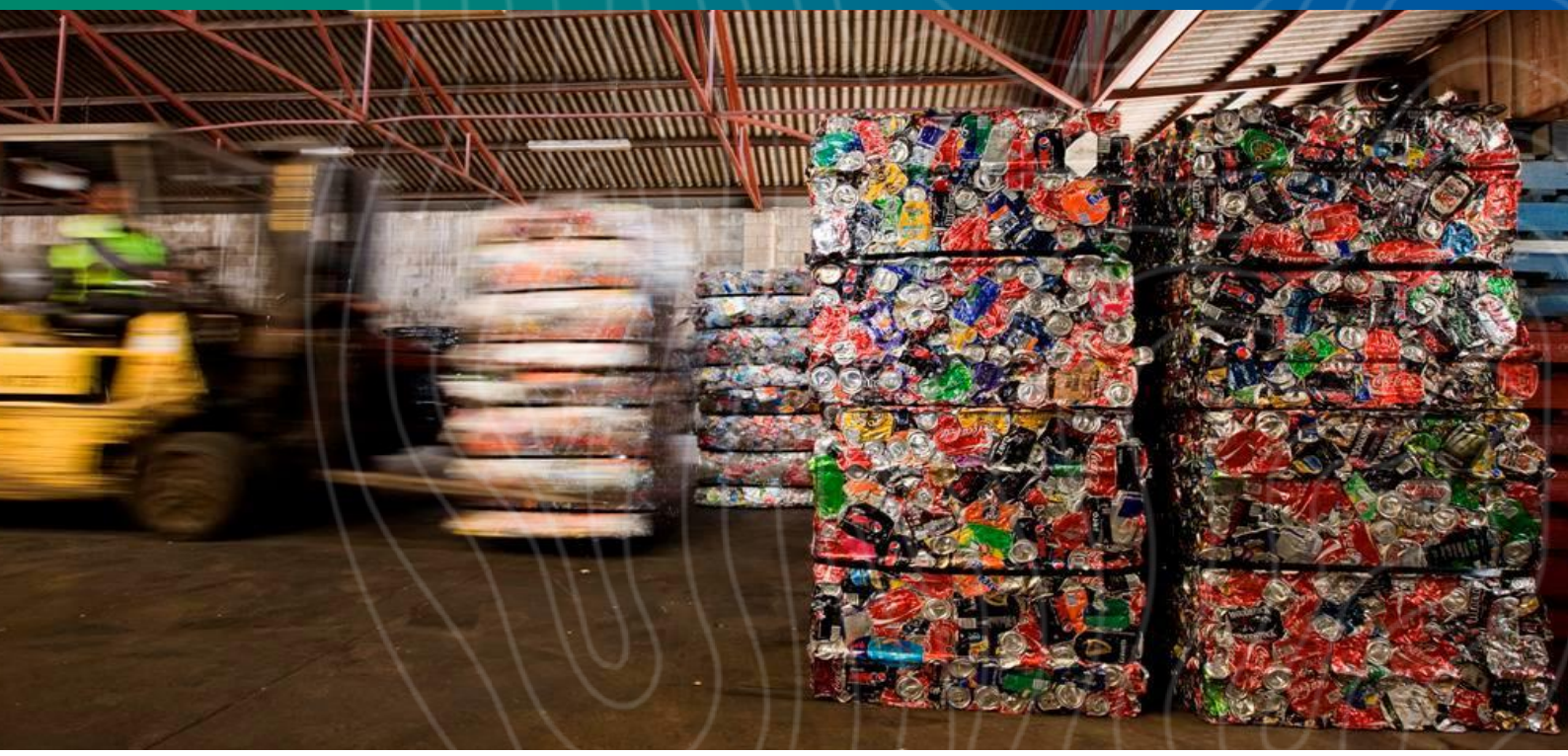
Explanatory Guide

to the draft Environment Protection (Beverage Container Deposit Scheme) Amendment Bill 2024



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EPA FOR RECONCILIATION

The EPA acknowledges and respects the Aboriginal peoples of South Australia as the first peoples and nations of this State. We recognise them as the traditional custodians of land and waters in South Australia and that their spiritual, social, cultural and economic beliefs are of ongoing importance today. We recognise that they have made, and continue to make, a unique and irreplaceable contribution to the State.

Artwork: 'Caring for Country', courtesy of Arrernte man Scott Rathman, for the EPA.

Contents

Executive Summary **2**

Invitation to comment **3**

Important information about your submission 3

Background to the Container Deposit Scheme Review **4**

Key changes to CDS in the draft Amendment Bill **6**

Updated objectives and features of the scheme 6

Proposed CDS governance model 6

What governance reform does the Amendment Bill seek to deliver? **9**

Pricing safeguard **13**

What the changes mean: **14**

For beverage suppliers (manufacturer, distributer or retailer of containers) 14

For collection depots (container refund points) 16

For material recovery facilities 18

For donation partners 20

For customers 21

For super collectors 21

Explanation of clauses **22**

Implementation **25**

Update on areas of national harmonisation **27**

List of figures

Figure 1 Proposed container deposit scheme governance model 8

List of tables

Table 1 Summary of proposed functions of the Minister, scheme coordinator and EPA 12

Executive Summary

The context of South Australia's (**SA**) container deposit scheme (**CDS**) has evolved considerably since its commencement in 1977 and it no longer meets the expectations of a contemporary extended producer responsibility scheme. The modernisation of CDS governance is proposed to unlock unrealised value in SA's circular economy, remove barriers to expanding community participation and lay the foundations to position SA for the three proposed elements of national harmonisation.

Under the *Environment Protection Act 1993* (**EP Act**), regulatory oversight of the CDS by the South Australian Environment Protection Authority (**EPA**) is limited and focuses on ensuring beverage suppliers, collection depots and super collectors are approved to participate in the scheme, and that beverage containers are prohibited from sale and/or refund return unless they are approved by the EPA and a label displays the correct refund marking.

Beyond these prescribed functions, the CDS is self-regulated by industry - with embedded governance challenges.

Amendment to the Beverage Containers Division of the EP Act is being proposed to create a more efficient, effective, transparent, and cost effective CDS.

Proposed reforms in the draft ***Environment Protection (Beverage Container Deposit Scheme) Amendment Bill 2024*** (the **draft Amendment Bill**) set out:

- Refreshed scheme objectives and features of the CDS that build upon the scheme's success.
- The appointment and functions of a not-for-profit scheme coordinator who would be responsible for the administration, management, and proper operation of the scheme.
- Clear roles and responsibilities for government and the scheme coordinator around prescribed functions including contract arrangements with scheme participants, scheme cost-setting practices, performance targets, customer service standards, IT-based auditing, reporting requirements, and regulatory oversight.

Pursuant to the reforms, the Minister would appoint the scheme coordinator that will have a Board membership prescribed by legislation including an independent Chair, representatives from the beverage industry (including South Australian based beverage producers), the existing container collection network, and expertise in recycled commodity markets. The beverage industry would continue to fund the CDS consistent with an extended producer responsibility scheme.

In response to a long history of pricing disputes between participants in the current scheme, the draft Amendment Bill proposes a scheme price review mechanism for the Essential Services Commission of South Australia (**ESCOSA**).

Through the reforms in the draft Amendment Bill the Government aims to build on the success of the CDS that has been achieved by the long-held enthusiasm of the South Australian community and innovation and hard work of businesses and non-government organisations in the resource recovery sector.

The draft Amendment Bill is now open for consultation.

Invitation to comment

The South Australian Government is seeking your feedback on the draft Amendment Bill to modernise the state's container deposit scheme.

The deadline for comments on the draft Amendment Bill is **Friday, 25 October 2024**.

To provide feedback email comments (preferred) to epainfo@sa.gov.au (Subject "CDS Draft Amendment Bill". Ensure you refer to specific sections of the Bill in your submission).

You may also post your written submission to:

CDS Draft Amendment Bill
Environment Protection Authority
GPO Box 2607
Adelaide SA 5001

Visit yourSAy [https://yoursay.sa.gov.au/] for further details including FAQs

Important information about your submission

Submissions will be treated as public documents unless received in confidence subject to the requirements of the *Freedom of Information Act 1991* and may be quoted in full or part in subsequent EPA reports. If you do not want the public to read your submission, please write 'confidential' on your submission.

Background to the Container Deposit Scheme Review

South Australia has a long history of recycling beverage containers dating as far back as the late 1800s. Local beer and soft drink manufacturers had their own voluntary returns in place, to recover and refill their glass bottles. Consumers returned soft drink bottles to retailers and beer bottles to 'marine stores' for a refund that was set and managed by industry.

The introduction and increasing popularity of single-use, non-refillable beverage containers in the 1970s meant that the new containers could not be reused again. Without a return system, single-use beverage containers soon became highly visible in the litter stream posing a threat to the environment.

Based on the 'polluter pays' principle and reinforcing the existing return systems previously established by industry for its refillable containers, the South Australian Parliament passed the *Beverage Container Act 1975*.

Upon commencement in 1977, beverage producers had started one of the first product stewardship schemes in Australia, taking responsibility for their containers and financially underpinning the considerable infrastructure investments and operating costs associated with the system. Importantly, the CDS is a mandatory scheme for all included beverage containers as opposed to the early voluntary return systems.

The success of the CDS has been made possible by a highly engaged South Australian community and the many businesses involved in container recovery and recycling, including beverage producers, suppliers and retailers, and non-government organisations.

A review of the CDS commenced in January 2019, with the release of the *Improving South Australia's Recycling Makes Cents* scoping paper for public consultation.

During the 6-week consultation, the EPA received over 1,170 responses from members of the public, CDS stakeholders, environment and community groups, the beverage manufacturing and supply sector, the resource recovery and recycling sector and the government sector. A summary report of responses was released in August 2019.

This feedback, together with investigations on beverage container material flows (including fate of containers) and economic analysis, helped inform the *'Improving South Australia's Recycling Makes Cents Discussion Paper'* which was structured around the following key issues:

- Objectives of the CDS including recovery and recycling of container materials within domestic circular economies.
- Scope of containers included in the CDS.
- Scheme approvals including container application fees and container markings.
- CDS container return rate drivers including deposit value, container return and payment of the refund.
- Governance of the CDS and its relationship to schemes in other jurisdictions.

From September to November 2021 the EPA received 250 submissions from the community, CDS stakeholders, environment and community groups, the beverage manufacturing and supply sector, the resource recovery and recycling sector, and across government.

A Discussion paper consultation summary report was released in August 2022.

Beyond the formal consultation periods, the EPA has continued to meet with CDS participants and stakeholders to inform the best-fit approach to reforms in South Australia as well as contributing to national discussions to ensure the three areas of national harmonisation are progressed.

The CDS reforms are to be progressed in two stages:

- Stage 1 reforms focus on changes to scheme governance and system modernisation and are the subject of the draft Amendment Bill.
- Stage 2 reforms relate to areas of national harmonisation around the scope of beverage containers included within the CDS, the refund amount and beverage container approvals.

There are no changes to the scope of eligible beverage containers or the refund amount proposed in the draft Amendment Bill.

Key changes to CDS in the draft Amendment Bill

Updated objectives and features of the scheme

The draft Amendment Bill proposes significant changes to scheme governance and other scheme elements to modernise the CDS.

The draft Amendment Bill proposes to broaden the objectives of the scheme beyond litter control and waste management (new s.64E(1)) by:

- elevating the resource recovery and circular economy elements of the scheme
- strengthening the scheme's promotion of extended producer responsibility for beverage suppliers
- supporting a strong market for recovered resources, including supporting the current recycling services offered to the South Australian community
- facilitating community access to the scheme and social enterprise, and
- enabling economic, environmental, and social benefits for the people of South Australia.

The updated objectives would support the expanded objects of the EP Act introduced in 2017 in the *Environment Protection (Waste Reform) Amendment Act 2017* to drive better material flow and circular economy outcomes, and to support a strong market for recovered resources.

The draft Amendment Bill (new s.64E(2)) lists the key features of the scheme as follows:

- establishment of a scheme coordinator with responsibility for the administration, management, and operation of the scheme
- approval of container refund points
- payment of refunds for the return of empty beverage containers
- establishment of a cost recovery scheme from beverage suppliers
- prohibition of the supply of eligible beverage containers by beverage suppliers who have not agreed with the scheme coordinator to contribute to scheme costs, and
- prohibition of the supply of beverage containers that are not approved by the EPA.

Proposed CDS governance model

The South Australian Government has endorsed a single not-for-profit scheme coordinator governance model to form the basis of the draft Amendment Bill.

A new section 68 of the EP Act provides for the appointment of the scheme coordinator by the Minister and specifies eligibility requirements for appointment. The scheme coordinator would be required to be an 'eligible entity', which means a body corporate that—

- is carried on other than for the profit or gain of its individual members; and
- is incorporated under the *Corporations Act 2011* of the Commonwealth, and
- has a constitution that complies with the prescribed requirements (see new s.68(6)), including a Board of at least 8 directors.

The scheme coordinator Board must include the following members:

1 a chair who is independent of the beverage and waste industries, and approved by the Minister

2 at least 1 director representing minor beverage producers (producing less than 300,000 beverage products per year) based in South Australia

3 at least 1 director representing a major beverage producer

4 at least 1 director representing a container refund point operator association in South Australia

5 at least 1 director who has expertise in recycled commodity markets

6 at least 1 other director who is nominated by the Minister

7 at least 2 directors who have legal or financial qualifications and experience and are independent of the beverage and waste industries.

The draft Amendment Bill (s.68(7)) outlines the full description of the proposed scheme coordinator Board membership.

The Minister would appoint the scheme coordinator following a selection process (see new s.68(2)) on terms and conditions determined by the Minister as specified in the instrument of appointment.

Once appointed, the scheme coordinator would operate as a single 'super collector' with new prescribed functions to ensure accountability and transparency around elements such as price setting, financial flows, container flows, scheme promotion, auditing, and reporting. The proposed functions of the scheme coordinator, as set out in the draft Amendment Bill (new s.68A), include:

- entering into, and managing, supply agreements with beverage suppliers to ensure contributions are made to cover scheme costs
- determining the scheme price payable under supply agreements
- making recommendations to the EPA on eligible beverage container applications
- maintaining and expanding a network of container refund points and entering into, and managing refund point agreements
- entering into and managing, material recovery agreements
- ensuing arrangements are in place for container collection from container refund points and for the sale of material to reuse or recycling markets
- approving donation partners
- ensuring audit arrangements are in place
- raising and maintaining public awareness of the scheme
- receiving and dealing with complaints from scheme participants and members of the public, and
- reporting against performance targets.

Figure 1 presents a conceptual model of CDS participants showing the types of scheme agreements between the scheme coordinator and beverage suppliers, container refund point operators, and eligible material recovery facility operators in addition to the high-level flow of scheme costs and empty beverage containers.

Importantly, the draft Amendment Bill proposes Ministerial powers to cancel or vary the conditions of the scheme coordinator appointment in certain circumstances such as a contravention of the EP Act (see new s.68(9)) or breach of the instrument of appointment.

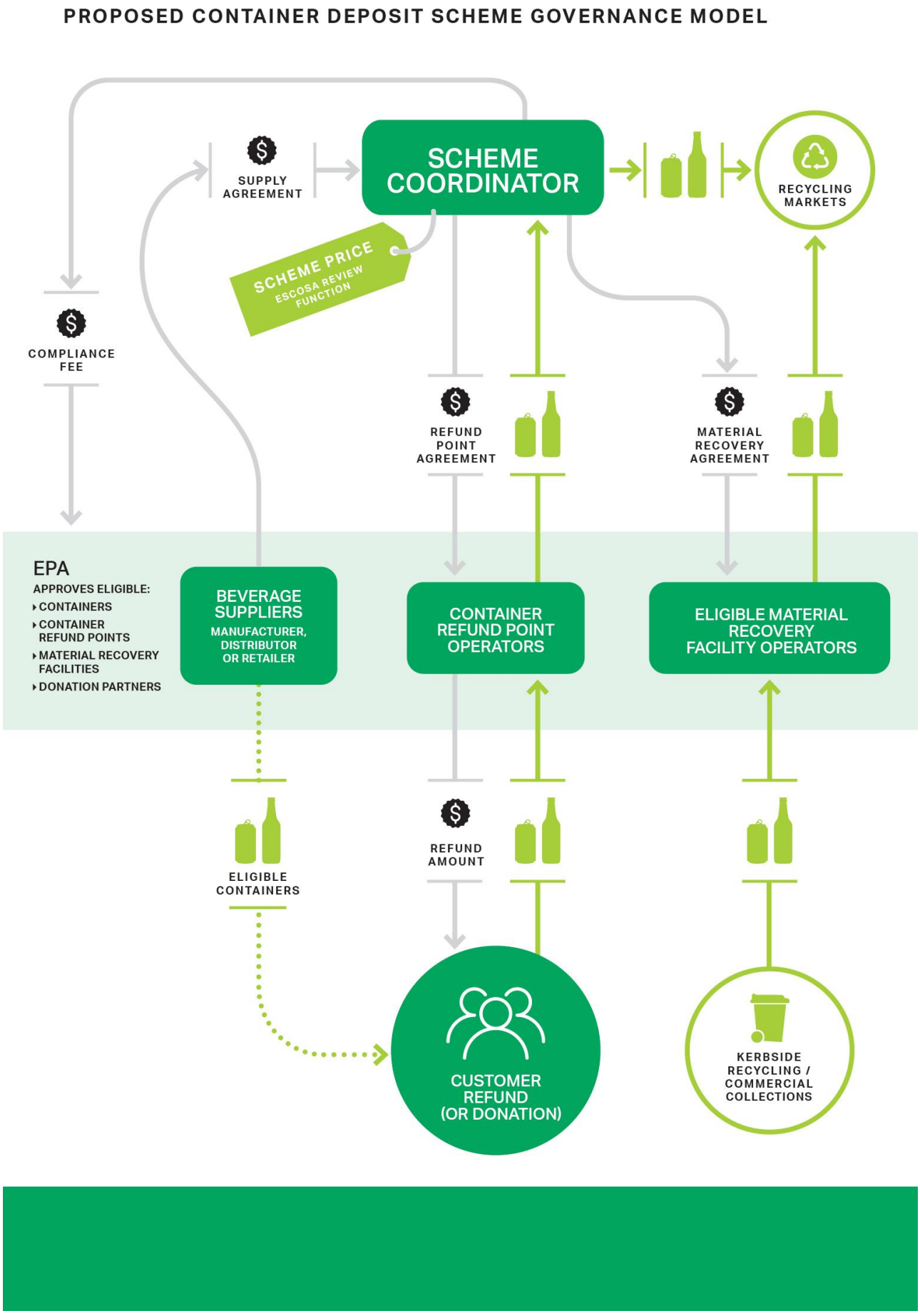


Figure 1 Proposed container deposit scheme governance model

What governance reform does the Amendment Bill seek to deliver?

A single entity who is responsible for administration, management, and the proper operation of the scheme

Limited competition between the existing super-collectors and the commercial-in-confidence arrangements between them and their respective commercial partners currently prevent scheme transparency and accountability and create a barrier to system modernisation.

Proposed changes to scheme governance, including the appointment of a not-for-profit scheme coordinator, seek to improve transparency around container flows, financial flows, and scheme fees, and are designed to gain efficiencies in scheme administration and operation.

Industry-led extended producer responsibility schemes benefit from governance arrangements that set out clear roles and responsibilities for industry that detail performance requirements, targets and expectations, accountability frameworks, auditing and reporting requirements, and funding arrangements.

The Minister would appoint the not-for-profit scheme coordinator which would report to a board comprising beverage and waste industry members, legal and financial experts and an independent chair approved by the Minister.

The scheme coordinator would be responsible for entering into agreements with scheme participants.

Table 1 presents a summary of the proposed functions of the Minister, scheme coordinator and the EPA.

Transparent cost setting

The scheme coordinator would be funded by the beverage industry through a transparent fee structure. Consistent with most CDSs across Australia the scheme coordinator would be required to set and publish the *scheme price* for each container material type for a specified period (see new s.68F).

The scheme price covers the refund amount, container refund point handling fees, recovery amounts payable under material recovery agreements, scheme coordination costs, and EPA compliance costs minus any revenue the scheme coordinator receives from the sale of material into recycling markets.

In response to a long history of pricing disputes between participants in the current scheme, the draft Amendment Bill proposes a pricing review mechanism for ESCOSA (see new s.69) that would be funded by the scheme.

Performance targets

The draft Amendment Bill would give the Minister the ability to require the scheme coordinator to meet performance targets and to develop a strategic plan (see new s.68(4)). Performance targets could cover a range of areas including minimum return rate targets, community access, awareness and education, and customer service standards. Targets will be determined by the Minister, informed by the EPA, and drafted in the regulations and carried over into the scheme coordinator's contract. Performance targets could be enforced via the Ministerial instrument of appointment of the scheme coordinator (see new s.68(9)).

Customer service standards

The draft Amendment Bill enables customer service standards to be prescribed for approved container refund points in addition to the scheme coordinator (see new s.68D(3)(d)).

Improved community accessibility and service experience

The scheme coordinator would be responsible for maintaining and expanding the container refund point network across the state, and to act as a container return point in areas of need if directed to do so by the Minister (see new s.68A(2)(f).

Findings from the recent Heads of EPA Container deposit scheme (CDS) behaviour change – national research report summary highlight that:

- convenience and ease of use were the top factor for a good experience at return points
- more than half of consistent and irregular CDS users agreed their return point experience influences their future CDS participation, and
- 30% of the 'never returned' segment said they do not return because it involves too much effort.

The establishment of additional return point types and locations in SA is expected to increase the availability and convenience for consumers returning empty beverage containers for a refund. The increased convenience (reduced costs of time and travel for individuals) is expected to result in the return of an additional 20 million empty beverage containers (just over 3% increase).

Scheme transparency and accountability

The proposed governance arrangements would enable public reporting against the scheme coordinator's prescribed functions. Annual reporting to the Minister could include:

- reporting against performance targets and the strategic plan
- scheme coordinator total operating costs and revenue breakdown
- handling fees per region payable to container refund point operators
- total number of containers sold and returned in South Australia as well as tonnages by each container material type
- circular economy data on the fate of recycled material
- total number and type of disputes and action taken in response to each dispute and the outcome of the dispute resolution process.

Annual reporting requirements will be determined by the Minister, informed by the EPA, and drafted in the regulations and the scheme coordinator's contract (see new s.68A(4)).

IT-based systems to support payment and audit functions and a broader range of return options

The scheme coordinator would be required to digitise the CDS, enabling digital access for all scheme participants and consumers. Newer schemes in other jurisdictions have implemented scheme–wide digital systems and have access to real-time financial and container flow data.

EPA fee reform

The draft Amendment Bill proposes a compliance fee mechanism whereby the EPA can recover the administrative costs of its functions from the scheme coordinator. This approach would enable the removal of application fees for category B containers (recyclable containers), and application and annual fees currently charged to collection depots (see new s.68G).

Current application fees for category B containers are the highest in Australia and disproportionately impact small beverage suppliers who frequently place smaller batches of new beverages on the market. Fee reform would remove an upfront cost burden for new entrant small beverage suppliers.

Branding, promotion and education

The scheme coordinator would be required to raise and maintain public awareness of the scheme, including how the scheme operates and its benefits, and the location of container refund points (see new s.68A(2)(n)).

Findings from the recent Heads of EPA CDS behaviour change – national research report summary highlight that:

- 17% of people surveyed said more easily accessible information about return point locations would encourage them to participate in CDS in the future, and
- 20% of the ‘never returned’ segment do not participate because they do not know where their closest return point is located.

Table 1 Summary of proposed functions of the Minister, scheme coordinator and EPA

Minister's functions	Scheme Coordinator's functions	Environment Protection Authority's functions
• Determines process to select scheme coordinator • Appoints eligible entity as the scheme coordinator on terms and conditions determined by the Minister in the instrument of appointment • Approves independent chair of the scheme coordinator Board along with another director • Can vary conditions of appointment or cancel the scheme coordinator's appointment on prescribed grounds • Determines annual reporting requirements of the scheme coordinator including strategic objectives, performance targets, governance plan In transition phase: • Sets the prescribed day on which the amended scheme would start • Approves the engagement plan on how the scheme coordinator will engage with existing collection depots • Approves scheme coordinator's methodology to determine handling fees	• Entering into, and managing, supply agreements with beverage suppliers to ensure contributions are made to cover scheme costs • Determining the scheme price payable under supply agreements • Making recommendations to the EPA on eligible beverage container applications • Maintaining and expanding a network of container refund points and entering into, and managing refund point agreements • Entering into and managing, material recovery agreements • Ensuing arrangements are in place for container collection from container refund points and for the sale of material to reuse or recycling markets • Enable digital access for all scheme participants and consumers • Approving donation partners on eligibility requirements set by the EPA • Ensuring audit arrangements are in place • Raising and maintaining public awareness of the scheme • Receiving and dealing with complaints from scheme participants and members of the public, and • Reporting against strategic objectives, performance targets, governance plan.	• Approves eligible: ○ Beverage Containers ○ Container refund points ○ Material recovery facilities ○ Donation partners • Approves material recovery agreement template • Develop recovery amount protocol(s) to be applied in determining recovery amounts payable under a material recovery agreement • Regulate non-compliance of beverage containers; refund points; material recovery facilities and donation partners • Ensure scheme coordinator meets conditions of appointment In transition phase: • Approves draft refund point agreement template

Pricing safeguard

To ensure fair market conduct by the scheme coordinator, the draft Amendment Bill proposes a prescribed price review function for ESCOSA. South Australia would be the first jurisdiction to introduce a formal price review mechanism for the CDS which would offer a pricing safeguard for beverage producers who fund the scheme, and the collection network who receive handling fees for returned containers (see new s.69).

A price review function, rather than a price setting role, for ESCOSA is considered the best fit for the South Australian context, noting a price review mechanism:

- maintains an incentive for the scheme coordinator to find cost efficiencies
- provides public disclosure around the cost efficiency of the scheme
- is a lower cost option, and
- more closely aligns with other jurisdictions where the scheme coordinator is responsible for setting and publishing the scheme price for different container material types.

The draft Amendment Bill proposes that the Minister may request ESCOSA to review whether the scheme price determined by the scheme coordinator is reasonable and efficient. The reasonableness of compliance fees would also be in scope for review. The Minister must request a review at least once every 3 years. ESCOSA's review report including recommendations must be provided to the Minister and published on ESCOSA's website (new s.69).

The scheme coordinator must have regard to any recommendations made by ESCOSA in setting the scheme price under new section 68F.

Regulations would prescribe the criteria that must be considered by ESCOSA in conducting a review.

What the changes mean:

For beverage suppliers (manufacturer, distributer or retailer of containers)

Existing beverage suppliers

Existing beverage container approvals issued by the EPA would carry over into a reformed scheme. This would be made possible by transitional provisions in the draft Amendment Bill (Schedule 1, cl.3).

Beverage suppliers would need to enter into a new supply agreement with the scheme coordinator. The supply agreement would replace the current waste management arrangement with the beverage supplier's chosen super collector (new s.68A(2)(a)).

New beverage suppliers

The draft Amendment Bill would not change who is required to make an application for a new beverage container. Any manufacturer, distributor or retailer who places eligible beverage containers[1] on the South Australian market would remain responsible for seeking EPA approval and entering into a supply agreement with the scheme coordinator (substitution of s.68 with new s.68B).

Application fees for category B containers (recyclable containers) would be removed, with the variation regulations to repeal the prescribed fees. The current application fees disproportionally impact small beverage suppliers who frequently place small batches of new beverages on the market.

All beverage suppliers

The scheme coordinator would be required to publish the scheme price for each material type payable under supply agreements. The scheme price covers the refund amount paid to customers, container refund point handling fees, and scheme administration costs. Revenue received by the scheme coordinator from the sale of material into recycling markets would offset scheme costs and would be factored into the scheme price for each material type (new s.68F).

The scheme price may vary for different containers materials noting there are a number of factors that would influence variable costs including the commodity price for container materials, transport costs and the return rate for the container material.

Beverage suppliers' financial contribution under supply agreements would be based on the type of material the containers are made from (reflecting the scheme price for that material), and the number of those containers sold into the South Australian market.

The draft Amendment Bill proposes that the Minister may request ESCOSA to assess whether the scheme price determined by the scheme coordinator is reasonable and efficient. The draft Amendment Bill proposes that the Minister must request a review at least once every 3 years. ESCOSA's review report including recommendations must be provided to the Minister and published on ESCOSA's website (new s.69).

[1] There are no changes to the scope of eligible beverage containers proposed as part of Stage 1 reforms. Current exclusions to the scope of eligible beverage containers would be consolidated in the regulations.

The scheme coordinator would be required to establish a digital register of container approvals along with a database of scheme agreements that would enable digital reporting and payment of contributions under supply agreements (new s.68A(2)(d)).

Supply arrangements under the scheme coordinator would start on a prescribed day to be fixed by the Minister by notice in the Gazette (Schedule 1, cl.2).

Key benefits:

- no application fee to seek a new beverage container approval
- scheme price for each container material type would be published by the scheme coordinator, and must be reviewed by ESCOSA on Ministerial request at least once every three years, and
- IT-based systems to support online reporting and payment for beverage suppliers.

For collection depots (container refund points)

Collection depots would be known as container refund points. The definition of container refund points would include depots, reverse vending machines and capture facilities and premises operated on a permanent, temporary or mobile basis and other facilities as prescribed by regulations (see new s.65). Persons running a container refund point will be known as a container refund point operator.

Existing collection depots

Existing collection depots would need to enter a contract with the scheme coordinator. A single refund point agreement would replace the multiple waste management arrangements currently required between a collection depot and each super collector (new s.68A(2)(f)).

The scheme coordinator would be responsible for recycling all container types, including glass (new s.68A(2)(i)).

The refund point agreement would eliminate sorting of containers via brand, and the system wide IT platform would enable more timely payment to container refund point operators on container count rather than a weight conversion factor (new s.68A(2)(d), (j), (k) and (l)).

Collection depots offering home collection services would be able to continue those services noting customers make a trade-off on a portion of the refund amount for the convenience of home collection of their containers.

Transitional provisions

The draft Amendment Bill sets out a process for the scheme coordinator to transition existing collection depots from waste management arrangements to a refund point agreement (Schedule 1, cl.4).

In preparing a refund point agreement, the draft Amendment Bill proposes that the scheme coordinator must:

- prepare an engagement plan, for approval of the Minister, setting out how the scheme coordinator will engage with each existing collection depot in establishing the network of container refund points across the State;
- prepare a methodology, for approval of the Minister, for determining handling fees payable under refund point agreements, having regard to the following:
    - existing waste management arrangements between depots and super collectors
    - base handling fees payable under existing waste management arrangements
    - differential handling fees payable under existing waste management arrangements;
- engage with existing collection depots in accordance with the engagement plan;
- publish a determination of the base and differential handling fees proposed under refund point agreements;
- provide a draft refund point agreement template for approval to the EPA;
- offer a refund point agreement to each existing collection depot; and
- report to the Minister any instances where an agreement has not been reached.

The scheme coordinator and collection depots must act fairly and reasonably in setting handling fees and entering into refund point agreements.

During this transition period the current scheme will operate under existing waste management arrangements with super collectors to ensure the scheme continues to cover scheme costs for returned containers, and that containers are recycled (Schedule 1, cl.2).

Refund point agreements under the scheme coordinator would start on a prescribed day to be fixed by the Minister by notice in the Gazette.

New container refund points

The scheme coordinator would be responsible for maintaining and expanding the container refund point network. Proposals to expand the network would need to be identified in the scheme coordinator's strategic plan for approval of the Minister.

The draft Amendment Bill proposes that the scheme coordinator may function as a container refund point operator if directed to do so by the Minister, such as in remote communities or where there is an identified need that cannot be met economically by an established operator (new s.68A(2)(f)).

Key benefits:

- guaranteed opportunity for existing collection depots to participate in a reformed scheme
- transitional provisions provide a formal process to transition from waste management arrangements to refund point agreements
- a single contract with the scheme coordinator would eliminate sorting of containers via brand, and the IT platform would enable more timely payment on container count rather than weight, and
- the scheme coordinator would be responsible for all materials, including glass.

For material recovery facilities

Currently, beverage containers that are placed into kerbside or commercial collection systems are sent to material recovery facilities (MRFs) where some CDS containers are recovered and presented to collection depots for an agreed amount.

The draft Amendment Bill proposes to formally recognise eligible MRF operators within the CDS (new s.68A(2)(h)). A MRF operator would be defined as a person who operates an EPA licensed MRF, or a class of persons prescribed by the regulations, such as a regional waste transfer station or bottle crushing service operators.

To ensure the integrity of the CDS, eligible MRF operators would have similar obligations to the scheme coordinator to ensure circular economy outcomes for recovered containers (new s.68A(2)(i)(iii)).

Proposed roles and responsibilities for the EPA, scheme coordinator and MRF operators are set out below:

EPA roles:

- Review and approve material recovery agreement (MRA) template(s) received from the scheme coordinator
- Develop and maintain recovery amount protocol(s) to be applied in determining recovery amounts payable to eligible MRF operators under a MRA
- Assess applications for approval of eligible MRF operator including the ability to place conditions on any approval. Applications to the EPA to be an eligible MRF operator would require as a minimum:
    - Evidence of a valid EPA Licence, or if under the EPA licence threshold evidence of a valid Development Approval
    - Evidence of an executed MRA with the scheme coordinator
    - Specification of the class(es) of beverage containers to which the application relates (e.g. PET, aluminium)
    - Evidence that arrangements are in place to verify that all recovered containers are reused and recycled in a way to support a strong market for recovered resources within a circular economy.
- Enforcement in relation to any contravention of EPA approval conditions.

Scheme coordinator roles:

- Prepare MRA template(s) for EPA approval
- Enter into, and manage, MRAs with EPA-approved eligible MRF operators
- Pay recovery amounts to eligible MRF operators in line with the recovery amount protocol and MRA
- Report on container and financial flows arising from MRAs with eligible MRF operators
- Deal with complaints and disputes arising from MRAs

MRF operator roles:

- Enter MRA with the Scheme Coordinator
- Seek EPA approval to be an eligible MRF operator
- Comply with obligations in MRA and EPA approval conditions

Key benefits:

- Eligible MRFs can be formally recognised in the CDS subject to EPA approval and meeting circular economy outcomes for eligible containers
- Eligible MRFs can apply for direct payment of recovery amounts from the scheme coordinator subject to meeting eligibility criteria providing efficiencies in handling of CDS materials.

For donation partners

Currently, the CDS provides a fundraising opportunity for community groups, sporting clubs and charities that partner with an established collection depot or collect empty containers for a refund.

The draft Amendment Bill proposes a scheme to formally recognise donation partners within the CDS (new s.68A(2)(j)).

A donation partner will include any of the following if they are approved by the EPA as a CDS donation partner:

- a charity that is a registered entity within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth that carries out any activities in South Australia
- a school within the meaning of the *Education and Children's Services Act 2019,* or
- a sporting, community, educational or environmental body that carries out any activities in South Australia and that—
    - does not carry out activities for profit or gain; and
    - is incorporated as a not-for-profit organisation (either under the *Associations Incorporation Act 1985* or as a company limited by guarantee) or in the case of a sporting club is, or is affiliated with, a sporting organisation operating in the State; and
    - is established primarily for a charitable, community or educational purpose.

The regulations would set out the EPA approval process along with eligibility criteria to be either a major donation partner who may be actively promoted throughout the whole state, or a local donation partner who may be actively promoted in a part of the State only.

The regulations may specify the payment of refunds for returned container directly to a donation partner.

Key benefits:

- Opportunity for the State-wide or local promotion of donation partners via the CDS
- Customers can choose to provide electronic payment of refunds directly to approved donation partners.

For customers

A proposed new scheme objective is to:

"*Provide communities throughout the whole of the State, as far as practicable, with access to facilities for the collection of empty beverage containers and the payment of refund amounts*" (new s.64E(1)(e))

The scheme coordinator would be required to maximise community participation in the CDS and to maintain public awareness of the scheme.

The draft Amendment Bill also provides for the ability for the regulations to prescribe customer services standards for container refund points (new s.68D(3)(d)).

Key benefits:

- Improved community accessibility and service experience driven by the scheme coordinator and container refund points
- Broader range of return options including RVMs and pop-up returns identified via the scheme coordinator's strategic plan
- Scheme wide IT platform enabling EFT directly to a customer bank account or payment to donation partners.

For super collectors

The draft Amendment Bill would remove super collectors from the South Australian scheme in their current form. The extent to which existing super collector infrastructure is retained would depend on the outcome of the process to appoint the scheme coordinator following the passage of the CDS Amendment Bill through the SA Parliament.

Explanation of clauses

A high-level explanation of each clause of the draft ***Environment Protection (Beverage Container Deposit Scheme) Amendment Bill 2024*** is provided below**:**

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

Part 2—Amendment of *Environment Protection Act 1993*

3—Amendment of section 3—Interpretation

This clause makes a minor clarifying amendment to the definition of ***beverage container approval*** to make it clear that the definition covers all approvals by the EPA under Part 8 Division 2.

4—Substitution of heading to Part 8 Division 2

This clause substitutes a new heading as follows:

Division 2—Beverage container deposit scheme

5—Substitution of section 64E

This clause substitutes a new statement of objectives and features of the scheme to reflect the proposed new arrangements.

6—Amendment of section 65—Interpretation

This clause provides various definitions for the purposes of the new container deposit scheme arrangements and amends or deletes current definitions as required.

7—Repeal of section 66

This clause repeals section 66. The exclusion of certain beverages will now be achieved by regulations under section 67.

8—Amendment of section 67—Exemption of certain containers by regulation

This clause is consequential to clause 7.

9—Substitution of sections 68 to 69A

This clause substitutes new sections as follows:

68—Appointment of scheme coordinator

This clause provides for the appointment of the scheme coordinator by the Minister and specifies eligibility requirements for appointment.

68A—Functions of scheme coordinator

This clause sets out details of the functions of the scheme coordinator who has responsibility for the administration, management and operation of the scheme.

68B—Approval of classes of containers as category A or category B containers

This clause allows the regulations to prescribe a scheme for approval of a class of containers as category A containers or category B containers, or for transfer of such an approval.

68C—Register of container approvals

The scheme coordinator must establish and maintain a register of approvals under section 68B.

68D—Approval of container refund points

This clause allows the regulations to prescribe a scheme for approval of container refund points. It is an offence to operate a container refund point without an approval under this section, punishable by a fine of $120 000 for a body corporate and $60 000 for an individual.

68E—Material recovery agreements

The scheme coordinator may enter into a ***material recovery agreement*** with an eligible material recovery facility operator providing for the payment of recovery amounts associated with empty beverage containers recovered for reuse and recycling by the operator.

68F—Scheme price

The scheme coordinator will enter into agreements with beverage suppliers under which the beverage supplier will be responsible for paying a ***scheme price*** to the scheme coordinator. This clause provides for the setting of the scheme price for each class of container for the purposes of such supply agreements.

68G—Compliance fees

This clause enables the Authority to recover the administrative costs of its functions under the Division from the scheme coordinator by the payment of ***compliance fees***.

69—ESCOSA reviews

ESCOSA is required to conduct reviews at least once every 3 years (at the request of the Minister) to determine whether the scheme price determined by the scheme coordinator is reasonable and efficient and to assess the reasonableness of compliance fees.

10—Amendment of section 69B—Sale and supply of beverages in containers

This clause increases expiation fees and makes consequential amendments.

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

This clause makes consequential amendments.

12—Repeal of section 69D

This clause deletes a section that will not be necessary under the new scheme arrangements.

13—Substitution of sections 71 and 71A

This clause inserts new sections as follows:

71—Approved container refund points to pay refund amounts for certain empty category B containers

This is essentially the same as the current section 71 but with a higher expiation fee and terms updated for consistency with the new scheme arrangements.

71A—Manner of payment of refund amounts

Section 71A is replaced to allow alternative payment methods.

14—Amendment of section 72—Certain containers prohibited

This clause increases expiation fees.

15—Insertion of section 74

This clause inserts a new section 74 authorising certain matters for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth and the Competition Code of South Australia.

16—Amendment of section 106—Appeals to Court

This clause amends section 106 to allow the holder of a beverage container approval to appeal to the Court against a decision of the Authority suspending the approval or refusing an application to transfer the approval.

17—Amendment of section 119—False or misleading information

This clause makes a minor clarifying amendment to section 119.

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

This clause makes consequential amendments.

Schedule 1—Transitional provisions

1—Interpretation

This clause inserts definitions for the Schedule.

2—Continuation of scheme until prescribed day

Despite commencement of the measure, beverage containers will continue being returned and dealt with according to the current law until a day fixed by the Minister by notice in the Gazette (the ***prescribed day)***.

3—Container approvals to continue

On and after the prescribed day, an approval in force under section 68 of the principal Act (as in force before commencement) continues in force as if it were an approval under section 68B of the principal Act (as inserted by this Act) provided that the holder of the approval has entered into a supply agreement with the scheme coordinator.

4—Approval of container refund points

This clause sets out a process to be followed in relation to the initial container refund point approvals and engagement with existing collection depots.

5—Transitional regulations

Transitional regulations may also be made.

Implementation

Subject to the passage of the Amendment Bill through the South Australian Parliament work would commence on drafting for consultation the variation regulations to support the reformed scheme.

The variation regulations would include to:

- prescribe the kind of Container Refund Points established under the new scheme
- prescribe the containers excluded from the CDS, including the exclusion of glass containers made for the purpose of containing wine or spirituous liquor[2].
- prescribe the scheme for the approval of classes of containers as category A or category B containers in the amended section 68 of the Act (see clause 9 of the Bill) as follows:
    - prescribe the manner and form in which applications are to be made;
    - make any other provision in relation to the application process and the provision of information for the purposes of the application;
    - prescribe criteria for the granting of an approval;
    - specify circumstances in which the EPA may refuse to deal with an application (or may refuse to further deal with an application);
- remove the application fee for category B container approvals and collection depots and replace the application fee with a scheme compliance fee (prescribe requirements in determining the scheme price amount)
- make provisions relating to conditions of a container approval;
- provide for the suspension, amendment or revocation of a container approval.
- prescribe modifications to an inquiry under the *Essential Services Commission Act 2002* and to prescribe criteria that must be considered by ESCOSA in conducting a review and make any other provision relating to reviews
- prescribe matters in relation to the scheme coordinator's functions
- prescribe "other matters" included as provisions about which the constitution of a body corporate must comply with to support the new appointment of scheme coordinator section
- deal with matters in relation to the scheme coordinator's performance of its functions
- prescribe scheme coordinators' reporting requirements.
- prescribe container refund point customer service standards
- prescribe a refund amount to continue the refund amount as 10c
- expand refund method for all refund points to provide electronic payments directly to customers and to include payment of the refunds directly to a donation partner
- establish the criteria to be a major donation partner
- prescribe information to be kept on the register of approvals to be established and maintained by the scheme coordinator.

[2] There are no changes to the scope of eligible beverage containers proposed as part of Stage 1 reforms.

Transitional provisions within the draft Amendment Bill seek to ensure the continuation of the existing scheme to cover the period when the South Australian government is selecting and appointing the scheme coordinator and all relevant agreements and approvals are settled (new Schedule 1, clause 2).

A new section 68 deals with the appointment of a scheme coordinator including providing the Minister with powers to invite eligible entities to apply, or otherwise receive applications for eligible entities, for appointment as the scheme coordinator.

Applications from eligible entities would be assessed against criteria to be determined by the Minister, noting an eligible entity would need to demonstrate that it has the capability to perform the function of a scheme coordinator set out in new section 68A.

The new arrangements would start on a prescribed day to be fixed by the Minister by notice in the Gazette.

Update on areas of national harmonisation

South Australia continues to work with other jurisdictions on the three areas of CDS national harmonisation:

1 the scope of containers included in CDSs

2 refund amounts, and

3 container approvals.

The Stage 1 reforms in the draft Amendment Bill would position South Australia for national harmonisation.

Scope of eligible beverage containers

There are no changes to the scope of eligible beverage containers proposed in the draft Amendment Bill.

Current exclusions to the scope of eligible beverage containers would be consolidated in the regulations. This means that the current exemptions for glass containers made for the purposes of containing wine made from grape or spirituous liquor (current s.66 of the EP Act) would be carried over to the regulations to join the current exclusions to the definition of beverage and container.

The proposed CDS core scope expansion is under consideration at the national level. A full expanded scope would see all beverage containers, including cordials, up to 3 litres included in the South Australian CDS and would require further legislative amendment.

Refund amounts

All CDSs across Australia offer a 10-cent refund on eligible containers.

Any increase in the refund amount will be considered in negotiation with other Australian and New Zealand jurisdictions that participate in CDS to promote a consistent refund amount.

As a first step in exploring a potential increase in the refund amount, the Heads of EPAs (HEPA) has released the Container deposit scheme (CDS) behaviour change – national research report summary to inform the optimisation and alignment of participation in CDS across Australia and New Zealand.

In total, 1,803 individuals were surveyed. The following key consumer segments were identified:

- Consistent users (60%): returned containers through the CDS regularly during the last 12 months.
- Irregular users (21%): returned containers through the CDS sometimes during the last 12 months.
- Never returned (19%): did not return containers through the CDS in the last 12 months.

The behavioural insights within the national research report summary and the key findings describe the recycling behaviours at home, the reasons for not always returning containers and the top three factors to encourage more CDS participation for each segment.

The key recommendations to optimise and align participation in CDSs across the jurisdictions include:

- promoting the circular economy and environmental benefits of CDS
- greater promotion of CDS return point sites and eligible containers
- enhancing the container return point experience through convenience and ease of use
- analysing the regulatory impact of increasing the refund amount

- removing the inconsistencies of CDS eligible beverage containers across all jurisdictions
- consider expanding the scope of eligible containers included in the container deposit schemes across all jurisdictions.

The coordinated implementation of the recommendations will support jurisdictional objectives to align and harmonise key features of container deposit schemes and ensure consistent return strategies across all States and Territories. The next step is for HEPA to analyse the regulatory impact of increasing the refund amount.

Container approvals

HEPA is investigating the feasibility of harmonising and integrating the container approval/registration application process. Led by the NSW EPA on behalf of HEPA, the aim of the project is to reduce the administrative burden on beverage suppliers, and jurisdictions, of managing container approvals/registration through an integrated system whereby suppliers only apply once rather than separately in each jurisdiction.

A BETTER ENVIRONMENT *FOR THE* HEALTH, WELLBEING *AND* PROSPERITY *OF* ALL SOUTH AUSTRALIANS

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