (a) the operator is unable:
    - (i) to verify that a supply approval is in force for the container; or
    - (ii) to identify the approved refund marking on the container (for example, because the container is crushed or the label has been removed or is illegible);

- (b) the container is contaminated;
  - (c) the container has a removable lid on it;
  - (d) the operator has asked for a declaration under section 17(3) for the container and the request has not been complied with;
  - (e) a circumstance stated in the collection approval relating to the approved depot.
- (5) However, the operator of the collection depot must not refuse to accept an empty container in a circumstance mentioned in subsection (4)(a) to (e) if the approved waste management arrangement relating to containers delivered to that collection depot requires acceptance in that circumstance.
- (6) Before accepting empty approved containers at a collection depot for payment of the refund amount, the operator may require the person delivering the containers to sort them by material type.

#### **19 Payment of refund amount by operator of collection depot**

- (1) The operator of an approved collection depot must pay a refund amount:
- (a) for an approved container the operator is required to accept under section 18(1); and
  - (b) to the person who delivered the container to the depot; and
  - (c) in accordance with subsection (3).

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) A refund amount for an empty approved container must be paid in cash or in another way prescribed by regulation.

#### **20 Acceptance of and payment for empty approved containers by CDS coordinator**

- (1) This section applies if:
- (a) the operator of an approved collection depot delivers to a CDS coordinator empty approved containers of any beverage products:
    - (i) that have been sorted by material type, regardless of the product names displayed on the containers; and

- 
- (ii) for which the operator has paid a refund amount under section 19(1); and
  - (b) there is an approved operator arrangement between the operator and coordinator in relation to approved containers; and
  - (c) the operator claims from the coordinator a refund amount for the containers and other amounts payable in accordance with the approved operator arrangement (*related amounts*).
- (2) The CDS coordinator must accept the approved containers unless any of the following circumstances apply:
- (a) the coordinator is unable:
    - (i) to identify the container as being an approved container; or
    - (ii) to be satisfied the container was purchased in the Territory, or a corresponding jurisdiction, after the start of the CDS;
  - (b) the container is contaminated;
  - (c) the container has a removable lid on it.
- (3) However, the CDS coordinator must not refuse to accept a container in a circumstance mentioned in subsection (2)(a) to (c) if the approved operator arrangement requires acceptance in that circumstance.
- (4) The CDS coordinator must pay the operator the refund amount and related amounts in accordance with the approved operator arrangement.

## 10 Section 21 amended

- (1) Section 21(1)(a)

*omit*

CEO

*insert*

NT EPA

(2) Section 21(1)(b)

*omit, insert*

(b) accompanied by:

- (i) a copy of each proposed waste management arrangement relevant to the approval; and
- (ii) in relation to an application for a coordinator approval – a copy of the agreements mentioned in section 12(3) entered into by the parties to the agreement; and
- (iii) any additional information to enable the NT EPA to decide the application.

(3) After section 21(2)

*insert*

- (3) If the application is for a collection approval, the application must state the days and times during which it is proposed to open the collection depot to the public.

**11 Sections 23 and 24 replaced**

Sections 23 and 24

*repeal, insert*

**23 Deciding application**

- (1) The NT EPA must consider the application and decide whether or not to grant a CDS approval.
- (2) The NT EPA may grant a CDS approval only if:
  - (a) the NT EPA has, under section 23A, approved each waste management arrangement relevant to the approval; and
  - (b) in relation to a collection approval – the NT EPA has taken into account the proposed location of the collection depot and the provisions of each relevant waste management arrangement and is satisfied the depot will be:
    - (i) accessible to the general public in that location; and
    - (ii) open on a consistent and regular basis; and

- (c) in relation to a supply approval – the NT EPA is satisfied:
  - (i) the material types of the containers (including the labels) are suitable for recycling, reuse or other disposal considered appropriate by the NT EPA; and
  - (ii) the way the refund marking is proposed to be applied to the containers is not likely to render the containers unsuitable for recycling, reuse or other disposal considered appropriate by the NT EPA.

### **23A Approval of waste management arrangement**

- (1) The NT EPA may approve a proposed waste management arrangement if satisfied:
  - (a) the arrangement includes provisions that deal with the matters mentioned in section 11(2); and
  - (b) in relation to a coordinator arrangement – it includes provisions mentioned in section 12(3); and
  - (c) if the arrangement includes other provisions – the provisions are not inconsistent with this Act; and
  - (d) all the provisions of the arrangement are appropriate for the CDS.
- (2) If the NT EPA refuses to approve a varied or replacement waste management arrangement given to it in accordance with a condition mentioned in section 24(b), the NT EPA must give the holder of the CDS approval a review notice for the refusal.

*Note for subsection (2)*

*A refusal to approve a proposed waste management arrangement relating to an application for a CDS approval is a reason for refusing to grant the CDS approval. The review notice in that circumstance must be given under section 25(4).*

- (3) For section 51(1)(d)(i) of the Commonwealth CCA and with reference to section 51(1C)(e) of that Act, the NT EPA is authorised to approve a coordinator arrangement that includes provisions the CDS coordinators are authorised by section 12(5)(b) to include.

**24 Conditions of CDS approval generally**

A CDS approval is subject to the following conditions:

- (a) the holder of the CDS approval must have in place one or more approved waste management arrangements relevant to the approval;
- (b) if an approved waste management arrangement is varied or replaced, the holder of the approval must give the varied or replacement arrangement to the NT EPA:
  - (i) for approval under section 23A; and
  - (ii) if necessary – for a variation of the conditions of the CDS approval;
- (c) the conditions mentioned in section 24A(1), 24B or 24C that are relevant to the approval;
- (d) any other conditions imposed by the NT EPA and stated in the approval.

**24A Conditions of supply approval**

- (1) The following conditions are imposed on a supply approval:
  - (a) the containers to which the approval relates must bear the approved refund marking;
  - (b) in relation to each supplier arrangement, the supplier must:
    - (i) if approved containers to which the arrangement relates are for sale in the Territory and display a barcode – give the CDS coordinator with whom the arrangement is made a document listing those barcodes (a ***supplier barcode document***); and
    - (ii) within the prescribed period – give that coordinator a document for each quarter specifying the total number of approved containers, by reference to material types, that have been sold by the supplier in the Territory during the quarter (a ***supplier sales document***).
- (2) In this section:

***prescribed period***, for a quarter, means 21 days after the end of the quarter.

**24B Condition of collection approval**

It is a condition of a collection approval that the operator of the approved collection depot must ensure, as far as reasonably practicable in the circumstances applicable to the depot, that the depot is:

- (a) accessible to the general public; and
- (b) open to the general public on a consistent and regular basis.

**24C Conditions of coordinator approval**

The following conditions are imposed on a coordinator approval:

- (a) if the CDS coordinator has made a supplier arrangement – the coordinator must, within 7 days after receiving a supplier barcode document from the supplier, give a copy of that document to:
  - (i) each other CDS coordinator; and
  - (ii) each operator with whom the coordinator has an operator arrangement;
- (b) if the coordinator is given a copy of another coordinator's supplier barcode document – the coordinator must, within 7 days after receiving the copy, give a further copy to each operator of an approved collection depot with whom the coordinator has an operator arrangement;
- (c) the coordinator must not require an operator to sort empty approved containers into more than the number of material types prescribed by regulation;
- (d) the coordinator must have in place adequate facilities and arrangements to ensure the coordinator is able to accept all empty approved containers the coordinator is required to accept under section 20;
- (e) the coordinator must not refuse to accept empty approved containers for the reason only that the containers have not been sorted by reference to the product names they display;
- (f) the coordinator must not, before accepting empty approved containers, require an operator to sort the containers by reference to the product names they display.



**12            Section 26 amended**

Section 26

*omit*

less than

*insert*

exceeding

**13            Section 30 amended**

(1)            Section 30, heading

*omit*

**CEO's**

*insert*

**NT EPA's**

(2)            Section 30(1)

*omit, insert*

(1) The NT EPA may decide to vary the conditions of a CDS approval if:

(a) an amendment to, or replacement of, an approved waste management arrangement relevant to the approval requires it; or

(b) the NT EPA becomes aware of information that, had it been known at the time the approval was granted or renewed, would have resulted in the NT EPA imposing different conditions on the approval.

(3)            Section 30(2) and (3)

*omit (all references)*

**CEO**

*insert*

**NT EPA**

**14            Section 37 amended**

Section 37(b) to (d)

*omit, insert*

- (b) the holder of the approval has failed to comply with:
  - (i) a condition of the approval; or
  - (ii) an approved waste management arrangement relevant to the approval;
- (c) the holder of the approval has failed to achieve a target within the period stated in a notice given to the holder under section 49(3);
- (d) an approved waste management arrangement relevant to the approval can no longer operate according to its provisions;
- (e) the NT EPA becomes aware of information that, had it been known at the time the application for approval or renewal of approval was made, would have given a reason for refusing the application.

**15            Section 49 replaced**

Section 49

*repeal, insert*

**49            Minister or NT EPA may establish targets for reuse, recycling or other disposal of approved containers**

- (1) The Minister or NT EPA:
  - (a) may establish targets for the reuse, recycling or other appropriate disposal of approved containers; and
  - (b) if targets are established – must publish them on the NT EPA's website.
- (2) The targets may:
  - (a) apply generally to all CDS participants; or
  - (b) apply to particular classes of CDS participants; or

- (c) set targets that must be achieved by the holders of a particular class of CDS approvals.
- (3) If targets are established for subsection (2)(c), the NT EPA must give each holder of the class of CDS approval a notice stating:
- (a) the targets to be achieved; and
  - (b) the period of time within which the holder is required to achieve the target; and
  - (c) that a failure to achieve a target is a ground for suspending or cancelling the CDS approval.
- (4) The NT EPA must monitor compliance with established targets.

**16 Section 86 repealed**

Section 86

*repeal*

**17 Section 91A inserted**

After section 91

*insert*

**91A Acquisition on just terms**

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

**18            Section 92 replaced**

Section 92

*repeal, insert*

**92            Annual report**

- (1) The NT EPA must prepare a report for each financial year about the administration of this Act.
- (2) The Minister must table the annual report in the Legislative Assembly within 4 months after the end of the financial year.

**19            Section 93 amended**

- (1) Section 93(2)(a)

*omit, insert*

- (a) matters to improve the efficiency or effectiveness of the whole CDS or any feature of the CDS;

- (2) After section 93(2)

*insert*

- (2A) A regulation may be made for a matter mentioned in subsection (2)(a) even if the improvement of the efficiency or effectiveness of a particular matter results in another matter being less efficient or effective.

**20            Part 7 inserted**

After section 93

*insert*

**Part 7            Transitional matters for Environment Protection (Beverage Containers and Plastic Bags) Legislation Amendment Act 2014**

**94            Definitions**

In this Part:

***amended***, in relation to a specified provision, means the provision of this Act as in force on and after the commencement day.

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***amendment Act*** means the *Environment Protection (Beverage Containers and Plastic Bags) Legislation Amendment Act 2014*.

***appropriate WMA*** means a waste management arrangement that meets the criteria for approval mentioned in section 23A(1)(a) to (d).

***CEO*** means the CEO as defined in the former Act.

***commencement day*** means the day on which this Act commences.

***existing validated approval***, see section 96(4).

***former***, in relation to a specified provision, means the provision as in force immediately before the commencement day.

***former Act*** means this Act as in force before the commencement day.

***related WMA***, in relation to an existing validated approval, means a waste management arrangement to which that approval relates.

***replacement approval***, see section 98(2).

## 95 Existing application relating to CDS approval

- (1) The NT EPA must decide an existing application under amended Part 2, Division 6, Subdivision 1 or 2 (as relevant).
- (2) To enable the NT EPA to decide the existing application, it may require the applicant to give information in addition to the information given to the CEO.
- (3) In this section:

***existing application*** means an application for any of the following that was made, but not decided, under former Part 2, Division 6, Subdivision 1 or 2 (as relevant):

- (a) a CDS approval;
- (b) the renewal of a CDS approval;
- (c) the variation of conditions of a CDS approval.

**96 Validation of CDS approvals**

- (1) The grant or purported grant of a CDS approval before the commencement day is declared to be, and to always have been, a valid exercise of power by the CEO.
- (2) The validity of the grant or purported grant is not affected merely because a waste management arrangement to which the CDS approval relates may not have been completely effective for the purposes of the former Act.
- (3) If a CDS approval that was the subject of a grant or purported grant mentioned in subsection (1) is no longer in force immediately before the commencement day, it is declared that the approval was valid and had effect under the former Act in accordance with the conditions to which the approval was subject.
- (4) If a CDS approval that was the subject of a grant or purported grant mentioned in subsection (1) is in force immediately before the commencement day, it is declared that the approval is, and always has been, a validated approval (an *existing validated approval*).

**97 Continuation of existing validated approval and related WMA**

- (1) An existing validated approval continues in force on and after the commencement day subject to the following conditions:
  - (a) in relation to each approval – the conditions stated in the approval under former section 24(3);
  - (b) in relation to a supply approval – the conditions mentioned in section 24A(1);
  - (c) in relation to a collection approval – the condition mentioned in section 24B;
  - (d) if a related WMA is also an appropriate WMA – the condition mentioned in amended section 24(b), in relation to the appropriate WMA, as if a reference in that paragraph to an approved waste management arrangement were a reference to an appropriate WMA;
  - (e) if a related WMA that is also an appropriate WMA ceases to meet the criteria for approval mentioned in section 23A(1)(a) to (d) as a result of the granting of a replacement approval to a CDS participant who is a party to the related WMA – the condition that the holder of the approval must, after being given a notice under section 98(2), enter into one or more appropriate WMAs to enable the holder to apply for a

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replacement approval as requested in the notice;

- (f) if no related WMA is an appropriate WMA – the condition that the holder of the approval must, after being given a notice under section 98(2), enter into one or more appropriate WMAs to enable the holder to apply for a replacement approval as requested in the notice.

*Example for subsection (1)(e)*

*A related WMA that is an operator arrangement may cease to meet the criteria for approval because a replacement coordinator approval contains provisions that have the effect of requiring the CDS coordinator who is a party to the operator arrangement to make arrangements with the holder of the existing validated collection approval for the sorting of empty approved containers by reference to material type.*

- (2) If an existing validated approval has more than one related WMA and not all of those WMAs are appropriate WMAs, the NT EPA may give the holder of the approval a notice requiring the holder to submit one or more waste management arrangements, within the period specified in the notice, to enable the NT EPA to decide whether or not to approve the arrangements under section 23A to replace the related WMAs.
- (3) The NT EPA may extend the period specified in a notice given under subsection (2), by a further period not exceeding the duration of the original period, if:
- (a) the holder of the existing validated approval applies to the NT EPA in writing for the extension before the end of the original period; and
- (b) the NT EPA is satisfied it is reasonable in the circumstances to extend the period.
- (4) If the holder of an existing validated approval does not comply with a notice given to the holder under subsection (2) within the period it specifies, or as extended under subsection (3):
- (a) the NT EPA may take action under Part 2, Division 6, Subdivision 3 on the ground that the holder has contravened the requirement of the NT EPA; and
- (b) if the NT EPA takes that action – a reference in section 37(a) to a provision of this Act is taken to be a reference to a requirement of the NT EPA under subsection (2).

- (5) A related WMA continues to apply on and after the commencement day according to its provisions as in force on the commencement day, as follows:
- (a) in relation to an appropriate WMA mentioned in subsection (1)(d) – until the earliest of the following:
    - (i) the day on which the appropriate WMA is varied or replaced by an approved waste management arrangement as a result of compliance with the condition imposed by subsection (1)(d);
    - (ii) the day on which the existing validated approval ceases to be in force;
  - (b) in relation to a related WMA mentioned in subsection (1)(e) or (f) – until the existing validated approval is cancelled under section 100;
  - (c) in relation to a related WMA the subject of a notice given under subsection (2) – until the earliest of the following:
    - (i) the day on which the related WMA is replaced by an approved waste management arrangement;
    - (ii) the day on which the existing validated approval ceases to be in force (which may be as a result of cancellation by the NT EPA following action taken under Part 2, Division 6, Subdivision 3).
- (6) This section does not prevent the holder of a CDS approval granted under the former Act from applying to the NT EPA for the cancellation of the approval because the holder has ceased to be a CDS participant.

## **98 CDS approval required to replace existing validated approval**

- (1) This section applies in relation to an existing validated approval if the condition in section 97(1)(e) or (f) applies.
- (2) The NT EPA must give the holder of the existing validated approval a notice requesting the holder to apply, within the relevant prescribed period, for a CDS approval to replace the existing validated approval (a *replacement approval*).



- (3) The notice must be given:
- (a) in relation to the existing validated approval to which the condition in section 97(1)(e) applies – as soon as practicable after the NT EPA becomes aware that the related WMA has ceased to be an appropriate WMA; and
  - (b) in relation to the existing validated approval to which the condition in section 97(1)(f) applies – as soon as practicable after the commencement day.
- (4) The notice must state that the existing validated approval will be cancelled:
- (a) if the holder of the existing validated approval applies for, and is granted, a replacement approval; or
  - (b) if the holder does not apply for a replacement approval:
    - (i) within the relevant prescribed period; or
    - (ii) if applicable – before the expiry of the period extended under subsection (5).
- (5) Subject to section 99(6), the NT EPA may extend the relevant prescribed period, by no more than 6 months, if:
- (a) the holder of the existing validated approval applies to the NT EPA for the extension:
    - (i) in writing; and
    - (ii) no later than 30 days before the end of the relevant prescribed period; and
  - (b) the NT EPA is satisfied it is reasonable in the circumstances to extend the period.
- (6) If the NT EPA refuses to extend the relevant prescribed period:
- (a) it must give the holder of the existing validated approval a review notice; and
  - (b) Part 2, Division 7 applies.
- (7) Part 2, Division 6, Subdivision 1 applies in relation to an application for a replacement approval.

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(8) In this section:

*relevant prescribed period* means the following period:

- (a) in relation to an existing validated approval to which the condition in section 97(1)(e) applies – 2 months after the day on which the notice is given to the holder under subsection (2);
- (b) in relation to an existing validated approval to which the condition in section 97(1)(f) applies:
  - (i) if the existing validated approval is a coordinator approval – 6 months after the day on which the notice is given to the holder under subsection (2); or
  - (ii) if the existing validated approval is a collection approval or supply approval – 8 months after the day on which the notice is given to the holder under subsection (2).

## 99 Arbitration

- (1) This section applies if the parties to a related WMA are unable to reach agreement about the provisions of an appropriate WMA within the prescribed period.
- (2) If the appropriate WMA is a coordinator arrangement, the matters in dispute must be decided by an arbitrator in the Territory.
- (3) If the appropriate WMA is a supplier arrangement or operator arrangement, the parties to the related WMA may agree that the matters in dispute be decided by an arbitrator in the Territory.
- (4) A notice relating to arbitration, signed by the parties to the related WMA, must be given to the NT EPA before the end of the negotiation period and must state:
  - (a) that the parties are unable to reach agreement about the provisions of the appropriate WMA; and
  - (b) the matter is to be referred to an arbitrator in the Territory; and
  - (c) whether or not the parties have reached an agreement about the arbitrator who is to decide the matter; and
  - (d) if the parties have reached an agreement mentioned in paragraph (c) – the details of the arbitrator.
- (5) If the parties are unable to reach an agreement mentioned in subsection (4)(c), the NT EPA must appoint an arbitrator.

- 
- (6) The NT EPA may extend the negotiation period, as necessary, to enable the completion of arbitration, the signing of an appropriate WMA and the granting of a replacement approval.
- (7) An arbitrator's decision for this section is binding on the parties to the arbitration proceedings.
- (8) However, if the arbitrator's decision relates to a coordinator arrangement and a CDS coordinator disagrees with the decision, the coordinator:
- (a) may elect:
    - (i) not to be bound by the decision; and
    - (ii) not to continue as a CDS coordinator; and
  - (b) if the coordinator makes that election – must give written notice of the election, within 7 days after being notified of the arbitrator's decision, to:
    - (i) the arbitrator and each CDS participant who was a party to the arbitration proceedings; and
    - (ii) the NT EPA.
- (9) The costs of arbitration must be shared equally by the parties, including a CDS coordinator who has decided not to continue as a CDS coordinator.
- (10) In this section:
- negotiation period*** means the following:
- (a) the relevant prescribed period under section 98;
  - (b) if the period has been extended under section 98(5) – the extended period.

***prescribed period*** means the period that ends 14 days before the end of the negotiation period.

## 100 Cancellation of existing validated approval

- (1) The NT EPA must cancel an existing validated approval:
- (a) if the NT EPA has granted a CDS approval to replace the existing validated approval – on the day the CDS approval is granted (unless the existing validated approval has ceased to be in force on the date stated in it); or

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- (b) if a circumstance mentioned in section 98(4)(b) applies – on the day after the expiry of the relevant period; or
  - (c) if notice is given to the NT EPA under section 99(8)(b) – on the day the notice is given.
- (2) The NT EPA must give a notice of cancellation under subsection (1)(b) to the person who held the existing validated approval.

**101 Continuation of certain rights under existing validated approval**

- (1) Subsection (3) applies in relation to the holder of an existing validated approval that is a collection approval if the holder:
- (a) delivered relevant containers to a CDS coordinator before the commencement day; or
  - (b) delivers relevant containers to a CDS coordinator on or after the commencement day.
- (2) Subsection (3) also applies if the existing validated approval is cancelled and the person who previously held the approval:
- (a) paid a refund amount for relevant containers delivered to the person on or before the day on which the person was given a cancellation notice; and
  - (b) delivers the relevant containers to a CDS coordinator on or after that day.
- (3) Former section 20(2) to (4) continues to apply, as if former section 20 had not been repealed by the amendment Act, in relation to the rights of the operator:
- (a) to require and receive payment from the CDS coordinator; and
  - (b) if the coordinator does not pay the amount as required – to recover the amount as a debt payable to the operator.
- (4) In this section:

*relevant containers* means containers to which a circumstance mentioned in former section 20(1)(a) to (c) applies.

*cancellation notice* means a notice given under section 100(2).

**102        Suspension or cancellation of CDS approval under Part 2**

- (1) This section applies if the CEO:
  - (a) gave a show cause notice to the holder of a CDS approval under former section 38; and
  - (b) had not, before the commencement day, made a decision in relation to the suspension or cancellation of the approval.
- (2) The NT EPA must continue to deal with the matter under amended Part 2, Division 6, Subdivision 3.

**103        Offences**

- (1) A prosecution for an offence against amended section 18(1) or amended section 19(1) may be commenced only in relation to approved containers delivered to the collection depot on or after the commencement day.
- (2) The repeal of former section 18(2) or former section 19(1) does not affect the starting or continuation of a prosecution in relation to approved containers delivered to the approved collection depot before the commencement day.

**104        Continuation of approved forms**

An approved form in use immediately before the commencement day continues to have effect as if it had been approved by the NT EPA under amended section 85.

**105        Transitional regulations**

- (1) A regulation may provide for a matter of a transitional nature:
  - (a) because of the enactment of the amendment Act; or
  - (b) to otherwise allow or facilitate the transition from the operation of a provision of the former Act to a provision of the amendment Act.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement day.
- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
  - (a) decreasing the person's rights; or

- (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, expire 1 year after the commencement day.

## 21 Schedule inserted

After section 105

*insert*

### Schedule Agreements for coordinator arrangement provisions

section 12(3)

#### 1 Definitions

***accepted containers*** means empty approved containers that:

- (a) are the subject of a primary coordinator's approved supplier arrangements; and
- (b) have been accepted by a secondary coordinator from an operator of an approved collection depot.

***market share***, of a CDS coordinator, means the coordinator's share of the total number of all approved containers sold in the Territory during a quarter calculated by reference to the numbers stated in all of the sales declarations for that quarter.

***primary coordinator***, in relation to approved containers, means a CDS coordinator who is a party to an approved supplier arrangement relating to those containers.

***sales declaration*** means a statutory declaration given under an agreement mentioned in clause 2.

***secondary coordinator***, in relation to approved containers, means a CDS coordinator who:

- (a) accepts the containers, when empty, from an operator with whom the coordinator has an approved operator arrangement; and
- (b) is not a party to the approved supplier arrangement relating to those containers.

**2 Quarterly sales declaration**

- (1) An agreement that each CDS coordinator must give to each other coordinator, in each quarter, a statutory declaration stating the following:
  - (a) the total number of approved containers, by reference to material types, anticipated to be sold in the Territory during the current quarter;
  - (b) the total number of approved containers, by reference to material types, actually sold in the Territory during the previous quarter;
  - (c) an adjustment of the numbers of approved containers for the previous quarter, taking into account the difference between:
    - (i) the number anticipated to be sold during that quarter as stated in the previous statutory declaration; and
    - (ii) the number actually sold during that quarter as stated for paragraph (b).
- (2) The agreement must require the statutory declaration to be given by a CDS coordinator within 7 days after the day on which the coordinator has been given all of the supplier sales documents for the previous quarter.
- (3) For subclause (1)(a), the total number of approved containers anticipated to be sold during the current quarter, by material type, is to be stated as the total number of those containers actually sold by the supplier in the previous quarter.
- (4) For subclause (1)(b), the total number of approved containers actually sold during the previous quarter is as specified in all of the supplier sales documents for that quarter.

*Notes for clause 2*

- 1 All of the statutory declarations for a quarter show the total sales in the Territory of approved containers by reference to material types.*
- 2 The numbers of approved containers stated by a CDS coordinator in the coordinator's statutory declaration indicate the market share of the coordinator relevant to the calculations mentioned in clauses 6, 7 and 8.*

### 3        **Sorting empty approved containers**

An agreement that each coordinator must specify in each approved operator arrangement the material types (including categories of material types), into which empty approved containers must be sorted by the operator.

### 4        **Weighing and counting accepted containers**

- (1) An agreement about the method to be used by a secondary coordinator for the following:
  - (a) weighing accepted containers;
  - (b) counting accepted containers;
  - (c) recording the weight or numbers of the accepted containers.
- (2) The agreement must require the secondary coordinator to weigh or count the accepted containers in the material types into which they are sorted when accepted.

### 5        **Operator costs and process fee**

- (1) An agreement that a primary coordinator must pay an amount to a secondary coordinator in relation to:
  - (a) operator costs; and
  - (b) a process fee.
- (2) For subclause (1)(a), *operator costs* are:
  - (a) the refund amounts paid by the secondary coordinator to an operator for accepted containers; and
  - (b) the amount paid by the secondary coordinator to the operator for the collection, sorting, aggregation and delivery of the accepted containers by the operator.
- (3) For subclause (1)(b), the *process fee* is the fee for the secondary coordinator carrying out the processes necessary to prepare accepted containers for transportation to a person or place for reuse, recycling or appropriate disposal.



- (4) The agreement must:
- (a) require the secondary coordinator to keep:
    - (i) a record of the number of accepted containers by reference to each material type; and
    - (ii) documents to verify the method used for counting the containers; and
  - (b) specify the basis on which the process fee is payable (for example, the payment of a specified amount for each accepted container dealt with by the secondary coordinator).
- (5) The agreement must require the secondary coordinator to calculate the amount payable by the primary coordinator in relation to accepted containers using:
- (a) a method of calculation specified in the agreement; or
  - (b) the following formula:
- $$A = B \times (C + D)$$
- where:
- A** is the amount claimed.
- B** is the market share of the primary coordinator in relation to the containers based on the most recent sales declarations.
- C** is the operator costs in relation to the containers.
- D** is the process fee in relation to the containers.
- (6) The agreement must require:
- (a) the secondary coordinator to give the primary coordinator a written claim for payment accompanied by copies of documents that provide evidence of the calculation of the amount claimed; and
  - (b) the primary coordinator to pay the secondary coordinator the amount payable within the time specified in the agreement, which must not exceed 14 days after receipt of the claim.

**6 Transportation costs and proceeds of sale**

- (1) An agreement that, for the transportation by a secondary coordinator of accepted containers to a person or place for reuse, recycling or appropriate disposal and for the sale of the containers:
  - (a) the primary coordinator must pay an amount to the secondary coordinator if the transportation costs exceed the proceeds of the sale; or
  - (b) the secondary coordinator must pay an amount to the primary coordinator if the proceeds of the sale exceed the transportation costs.
- (2) The agreement must require the secondary coordinator to calculate the amount payable by the primary coordinator or secondary coordinator, in relation to the accepted containers, using:
  - (a) a method of calculation specified in the agreement; or
  - (b) the following formula:
$$A = B \times (C - D)$$
where:

**A** is the amount payable.

**B** is the market share of the primary coordinator in relation to the containers based on the most recent sales declarations.

**C** is the cost of transportation of the containers.

**D** is the amount received by the secondary coordinator from the proceeds of the sale of the containers following transportation.
- (3) The agreement must require:
  - (a) the secondary coordinator to give the primary coordinator a written statement of the amount payable accompanied by copies of documents that provide evidence of the calculation of the amount; and
  - (b) the coordinator who is liable to pay the amount to do so within the time specified in the agreement, which must not exceed 14 days after the day on which the statement is given by the secondary coordinator.

**7 Revision of claims for payment**

- (1) An agreement that a secondary coordinator must revise a claim made under clause 5 or 6 if the primary coordinator's market share, as calculated, requires revision because of an adjustment of the numbers of accepted containers stated in subsequent sales declarations.
- (2) The agreement must require the secondary coordinator to give the primary coordinator a written statement showing the revision, and how it is calculated, and specify that:
  - (b) if the primary coordinator is liable to pay an additional amount to the secondary coordinator, the amount must be paid within the time specified in the agreement, which must not exceed 14 days after receipt of the statement; and
  - (c) if the secondary coordinator is liable to refund an amount to the primary coordinator because of an overpayment, the amount must be refunded within the time specified in the agreement, which must not exceed 14 days after the statement is given.

**8 Audits**

- (1) An agreement that one auditor, named in the agreement, must be appointed by the CDS coordinators to:
  - (a) conduct an audit of each coordinator's relevant information for a financial year; and
  - (b) give each coordinator a written report in relation to all of that information.
- (2) The agreement must specify:
  - (a) the time within which the auditor must conduct the audit and give the report; and
  - (b) how the CDS coordinators will pay the auditor's costs.
- (3) An agreement that if, at any time, a CDS coordinator reasonably believes any of the relevant information given by another coordinator is inaccurate:
  - (a) the coordinator may request the auditor named in the agreement mentioned in subclause (1) to audit the relevant information and give the coordinator a written report in relation to the information; and

- (b) if the auditor's report states that the relevant information is inaccurate, the coordinator who gave that information must pay the auditor's costs; and
  - (c) if the auditor's report states that the relevant information is accurate, the coordinator who requested the audit must pay the auditor's costs.
- (4) The agreement under subclause (3) must specify that:
- (a) if inaccurate information is found by the auditor, and a primary coordinator has paid a secondary coordinator more than the coordinator was entitled to be paid, the secondary coordinator must refund the relevant amount to the primary coordinator within 28 days after receiving the auditor's report; and
  - (b) if inaccurate information is found by the auditor, and a primary coordinator has paid a secondary coordinator less than the coordinator was entitled to be paid, the primary coordinator must pay the relevant amount to the secondary coordinator within 28 days after receiving the auditor's report.
- (5) In this clause:

*auditor* means a person who has the necessary formal qualifications to audit relevant information and is not a CDS participant or an employee of a CDS participant.

*relevant information* means financial and other information that is relevant to the matters that are the subject of a coordinator agreement.

## 9 Statutory declarations

An agreement that the CDS coordinators may require that any information to be given under an agreement mentioned in clauses 3 to 8 must be given by statutory declaration.

## 22 Act further amended

The Schedule has effect.

**Part 3 Amendment of Environment Protection (Beverage Containers and Plastic Bags) Regulations**

**23 Regulations amended**

This Part amends the *Environment Protection (Beverage Containers and Plastic Bags) Regulations*.

**24 Regulation 2FA amended**

(1) Regulation 2FA(1)

*omit*

CEO

*insert*

NT EPA

(2) Regulation 2FA(2)

*omit*

19(1)(a)(ii)

*insert*

19(3)

**25 Regulation 2FB inserted**

After regulation 2FA

*insert*

**2FB Limitation on sorting empty approved containers by material type**

For section 24C(c) of the Act, the prescribed number of material types is 9.

**26 Regulation 11 amended**

Regulation 11(1)

*omit*

CEO

*insert*

NT EPA

**Part 4 Expiry of Act**

**27 Expiry of Act**

This Act expires on the day after it commences.

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**Schedule Act further amended**

section 22

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part 2, Division 5, heading	whole heading	<b>Division 5 Delivery, acceptance and refund amounts</b>
section 22, heading	<b>CEO</b>	<b>NT EPA</b>
sections 22 and 25(1)	CEO <i>(all references)</i>	NT EPA
section 25(2)	section 24(3)	section 24
sections 25(3)(b)(v) and (4), 29, definition <b><i>condition</i></b> and 31(1) and (2)(b)	CEO <i>(all references)</i>	NT EPA
section 32, heading	<b>CEO</b>	<b>NT EPA</b>
sections 32 to 35, 38(1) and (2)(a), 39, 40, 41(1)(a), (2) and (3), 44(1), (3) and (6), 45(1) and 48(1), (2)(d) and (3)	CEO <i>(all references)</i>	NT EPA
section 48(5)	CEO's decision	decision of the NT EPA
sections 67(4) and 68(a)	CEO	NT EPA
section 77, definition <b><i>declared provision</i></b> , paragraph (a)	18(2)	18(1)
sections 83 and 84	CEO	chairperson of the NT EPA
sections 85, 87(2) and (3), 88(1) and 90(1)	CEO	NT EPA