



Legislative Council

Environment and Planning Legislation Committee

Report No. 1
February 2012

Inquiry into the Environment
Protection Amendment (Beverage
Container Deposit and Recovery
Scheme) Bill 2011



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Amendment (Beverage Container Deposit and
Recovery Scheme) Bill 2011

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The Committee records its appreciation to everyone who contributed to the Inquiry through the submission process and at the Committee's public hearings; they are listed in the Appendices. The report was prepared by the Committee's Research Assistant, Mr Anthony Walsh, with the research program under the direction of the Committee's Secretary, Mr Keir Delaney.

Legislative Council Environment and Planning Legislation Committee

Inquiry into the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011

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Chair's Foreword

I am pleased to present the Final Report of the Environment and Planning Legislation Committee's *Inquiry into the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011*.

This is the first report from a legislation committee since the new Legislative Council committee system was put in place at the start of this Parliament. While we were able to draw on past practice to guide us, the Committee operated in unfamiliar territory, partly because the terms of reference required the Committee to inquire into a Bill which had not finished its second reading in the House.

Whilst a container deposit scheme proposed by the Bill appeared on the surface to be a simple and attractive concept, the inquiry process revealed a raft of complex policy and implementation issues and obstacles.

Firstly, the Committee acknowledges considerable public support for the broad objective of litter reduction as well as reduction of beverage container litter through a recovery scheme. However, because the scheme targets only one element of the litter stream, evidence indicated that container deposit legislation would not modify littering behaviours *per se* or reduce the volume of non beverage container litter as do broader anti-litter education campaigns and programs.

The Committee also investigated South Australia's container deposit legislation, which having been introduced in the 1970s, is supported by other waste collection programs delivered by businesses and enterprises which have subsequently developed around the scheme. This is in contrast to Victoria's waste recovery and recycling practices which are well established and supported, incorporating effective 'at home' or kerbside recycling programs and involving numerous existing businesses on whom a new container deposit scheme would have substantial impact.

Local government also expressed concerns about the implications of lost revenue and potentially increased collection costs for councils and therefore ratepayers, but were broadly in support of the objectives of the Bill.

The Committee also formed a view that a state-based scheme with different regulations and requirements for compliance may impose additional cost burdens on industry which, on the basis of information presented to the Committee, has not been factored into a full cost/benefit analysis for the proposed scheme.

High level advice was also received by the Committee, which cautioned that the Bill introduced in the Legislative Council may well be rendered unconstitutional by the courts and also may be subject to legal challenge if it were passed by both Houses and given Royal Assent.

The Committee also notes that strategies for litter reduction are matters under active consideration by the Council of Australian Governments (COAG). In December 2011 a Consultation Regulation Impact Statement on methods to reduce packaging waste was released for public consultation by COAG and is considering a national container deposit

scheme as an option. A decision on the preferred way forward is expected in the not too distant future.

In view of the issues and challenges identified by the Report, however, it is clear that Victoria's interests would not be best served by pushing ahead with the Bill while the COAG process is ongoing and actively considering many of the issues which have been the subject of this report. The Committee was also of the view that the COAG process is better placed to address the obstacles associated with a state-based scheme proposed by this Bill.

In summary and on the basis of the impediments identified by this Inquiry, the clear lack of definitive evidence on the financial impacts of the introduction of the Bill on various participants in a sector which already had established waste recycling enterprises (unlike South Australia when Container Deposit Legislation was the first to be introduced), as well as work being undertaken through COAG, the Committee recommends that the Legislative Council take note of the issues associated with the introduction of a state-based container deposit scheme. These issues are summarised in Chapter 4. The Committee stops short of recommending to the Legislative Council not to proceed with the Bill because of the view that these are decisions for Legislative Councillors, respective parties and the proponent of the Bill to determine in the light of this Report.

This Inquiry was conducted over a relatively short timeframe of six months. The Committee consulted widely, holding five days of public hearings, including one in South Australia. On behalf of the Committee I extend our thanks to all those who contributed to the Inquiry and in particular the government, industry and community groups who assisted the Committee's investigations in Adelaide.

I also commend the efforts of Ms Colleen Hartland, the Member for Western Metropolitan Region and the sponsor of the Bill, and her staff, for their work in preparing, drafting and explaining the Bill.

Finally, I would like to thank the Committee staff, Mr Keir Delaney and Mr Anthony Walsh, for their work on this Inquiry.

Inga Peulich, MLC
Chair

Findings

Finding 1

A national container deposit scheme has several advantages over state and territory schemes. Operating multiple schemes across Australia may fail to fully realise economies of scale and may increase the administrative burden and cost when compared to a national scheme.

(Page 19)

Finding 2

The scheme proposed by the Bill is predicated on using reverse vending machines used in some European countries. However, there are concerns that this technology may not be able to cope with the anticipated volume of beverage containers and that the machines may be prone to damage from vandalism.

(Page 21)

Finding 3

There is scope for Victoria to improve its performance in away from home recovery of litter and recycling of resources through education and consistent practices, such as bin colour, signage, location and placement of bins and items accepted.

(Page 27)

Finding 4

There are concerns about the financial impact of the scheme on existing kerbside recycling and waste recycling businesses. In the South Australian model, these businesses did not exist at the time South Australia's legislation was introduced. Any proposed container deposit scheme should be designed so as to minimise any financial impacts on kerbside recycling for industry and Victorian local government.

(Page 35)

Finding 5

Submissions received from local government generally supported the objectives of the proposed scheme. However, many also considered there was insufficient evidence to determine the likely financial impact on their operations.

(Page 35)

Finding 6

The scheme proposed by the Bill targets only one element of the overall litter problem. It would reduce beverage container litter and the amount spent by government to clean up this litter in public places, but measures to address other forms of litter would need to remain in place.

(Page 38)

Finding 7

If the scheme proposed by the Bill were implemented, public infrastructure, such as bins, may need to be provided and/or altered to encourage separation of beverage containers, minimise littering and reduce the potential health risks of scavenging for containers.

(Page 38)

Finding 8

If the proposed scheme were implemented, there may also be a need for a public campaign warning of the potential health dangers of scavenging for containers (especially in bins).

(Page 38)

Finding 9

The number of beverage containers produced and sold each year is increasing. A container deposit scheme would conserve virgin materials through the re-use of this resource. Expanding the scheme to a greater range of containers could further expand the benefits of recycling.

(Page 41)

Finding 10

There is conflicting evidence about the likely impact of the scheme proposed by the Bill on beverage prices in Victoria and the cost of living. The extent to which prices will rise will depend on various factors including the ability of beverage manufacturers to cover costs associated with the scheme. The Committee was not in a position to establish and/or assess the cost impacts on beverage manufacturers if the proposed scheme were implemented.

(Page 45)

Finding 11

A container deposit scheme may cause job losses in some areas of the economy, whilst creating new jobs elsewhere. There is insufficient evidence for the Committee to ascertain whether the net effect would be positive or negative.

(Page 45)

Finding 12

The scheme is likely to require existing recycling businesses to capitalise new equipment and/or adapt existing infrastructure. The financial impact on existing recycling businesses could not be established.

(Page 49)

Finding 13

Notwithstanding the benefits of the proposed scheme identified in other parts of this Report, any deficit incurred by the scheme would ultimately be underwritten by the Victorian Government through its responsibility for Environment Protection Authority (Victoria), which would, under the Bill, manage the scheme.

(Page 51)

Finding 14

The Committee received differing opinions as to the existence of legal or constitutional impediments to the Bill and whether the Bill can be introduced into the Legislative Council. Given the advice from the Victorian Government Solicitor's Office and the potential for the Bill to be interpreted as imposing a duty, rate, tax, rent, return or impost, it is a matter for the Legislative Council and ultimately the Victorian Government to consider these issues before determining a response to this Bill.

(Page 54)

Acronyms

ACT	Australian Capital Territory
AFGC	Australian Food and Grocery Council
CDL	Container Deposit Legislation
CDS	Container Deposit Scheme
COAG	Council of Australian Governments
EPHC	Environment Protection and Heritage Council
KESAB	Keep South Australia Beautiful
MAV	Municipal Association of Victoria
PET	Polyethylene Terephthalate
RIS	Regulation Impact Statement
RVM	Reverse Vending Machine
VGSO	Victorian Government Solicitor's Office
VLGA	Victorian Local Governance Association

Chapter One: Introduction

1.1 Establishment of the Committee

This is the first report of the Environment and Planning Legislation Committee for the 57th Parliament.

The functions of the Environment and Planning Committee are set out in the Legislative Council Standing Orders. The Committee will ‘inquire into and report on any proposal, matter or thing concerned with arts, coordination of government, environment, and planning the use, development and protection of land.’¹

Further, the Standing Orders state that legislation committees may ‘inquire into, hold public hearings, consider and report on Bills or draft Bills referred to them by the Legislative Council, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to their functions.’²

On 10 February 2011, the Legislative Council resolved to allocate the following Departments (including agencies and public entities) to the Committee:

- Department of Premier and Cabinet
- Department of Planning and Community Development
- Department of Sustainability and Environment.³

On 8 February 2011, in accordance with the Legislative Council’s Standing Orders, the following Members were appointed to the Environment and Planning Legislation Committee:

- Mr Andrew Elsbury (Liberal)
- Mrs Jan Kronberg (Liberal)

¹ Legislative Council Standing Orders 2010, 23.02(2).

² Legislative Council Standing Orders 2010, 23.02(4)(b).

³ Victoria, *Minutes of the Proceedings*, Legislative Council, 10 February 2011, 21.

- Mr Craig Ondarchie (Liberal)
- Ms Sue Pennicuik (The Australian Greens)
- Mrs Inga Peulich (Liberal)
- Mr Johan Scheffer (ALP)
- Mr Brian Tee (ALP)
- Ms Gayle Tierney (ALP).

At its first meeting, Mrs Peulich was elected Chair of the Legislation Committee and Ms Tierney its Deputy Chair.

On 31 August 2011, Mr Tee advised that Mr Lee Tarlamis would act as his substitute for the Committee's inquiry into the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011.

1.2 Terms of Reference

On 30 August 2011, the Legislative Council agreed to the following motion:

That the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011 be referred to the Environment and Planning Legislation Committee for inquiry, consideration and report within 6 months of the passing of this resolution, and in particular, the Committee is to give consideration to proposals for nationally consistent or uniform approaches to waste recycling and disposal and the potential impact passage of the Bill in its current form may have on such options and make recommendations on Victoria's engagement in national recycling initiatives and to include in the report an examination of environmental benefits, financial costs and benefits, any cost of living impacts and any other matter the Committee considers is relevant thereto.⁴

1.3 Inquiry process

While the Legislative Council appointed legislation committees in the 55th and 56th Parliaments, these Committees conducted inquiries into Government Bills. Evidence was usually taken from the responsible Minister (or their representative) and generally the committee reported back to the Council in a matter of weeks.

⁴ Victoria, *Minutes of the Proceedings*, Legislative Council, 30 August 2011, 173.

The referral of the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011 to the Environment and Planning Legislation Committee was unusual for a number of reasons:

- The Bill is a Private Member's Bill
- The Bill was referred to the Committee before the Second Reading debate was completed
- The Committee was given extensive terms of reference in addition to examining the Bill
- The Committee was given six months to undertake the Inquiry.

When determining how to proceed with the Inquiry, the Committee looked at both the practice of legislation committees from the previous Parliament, and the practice of Senate legislation committees, given the Victorian Standing Committee system is modelled on the Senate structure.

The Committee determined that it would advertise its terms of reference and call for written submissions. Public hearings were held to receive evidence in relation to the Bill and the terms of reference. Finally, the Bill was scrutinised through a clause by clause examination, as would occur in Committee of the whole.

While the Northern Territory had enacted legislation to introduce a beverage container deposit scheme, in 2011 the only Australian jurisdiction with an operational scheme was South Australia. Accordingly the Committee travelled to South Australia to receive evidence in relation to its scheme. The Committee also undertook two site visits in South Australia to witness the collection and sorting operations at a Scouts Recycling Centre in Port Adelaide and the Visy Materials Recovery Facility in Wingfield.

1.4 Bill and Inquiry timeline

A brief overview of the timeline for the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011 is outlined below:

- 3 March 2011: Ms Colleen Hartland, Member for Western Metropolitan Region, gave notice in the Legislative Council that she intended to

introduce a Private Member's Bill to amend the *Environment Protection Act 1970* (Vic) and establish a beverage container deposit scheme.

- 1 June 2011: Ms Hartland introduced and moved the First Reading of the Bill in the Legislative Council.
- 15 June 2011: Ms Hartland moved the Second Reading of the Bill in the Legislative Council.
- 17 August 2011: the Leader of the Government, Mr David Davis, gave notice in the Legislative Council that he intended to move a motion to refer the Bill to the Environment and Planning Legislation Committee for examination.
- 30 August 2011: the Legislative Council resolved on the motion of Mr David Davis to refer the Bill to the Committee.
- 6 September 2011: the Committee placed an advertisement in *The Age* calling for written submissions. The Committee also wrote to 114 individuals or organisations inviting submissions. A total of 47 written submissions were received. (A full list of written submissions is in Appendix A.)
- October and November 2011: the Committee conducted five days of public hearings, receiving evidence from 15 organisations or individuals. (A full list of public hearings witnesses is in Appendix B.)
- 8 February 2012: the Committee held a final hearing with Ms Hartland, where it went through the Bill clause by clause.

1.5 Overview of the Bill

The Bill seeks to amend the *Environment Protection Act 1970* (Vic) to encourage recycling of beverage containers. The scheme is to be administered by Environment Protection Authority (Victoria).

The Bill proposes an 'environmental levy' of 10 cents on all beverage containers intended for human consumption, regardless of material. This means the Bill applies to all plastic, glass, paper, aluminium, steel or composite containers.⁵ The

⁵ The proposed Bill has a wider scope than the South Australian scheme, as the latter does not apply to wine bottles or plain milk containers.

Bill seeks to address the lack of recycling available for beverage containers away from the home. The 10 cent 'levy' (or refund) is intended to act as an incentive for cafes, restaurants, food courts, offices and events to make new waste recovery arrangements to ensure that beverage containers are not directed to landfill. In her explanatory paper *Turning Rubbish into Community Money*, Ms Hartland suggests that if passed the Bill would see an increase in beverage container recycling from 49.5 percent to 83 percent.⁶

The Bill provides for the administration and data collection to be undertaken at the collection centres or 'Hubs'. Ms Hartland therefore anticipates that the operating costs for the scheme would be low, that the scheme would be self-funding, and that there would not be an additional financial burden on Environment Protection Authority (Victoria). Environment Protection Authority (Victoria) would be able to draw on revenue from the sale of recyclate (recycled material that will be used for new products) and use unredeemed deposits to fund the operation of the scheme.

In summary, the Bill proposes that Environment Protection Authority (Victoria) would be responsible for:

- Collecting the environmental levy
- Authorising and entering into agreements with collection depots and collection centres
- Facilitating and promoting the scheme
- Encouraging the use of recyclable containers through financial incentives
- Supporting kerbside recycling services
- Advising the minister in relation to the operation of the scheme.

1.6 Structure of the Report

Chapter Two provides an overview of the South Australian and Northern Territory schemes, and discusses similarities with or differences from the scheme proposed for Victoria. It also outlines the attempts at introducing a container

⁶ Colleen Hartland, *Turning Rubbish into Community Money* (2011) 1.

deposit scheme in the other states and the Australian Capital Territory (ACT) and discusses national initiatives currently underway. The Report also considers the *Packaging Impacts Consultation Regulation Impact Statement* (hereafter referred to as the RIS) undertaken by the Council of Australian Governments (COAG) Standing Council on Environment and Water. Given they are a feature of the Bill, this section concludes with an overview of reverse vending machines (RVMs).

Chapter Three covers the issues relating to the proposed container deposit scheme. It examines the evidence received in relation to whether the scheme would have any positive or negative impacts on away from home recycling and kerbside collection services. The scheme's potential impact on litter, the environment, employment and the cost of living are also explored in this Chapter. Finally this Chapter examines costs in relation to the scheme and possible constitutional and/or legal impediments to its introduction.

Chapter Four comprises the Committee's recommendation to the Legislative Council.

The transcript of the deliberations of the Committee when conducting its clause by clause consideration of the Bill is provided in Appendix H.

Chapter Two: Container Deposit Schemes in Australia

2.1 South Australia and the Northern Territory

South Australia and the Northern Territory are the only two jurisdictions in Australia which currently operate a container deposit scheme. South Australia's is a mature scheme which has evolved from a litter reduction measure (primarily) into a complex recycling system supporting many small businesses and community groups. The recent implementation of the Northern Territory scheme may illustrate some of the 'teething problems' any new scheme may encounter.

South Australia

South Australia's container deposit scheme was introduced in 1977 as a litter reduction measure, focusing on beverage items consumed away from home.¹ Over time, the scheme has expanded to include other containers.² The Committee received evidence that the South Australian scheme has successfully targeted the removal of selected items from the general waste stream.³ Equally, however, environmental awareness has changed dramatically in the 35 years since this scheme was introduced.⁴

In September 2008, the deposit was increased from 5 cents to 10 cents.⁵ The container deposit scheme does not apply to all beverage containers, focusing primarily on containers consumed away from the home. For example, it does not apply to plain milk, wine in glass bottles, casks or therapeutics.⁶

¹ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 120 (Mr Tony Circelli).

² Ibid.

³ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 131 (Mr Neville Rawlings).

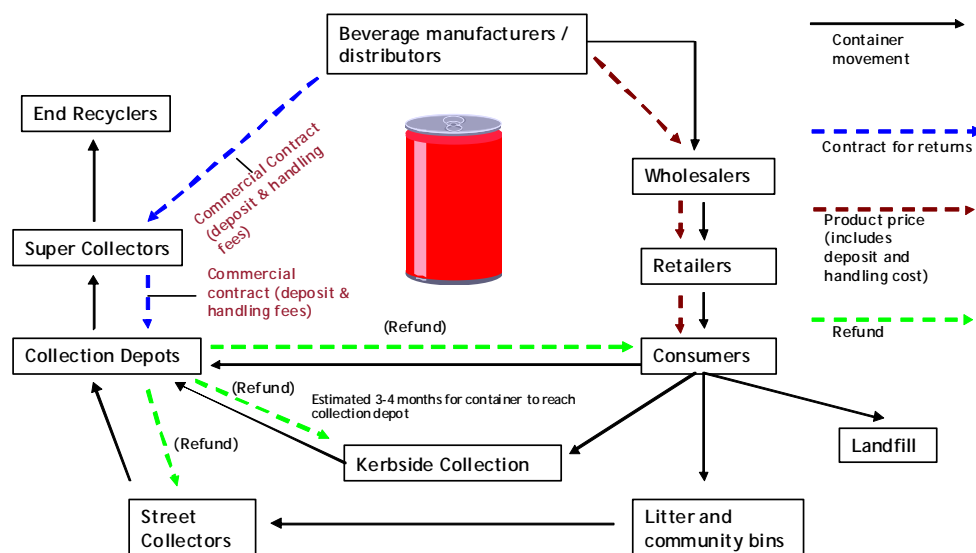
⁴ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 110 (Dr Raul Barreto); Written submission number 40 from Whittlesea City Council.

⁵ Circelli, above n 1, 117.

⁶ Ibid, 120.

The operation of the South Australian container deposit scheme is summarised in Figure 1 below:

Figure 1: South Australian Container Deposit Scheme - Overview



Source: EPA(SA) presentation to Committee: 28.11.2011.

The scheme consists of collection depots, where people return their used beverage containers and redeem the deposits. There are currently 124 collection depots in South Australia.⁷ South Australia's scheme is largely a manual one, with only one reverse vending machine in operation.⁸ (For discussion of reverse vending machines see section 2.5.) These depots were initially located so that people in the metropolitan area would not have to travel more than five kilometres to return their containers.⁹ However, it was suggested to the Committee that expanding this radius to eight to ten kilometres would increase the viability of these centres.¹⁰ The Committee notes that depots may be best located in light industrial zones due to the potential for noise, odour and increased vehicular traffic.

⁷ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 131 (Mr Philip Martin).

⁸ Circelli, above n 1, 118.

⁹ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 137 (Mr Bob Naismith).

¹⁰ Martin, above n 7, 137.

The collection depots sort and compact the containers before sending them to a 'super collector'.¹¹ There are three super collectors in South Australia, each collecting a different type of container.¹² The super collectors:

- receive deposits from beverage manufacturers (under contract)
- pay collection depots the 10 cent deposit plus a handling fee
- sell the recycle to recyclers for reprocessing.¹³

Northern Territory

The *Environment Protection (Beverage Containers and Plastic Bags) Act 2011* (NT) came into effect on 3 January 2012. By design, the container deposit scheme in the Northern Territory is very similar to the one operating in South Australia, with the scheme administered by the beverage industry.¹⁴ Beverage containers purchased in the Northern Territory, which are intended for human consumption, sealed and less than three litres are subject to a 10 cent deposit. Some containers are exempt, such as glass wine bottles and plain milk containers.

The deposit can be redeemed by returning empty containers to a collection depot or a reverse vending machine. As in South Australia, collection depots are the public interface of the scheme where containers are returned, sorted and deposits redeemed. The collection depots then return the containers to 'coordinators'. Coordinators perform a similar role to the super collectors in South Australia; they pay collection depots the deposits along with 'reasonable costs' relating to the cleaning, storage, packing and processing of the containers. The Committee understands there is no set amount for 'reasonable costs', but notes that collection depots in South Australia receive a fixed handling fee of around 4 cents per container.¹⁵ Media reports suggest the Northern Territory's scheme has encountered some initial problems, such as confusion over what containers were

¹¹ Circelli, above n 1, 117.

¹² Ibid.

¹³ Ibid.

¹⁴ Northern Territory, *Parliamentary Debates*, Legislative Assembly, 25 November 2010.

¹⁵ Written submission number 17 from Australian Food and Grocery Council 8.

covered by the scheme, allegations of excessive price rises by retailers, and the distribution of collection depots in remote areas.¹⁶

The Environment Protection Authority (South Australia) informed the Committee that it had worked closely to align the two systems to create corresponding jurisdictions:

Container deposit legislation has been introduced in NT as well, as you know, and we have been working very carefully with them to align the schemes as much as possible. We aim to go to what we call a corresponding jurisdiction status in two years time, which means that, if you purchase the container in either Northern Territory or South Australia, you can return it in either Northern Territory or South Australia.¹⁷

2.2 Proposed Victorian scheme: Overview

The container deposit scheme proposed for Victoria would be administered by Environment Protection Authority (Victoria). It involves a network of 'Hubs', similar to the collection depots in South Australia, where beverage containers are returned and deposits redeemed. The Hubs are also responsible for sorting, compacting and transporting containers to recyclers. (See Appendix C for a diagram summarising the scheme's operation.) Ms Hartland anticipates that there would be approximately 60 Hubs across Victoria, owned and operated by either local government, private operators or community groups.¹⁸ The scheme would also utilise a large number of reverse vending machines – these are discussed in more detail in section 2.5.

Unlike South Australia where beverage manufacturers pay the deposits to super collectors, in Victoria beverage manufacturers would pay the deposits into a fund managed by Environment Protection Authority (Victoria). Any unredeemed deposits, along with the sale of the recyclate, would be used to fund the system. Given the fund is proposed to be administered by the Government, Ms Hartland

¹⁶ Myles Morgan and Anthea Kissel, 'NT cash for containers scheme hit by critics', www.abc.net.au/news/2012-01-05/20120105-cash-for-containers-criticism/3760256/?site=darwin accessed 23.01.2012 at 10.30 a.m.; Liz Trevaskis, 'No cash for remote cans?', www.abc.net.au/rural/nt/content/201201/s3404577.htm?site=darwin accessed 23.01.2012 at 10.30 a.m.

¹⁷ Circelli, above n 1, 123.

¹⁸ Colleen Hartland, *Turning Rubbish into Community Money* (2011) 9.

argued that this would make the fund more accountable as it would be subject to public scrutiny.¹⁹

In her evidence during the consideration of the Bill in detail, Ms Hartland reiterated that she preferred the scheme to be administered by Environment Protection Authority (Victoria). However, Ms Hartland noted the advice from the Victorian Government Solicitor's Office, and suggested to the Committee that if this were an impediment to the Bill then an independent authority could be established to administer the scheme.

The proposed scheme is much broader than the South Australian scheme. South Australia's scheme has targeted beverages usually consumed away from the home. The Victorian scheme proposed by the Bill would apply to all sealed beverage containers not exceeding three litres and intended for human consumption.²⁰ In response to the question of why the Bill did not also apply to food containers more generally, Ms Hartland advised:

You have to start somewhere. We feel you start with the drink containers. Pickle jars are a good example; they tend to be used in the home, and they are quite easy to recycle into the bin. We are really looking at how we can improve that public place; they are the kinds of containers you do not tend to use in those places. But it is a really interesting point, and it is one we actually gave a lot of thought to, but we felt we had to start somewhere, and it had to start with the drink containers.²¹

2.3 Container deposit legislation around Australia

This section will examine developments in other states and the ACT. At the present time, these jurisdictions do not operate container deposit schemes.

Western Australia

In 2005 the Western Australian Government announced that a container deposit scheme would be introduced, however two years later it stated it was waiting for

¹⁹ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 12 October 2011, 3 (Ms Colleen Hartland).

²⁰ Section 3, Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011. For example, the proposed scheme includes wine bottles; the South Australian scheme does not. The Committee notes that if the Bill is adopted and enacted, it could be amended at a later date to include a greater range of packaging.

²¹ Hartland, above n 19, 6.

independent economic analysis before proceeding.²² In 2009, the Western Australian Parliament's Legislative Council Standing Committee on Environment and Public Affairs tabled a report on *Municipal Waste Management in Western Australia*. This report noted that most waste management policies and plans in Western Australia excluded regional areas due to factors such as distance and dispersed population making it uneconomical to efficiently recycle waste.²³ As such, the Legislative Council Standing Committee on Environment and Public Affairs concluded that extended producer responsibility schemes, such as container deposit systems, could resolve issues of prohibitive transport costs in rural and regional areas in relation to recyclable waste.²⁴

A Private Member's Bill for a container deposit scheme was introduced by an Opposition Member on 19 October 2011.²⁵ The scheme proposed in the Container Deposit and Recovery Scheme Bill 2011 (WA) is very similar to that proposed for Victoria. Essentially, all beverage containers not exceeding three litres will be subject to a 10 cent deposit, paid by the beverage manufacturer or importer. This scheme would also be funded from unredeemed deposits.²⁶ A key difference is that the Western Australian Bill gives responsibility for the scheme to an existing independent body, the Waste Authority.

New South Wales

In November 2001, Dr Stuart White was commissioned by the Government to conduct an independent review of container deposit legislation as part of a review of the *Waste Minimisation and Management Act 1995* (NSW). The *Independent Review of Container Deposit in New South Wales* (also called the 'White Report'), found that there would be an environmental benefit in the range of \$70-100 million per annum if a scheme were implemented in New South Wales.²⁷ Further, it

²² Mary Westcott & Kelli Longworth, *Container Deposit Schemes* (January 2010) 6.

²³ Legislative Council Standing Committee on Environment and Public Affairs, Parliament of Western Australia, *Municipal Waste Management in Western Australia* (May 2009) 15.

²⁴ Ibid.

²⁵ The Committee understands that this Bill has not proceeded further at the time of tabling this Report. Western Australia, *Parliamentary Debates*, Legislative Assembly, 23 November 2011, 9721.

²⁶ Western Australia, *Parliamentary Debates*, Legislative Assembly, 19 October 2011, 8368b.

²⁷ Institute of Sustainable Futures, *Independent Review of Container Deposit Legislation in New South Wales*, Vol II (November 2001) i.

predicted that a container deposit scheme would create up to 1,500 full-time jobs in the state.²⁸ A subsequent assessment of the White Report by Access Economics suggested there were flaws and shortcomings in its analysis, particularly in the cost-benefit accounting. It concluded that the White Report did not provide a sound basis for making public policy.²⁹

A Private Member's Bill was introduced into the New South Wales Legislative Council in 2008 to establish a container deposit scheme (Waste Avoidance and Resources Recovery (Container Recovery) Bill 2008). The Bill was negatived on its Second Reading and as such did not proceed.

Australian Capital Territory

A Private Member's Bill was introduced into the ACT Legislative Assembly in 2008 (Waste Minimisation (Container Recovery) Amendment Bill 2008) and subsequently lapsed. This Bill mirrored the Private Member's Bill introduced into the New South Wales Parliament in 2008, but could have operated independently if it were enacted.

Tasmania

In 2006, the Joint Standing Committee on Environment, Resources and Development of the Tasmanian Parliament inquired into whether Tasmania should implement a container deposit scheme.³⁰ The Committee recommended that a scheme be introduced subject to its viability and effectiveness being supported by a cost-benefit analysis.³¹ Following this, Hyder Consulting Pty Ltd was commissioned to investigate the feasibility of a container deposit scheme in Tasmania.³² Hyder concluded that as there were no secondary reprocessing facilities in Tasmania at the time, the environmental benefits would be diminished by having to transport containers back to the mainland.³³

²⁸ Ibid, ii.

²⁹ Access Economics, *Critical Assessment of Independent Review of Container Deposit Legislation in New South Wales* (30 April 2002) 23.

³⁰ Joint Standing Committee on Environment, Resources and Development, Parliament of Tasmania, *Waste Management in Tasmania* (2006).

³¹ Ibid, 7.

³² Hyder Consulting, *Feasibility Study of a Container Deposit System for Tasmania* (May 2009).

³³ Westcott & Longworth, above n 22, 7.

Queensland

Queensland does not currently operate a container deposit scheme. Previously the Queensland Government had indicated that it would work with all Australian Governments towards a uniform national approach to beverage container waste.³⁴

Commonwealth

Two Private Members' Bills were previously introduced into the Senate in 2008 and 2009 to establish a national container deposit scheme - the Drink Container Recycling Bill 2008 and the Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2009. Both Bills sought to impose a levy on the sale of beverage containers to encourage recycling, with both being referred to a Senate Committee to review. The Committee reviewing the Drink Container Recycling Bill 2008 recommended that the Environment Protection and Heritage Council (EPHC) work towards a national container deposit scheme, while the Committee reviewing the Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2009 concluded it could not determine or quantify the benefits of the Bill without further data, and recommended that the EPHC advance its review of container deposit schemes. Neither Bill was advanced or passed.

2.4 National initiatives

There has been ongoing debate over several years about the desirability of introducing a national container deposit scheme. The Committee notes that both sides of the argument are able to submit detailed evidence advancing their case, supported by a large number of consultant reports and other studies. The release of the Council of Australian Governments' (COAG) Consultation Regulation Impact Statement (RIS) in December 2011 is a significant step forward in understanding the costs and benefits of a national scheme in comparison to other

³⁴ Ibid, 6.

packaging waste management options, but as a consultation document the RIS does not indicate a preferred option.³⁵

Consultation Regulation Impact Statement

The RIS relates to all packaging and not just beverage containers. It considered seven options to reduce packaging waste. These were:

- A national waste packaging strategy
- Three options for co-regulatory packaging stewardship
- A mandatory advanced disposal fee
- Two options for container deposit schemes.³⁶

With regard to container deposit schemes, the RIS concluded that while the community is strongly committed to kerbside recycling, there was also a high level of support for a container deposit scheme.³⁷ Further, a container deposit scheme had the potential to develop and establish recycling where it would otherwise not occur.³⁸ All options investigated by the RIS resulted in an increase in recycling.³⁹

The Committee understands that RIS process is scheduled to conclude within the next 12 months. In light of the importance of this work, and its implications for the Bill, the Committee is of the strong view that it is prudent to await the outcome of the RIS process to more fully understand the economic and financial implications of the scheme. Further, it would be unwise to proceed given that any proposed national scheme may be materially different to that proposed by this Bill.

Product Stewardship Act

Product stewardship involves designing products to limit the amount of materials required for their manufacture and limit the amount of hazardous materials used.

³⁵ Council of Australian Governments Standing Council on Environment and Water, *Packaging Impacts Consultation Regulation Impact Statement* (December 2011), xiii.

³⁶ *Ibid.*, xi.

³⁷ *Ibid.*, 13.

³⁸ *Ibid.*, 13.

³⁹ *Ibid.*, xii.

It may also involve manufacturers participating in initiatives to divert waste from landfill and encouraging recycling. A container deposit scheme is an example of product stewardship.⁴⁰ The Commonwealth Parliament has enacted the *Product Stewardship Act 2011* (Cth), which came into effect on 8 August 2011. This Act establishes a national framework to manage the environmental, health and safety impacts of products and their disposal.⁴¹

If a national container deposit scheme was to be introduced, it would not necessarily override a Victorian scheme. The *Product Stewardship Act 2011* (Cth) would preserve any provisions of a Victorian scheme that had a greater benefit.⁴² Therefore Victorian infrastructure and investment would not be jeopardised by a future national scheme.

Packaging Covenants

The Committee's terms of reference require it to consider proposals for nationally consistent or uniform approaches to waste recycling and disposal. The Packaging Covenant, to which the Victorian Government is a signatory, is one approach to address these objectives.

There have been three Packaging Covenants in Australia (in 1999, 2005 and 2010). These Covenants form part of a number of measures to improve recycling rates by committing government and industry to mitigate the negative impacts from packaging.⁴³ The Packaging Covenants set up a voluntary framework for the management of packaging waste based on effective product stewardship. It has become one of the primary vehicles for reform, given it links all stakeholders including all Australian Governments.

The RIS suggests that because initiatives undertaken by the Packaging Covenant are wide-ranging and involve a number of stakeholders it may difficult to

⁴⁰ Container deposit schemes are also an example of Extended Producer Responsibility (EPR), which means producers are responsible for a product (and/or its packaging) up to the post-consumer stage.

⁴¹ COAG, above n 35, 12.

⁴² Hartland, above n 19, 17.

⁴³ COAG, above n 35, 1.

attribute improvements in recycling rates to any single action or initiative.⁴⁴ However, in evidence to the Committee, Ms Jenny Pickles, General Manager, Packaging Stewardship Forum, Australian Food and Grocery Council (AFGC), cited the following as an achievement of the Packaging Covenant:

It was a very small thing, but it was a thing that was causing considerable litter. It was the old ring pull cap on your can. Where has the ring pull cap of your can gone? It was redesigned out as a litter issue. All the caps now have a proper connection: the cap stays in there, they open up and no littering is caused as a result of that.⁴⁵

In 2010, the Australian Packaging Covenant reported an overall recycling rate for packaging of 62.5 percent.⁴⁶ While this was an increase on the previous year's result, this improvement relates to improved paper and glass recycling. One witness commented that after 12 years of packaging covenants 'we are still recycling less than half the beverage containers we consume'.⁴⁷

The Committee notes that while the Packaging Covenant may work to reduce litter volume, these initiatives may not necessarily improve recycling. For example the increased use of lightweight and lower volume packaging satisfies a number of sustainable packaging guidelines,⁴⁸ but may not consider or improve the recyclability of packaging materials.⁴⁹ Soft plastic pouches are increasing in use, however they are less easily recycled than traditional materials such as glass, aluminium and steel.⁵⁰ As such, although less material by volume may be sent to landfill, such initiatives may not improve the recycling rate.

National Container Deposit Scheme

In evidence to the Committee at a public hearing, Ms Hartland noted that a national scheme could have advantages and may be hastened or enhanced by Victoria establishing its own scheme first:

A national scheme versus a state scheme is one of the fundamental questions in all of this. There is no doubt that a national scheme is better, so long as it

⁴⁴ Ibid, 15.

⁴⁵ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 9 November 2011, 29 (Ms Jenny Pickles).

⁴⁶ COAG, above n 35, 14.

⁴⁷ Written submission number 43 from Revive Recycling 22.

⁴⁸ COAG, above n 35, 19.

⁴⁹ Ibid, 20.

⁵⁰ Ibid, 19.

contains the best elements of the one we are proposing in Victoria. Otherwise, a more efficient and accountable Victorian system would be better. Our Bill is not an alternative to a national scheme; it would help bring about a national scheme. ... A future national scheme cannot override a good existing state scheme, so there is no chance that the time and effort spent setting up a Victorian scheme would be wasted. In our minds it is quite clear that a good scheme in Victoria will actually help a national scheme. If Victoria goes ahead with a state based scheme, it will reap the advantages of getting in on the ground floor.⁵¹

This was supported by evidence received from Revive Recycling which suggested that introducing a deposit scheme in Victoria may be a pathway to introducing a national scheme.⁵²

The Committee agrees that a national container deposit scheme would have a number of advantages over a situation where each state or territory established separate systems. As the EPHC noted in its 2010 report, different state-based regulations and requirements may impose additional burdens on beverage and container manufacturers.⁵³

A national scheme on the other hand would avoid duplication, offer uniform regulations and provide greater efficiencies due to economies of scale. For example, due to the intensive nature of some recycling processes, there may only be one major plant in Australia to reprocess some recyclate.⁵⁴ Nationally consistent policies would ensure recyclate is collected efficiently and would be of similar quality. The EPHC also noted that a national scheme would have a significant impact on litter:

A national CDS is expected to provide the greatest reduction in overall litter levels, with the potential to provide a 6 per cent reduction in the total national litter count and a 19 per cent reduction in the total national litter volume.⁵⁵

However, the EPHC cautions that there would be significant costs associated with a national container deposit scheme:

A national CDS would require significant changes to the collection and handling systems for beverage containers and would bring a moderate increase in resource recovery. The scheme would add significant system costs to the

⁵¹ Hartland, above n 19, 2.

⁵² Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 90 (Mr Marcus Fraval).

⁵³ Environment Protection and Heritage Council Beverage Container Working Group, *Beverage Container Investigation: Revised Final Report* (28 April 2010) 84.

⁵⁴ Written submission number 12 from Alcoa Australia Rolled Products 6.

⁵⁵ EPHC, above n 53, 17.

national recycling bill as well as a financial impost on consumers due to the value of unredeemed deposits. Inconvenience in returning beverage containers would represent another impost.⁵⁶

Finding 1

A national container deposit scheme has several advantages over state and territory schemes. Operating multiple schemes across Australia may fail to fully realise economies of scale and may increase the administrative burden and cost when compared to a national scheme.

2.5 Reverse vending machines

In evidence to the Committee, Ms Hartland suggested that reverse vending machines were a pivotal element of the proposed Victorian scheme and one that would contribute substantially to its cost effectiveness.⁵⁷

Reverse vending machines are programmed to accept eligible beverage containers, and dispense cash or a voucher in return. Essentially they obviate the need for large collection depots and increase the convenience of returning a container to collect a deposit. These machines have the capacity to pre-sort and pre-crush the containers.⁵⁸ This reduces both the space and staff required to collect containers.⁵⁹ As reverse vending machines take up less space, they can be located in existing commercial areas, as opposed to depots which are generally located in light industrial zones. Reverse vending machines also have the capacity to automate the collection of data. There is currently no reliable estimate of the total number of packaging items produced or used in Australia.⁶⁰

The Committee received evidence that Tomra Systems, a Norwegian company that is a leader in this technology, operates over 67,000 machines worldwide, which collect over 30 billion beverage containers per annum.⁶¹ The Committee

⁵⁶ Ibid, 26.

⁵⁷ Hartland, above n 19, 3.

⁵⁸ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 12 October 2011, 14 (Ms Elizabeth Ingham).

⁵⁹ Written submission number 45 from Boomerang Alliance 9.

⁶⁰ COAG, above n 35, 3.

⁶¹ Fraval, above n 52, 88.

understands that there is currently only one operational reverse vending machine in South Australia and several due to be established in the Northern Territory. Given the potential to reduce time spent sorting containers, and save on labour costs, the Committee was interested to learn why South Australia has not employed this technology. Mr Marcus Fraval, Chief Executive Officer of Revive Recycling suggested:

If you look at almost any deposit system around the world — South Australia is probably the one, and maybe there is another one internationally — where RVM technology is not being used, you have to ask why. I think in any new system if you make it convenient and the technology can add value, then it will be used. ... The problem in South Australia is twofold, although there is a principal problem. One is that there has been no investment in technology for 30 years, and the model there is for people to save up over many months and then ultimately take to a depot. That is a cultural model that has evolved. ... Initially the local super collectors were very keen to introduce technology into South Australia because of the cost savings, but ultimately there was, in my opinion, a tug of war between local and national boards and political concerns at a national level in terms of deposits more broadly, and they were not interested in investing in technology. Not only were they not interested in investing in technology; they were not interested in others investing in technology because we had offered to invest in technology and provide lower handling fees and were rejected, so that is the reason there is nothing in South Australia.⁶²

The Committee heard some concerns about the speed and accuracy of reverse vending machines when handling high container volumes.⁶³

On average, [reverse vending machines] handle about 27 to 30 units per minute, as long as there is no rejection. ... you can only feed one at a time. I would suggest in an average depot we would be sorting around 80 to 120 a minute.⁶⁴

Evidence received by the Committee questioned whether vending machines would be as convenient as suggested:

... unless they are very efficient in recognising a deposit container they will be very frustrating. We have all seen the supermarket checkout where you have to pass the material two or three times in front of the machine in order to get a reading. ... I just do not think it will work.⁶⁵

The Committee received evidence that some authorities overseas were either decommissioning reverse vending machines because they were either too slow,⁶⁶

⁶² Ibid, 92.

⁶³ Rawlings, above n 3, 134.

⁶⁴ Martin, above n 7, 133.

⁶⁵ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 82 (Hon David Evans).

⁶⁶ Rawlings, above n 3, 134.

or required frequent servicing (two to three times daily).⁶⁷ The Committee also received evidence the reverse vending machine in South Australia had suffered damage due to vandalism.⁶⁸

... the first vending machine out at Hollywood Plaza. ... has had teething problems because it has an external face and there has been vandalism, and understanding how to operate a vending machine has been a real issue.⁶⁹

The Committee notes that the potential for damage caused by vandalism and security concerns could be reduced if the machines dispensed vouchers rather than money.

Finding 2

The scheme proposed by the Bill is predicated on using reverse vending machines used in some European countries. However, there are concerns that this technology may not be able to cope with the anticipated volume of beverage containers and that the machines may be prone to damage from vandalism.

⁶⁷ Martin, above n 7, 134.

⁶⁸ Naismith, above n 9, 134.

⁶⁹ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 73 (Mr John Phillips OAM).

Chapter Three: Proposed Victorian scheme – key issues

3.1 Away from home recycling

In *Turning Rubbish into Community Money*, Ms Hartland observes that little or no recycling is available for food and beverage containers that are consumed away from home. These recyclable items are discarded and either end up in landfill or are littered.¹ As such, a key objective of the proposed container deposit scheme is to encourage people to recycle away from home by providing a financial incentive. The Bill aims to increase overall recycling in Victoria from 49.5 percent to 83 percent, with most of the increase to come from improved away from home recycling.²

The Committee received a number of submissions supporting these arguments. Written submissions suggested that the proposed container deposit scheme would not only curb littering in public places but also encourage recycling of containers.³ Away from home consumption is predicted to increase;⁴ as such there is a need to identify strategies which will increase recycling in these locations.

The Committee notes that recovery and recycling rates for beverage containers differ between at home and away from home.⁵ The RIS estimated that 60 percent of beverage containers were recycled at home, versus 22.3 percent away from home.⁶ While this data is not exclusive to beverage containers,⁷ the figure below

¹ Colleen Hartland, *Turning Rubbish into Community Money* (2011) 2.

² Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 12 October 2011, 5 (Ms Elizabeth Ingham).

³ Written submission number 4 from Wyndham City Council; Written submission number 5 from Benalla Litter Prevention Group; Written submission number 23 from Total Environment Centre; Written submission number 39 from Yarra Ranges Shire Council.

⁴ Sustainability Victoria, *Public Place Recycling: Best Practice Guidelines* (April 2007) 1.

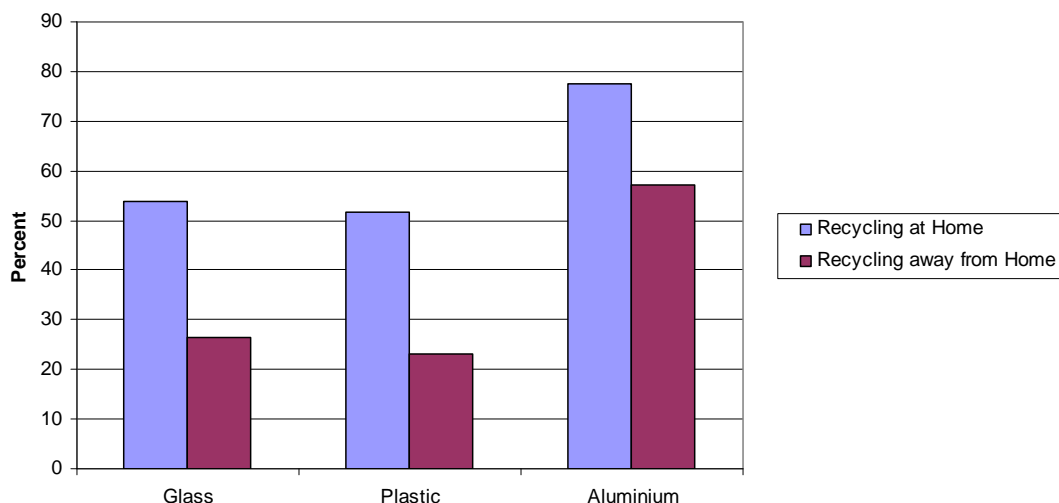
⁵ Council of Australian Governments Standing Council on Environment and Water, *Packaging Impacts Consultation Regulation Impact Statement* (December 2011) 6.

⁶ Ibid, 10.

⁷ Ibid, 7.

shows that for glass, plastic and aluminium, recycling away from home consistently lags behind that which occurs at home.

Figure 2: Comparison of recycling rates at and away from home



Source: Council of Australian Governments Standing Council on Environment and Water, *Packaging Impacts Consultation Regulation Impact Statement* (December 2011)

Victoria's kerbside collection system works because it makes recycling at home convenient.⁸ All 79 local governments in Victoria operate kerbside recycling services, providing access to 95 percent of households.⁹ Away from home recycling programs, on the other hand, have not kept pace by offering the same level of convenience. As Mr John Merritt, Chief Executive Officer of Environment Protection Authority (Victoria) told the Committee in relation to workplace recycling:

From what I can see, little effort and little progress has been made at the workplace level to attempt to do the same sorts of things. What we have seen at the household level is that there is an underlying appetite for it, so if you build it, they will come. It has not yet been explored fully in the workplace environment. I think there is a lot of scope to do more there.¹⁰

However, away from home recycling schemes present various operational challenges. Recycling in most public areas (such as sporting venues, train stations

⁸ COAG, above n 5, 13; In *Kerbside Recycling in Metropolitan Melbourne: Summary Report*, Sustainability Victoria found 99 percent of respondents found recycling was either very or fairly convenient.

⁹ Sustainability Victoria, *Victorian Local Government Annual Survey: 2008-2009* (Sept 2010) 29.

¹⁰ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 100 (Mr John Merritt).

and shopping centres) is generally collected by private contractors,¹¹ and this may be more expensive than sending waste to landfill.¹² Waste in parks is generally collected by local government. Different away from home recycling systems (e.g. different bins which accept different items for recycling) increase the potential for non-recyclable materials to be disposed of incorrectly.¹³ In *Public Place Recycling: Best Practice Guidelines*, Sustainability Victoria suggest that away from home recycling can be successful if it is well planned, the bin system is consistent and signage is easily understood.¹⁴ In support of this the AFGC advised that it had recently been involved in a number of away from home recycling initiatives in shopping centres, which recorded a doubling of the recycling rate, while contamination rates were similar to those experienced by kerbside collection schemes.¹⁵

Increasing the availability of away from home recycling, and educating the public on how to use it, was suggested to the Committee as a more cost effective alternative to a container deposit scheme.¹⁶ This view was supported by Visy, Australia's largest operator of kerbside collection services. In evidence to the Committee, Mr Michael Eadie, General Manager, Commercial, stated:

We believe there are a number of initiatives that can address away from home recycling. We have for some time, along with industry, been addressing that by putting bins into public places such as airports, shopping centres, train stations and the like, and I think continued investment in that area will improve that recycling rate, as will a continuation of education about recycling and anti littering. Providing consumers with an option in public places to do the right thing and put it in the recycling bin will improve it.¹⁷

Similarly, Dr Raul Barreto, an economist at the University of Adelaide, suggested that people recycle, both at home and away from home, due to the 'warm glow',¹⁸

¹¹ COAG, above n 5, 8.

¹² Ibid.

¹³ Ibid, 7.

¹⁴ Sustainability Victoria, above n 4, 1.

¹⁵ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 9 November 2011, 30 (Ms Jenny Pickles).

¹⁶ Written submission number 11 from Mitchell Shire Council; Written submission number 34 from Bayside City Council; Written submission number 18 from Mr Donald Chambers; Written submission number 19 from Keep Australia Beautiful Victoria Inc.

¹⁷ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 105 (Mr Michael Eadie).

¹⁸ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 111 (Dr Raul Barreto).

and as such, if properly implemented, away from home recycling may be the cheaper option.

The question is, which is better and cheaper? I would argue that a cheaper alternative to CDL, with quite possibly the same result, will simply be public recycling.¹⁹

However, in its written submission, the Total Environment Centre suggested that away from home recycling bins would make little difference to recycling rates and may contaminate recyclate.²⁰ Other than the feeling of ‘doing the right thing’ as discussed above, it has been argued that kerbside collection or away from home recycling do not offer an incentive to not litter.²¹ The Committee received evidence supporting the view that the availability of bins did not necessarily reduce the incidence of littering in public places,²² and that a different mechanism was required to combat littering and improve recycling:

Cr DUNN —... we have a local skate park which has incredibly high usage and very popular. We recover 2 cubic metres of beverage containers that are unfortunately posted down the pits. That is not for a lack of bins around the place; it just seems that that is a fun thing to do. We suspect that if there was a quid in it, that might not happen with those beverage containers. They might be put to better use than being posted down our pits.²³

In support of this view, the Committee notes a study undertaken for the Beverage Industry Environment Council in 1997 found that littering may not be stopped by simply providing bins in public places. This study found that most littering occurred within five metres of a bin.²⁴ The study also found that once a place is littered, it attracts more litter.²⁵ This suggests that changing behaviours through ongoing education plays an important role in reinforcing desirable litter behaviour and is important to the success of litter and recycling programs.

The Committee notes that when it was first introduced, away from home recycling in Victoria did not achieve high recovery rates due to a number of

¹⁹ Ibid, 113.

²⁰ Total Environment Centre, above n 3, 1.

²¹ PricewaterhouseCoopers, *Reuse and Recycling Systems for Selected Beverage Packaging from a Sustainability Perspective* English Translation (November 2011) XXIII.

²² Written submission number 45 from Boomerang Alliance, 7.

²³ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 63 (Cr Samantha Dunn).

²⁴ Beverage Industry Environment Council, *Understanding Littering Behaviour in Australia* (1997) 7.

²⁵ Ibid, 43.

factors, such as inappropriate infrastructure, signage and bin placement. This resulted in higher contamination rates and waste removal costs.²⁶ Sustainability Victoria suggest that away from home recycling is more likely to be successful at sites with high levels of bin usage and significant cultural, social or environmental values.²⁷ Education programs to change behaviours may be required if a particular site suffers from excessive littering. The Committee notes Sustainability Victoria recommended first improving the cleanliness of the site, and then introducing a recycling scheme as disposal behaviour improves.²⁸

Finding 3

There is scope for Victoria to improve its performance in away from home recovery of litter and recycling of resources through education and consistent practices, such as bin colour, signage, location and placement of bins and items accepted.

3.2 Impact on municipal kerbside collection and recycling

As noted in the previous section, kerbside collection and recycling programs run by local governments have been very successful at reaching their target audience – recycling at home. Kerbside recycling enjoys a high level of public commitment and support and has made the act of recycling a simple, daily occurrence for most households.²⁹

A central point of debate in this Inquiry was the potential impact of this Bill on Victoria's kerbside recycling system. The Committee identified this as a critical issue and examined a range of complex and often divergent evidence. The Committee sought to determine whether the two schemes could co-exist or whether the success of kerbside recycling would be jeopardised by the introduction of a container deposit scheme in Victoria.

²⁶ Sustainability Victoria, above n 4, 5.

²⁷ Ibid, 6.

²⁸ Ibid.

²⁹ COAG, above n 5, 13.

Kerbside recycling programs are not free. Sustainability Victoria calculates that in the 2008-09 period, kerbside recycling services cost local government a total of \$73,386,074.³⁰ Local government offsets this through the sale of the collected recycle.³¹ The Committee received evidence that the introduction of a container deposit scheme would impact both positively and negatively on the economics of kerbside recycling in Victoria. A brief overview of this evidence will be cited, whilst cross referencing this against some of the numerous studies undertaken in other jurisdictions examining the impact of container deposit schemes on kerbside collection.

Impact expected by sponsor of the Bill

In evidence to the Committee, Ms Hartland suggested that based on the analysis in her paper, *Turning Rubbish into Community Money*, the proposed container deposit scheme would have two main benefits for local government. Firstly, it would provide local government with a revenue stream from redeeming the deposits from containers disposed through the kerbside collection.³² Secondly, it would save local government money from reduced landfill fees.³³

Ms Hartland also suggested that the material collected via kerbside would have a higher value as there would be less contamination.³⁴

One of the issues with paper in regard to kerbside collection is that it often gets contaminated with broken glass and so often paper is wasted. If you take the glass containers out of that, it would mean there would be a lot less contamination of the paper.³⁵

At the same hearing, Ms Hartland's electorate officer and co-author of the discussion paper *Turning Rubbish into Community Money*, Ms Elizabeth Ingham, informed the Committee:

... the biggest financial drain on kerbside is the inclusion of glass — it breaks. A container deposit scheme will remove those containers before they reach the plant gate. Any remaining containers become profitable to remove. Glass bottles are a particular problem. Single use bottles are lightweight and they are

³⁰ Sustainability Victoria, above n 9, 5.

³¹ Written submission number 28 from Boroondara City Council.

³² Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 12 October 2011, 11 (Ms Colleen Hartland).

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid, 7.

becoming more lightweight by the year. More than half of them are shattered as they come into the plant. It is impossible to separate all the broken pieces out of the mix. When the mixed waste comes into the plant, they try to remove the broken glass pieces using a destoner but the glass grinds against the machinery. The grinders are very expensive and they wear out.³⁶

Ms Hartland estimated the proposed scheme would save local government \$217 million per annum and would also reduce kerbside recycling costs by over 30 percent.³⁷ Local government would need to renegotiate their waste collection contracts in order to realise all these potential savings.³⁸

South Australia

South Australia operates both a popular container deposit scheme and successful municipal kerbside recycling, and is therefore an obvious reference point for the Committee. In evidence taken in Adelaide, the Committee sought advice from witnesses on whether South Australia's container deposit scheme impacts on kerbside recycling. According to the Environment Protection Authority (South Australia), the South Australian scheme complements kerbside collection, a view confirmed by the EPHC,³⁹ and other witnesses. Mr John Phillips OAM, Executive Director of KESAB Environmental Solutions told the Committee:

Anecdotally there is a lot of information out there that talks about household kerbside collection not working in parallel with the container deposit legislation; that is untrue. Household kerbside collection works very well in parallel with container deposit legislation. As previously reported this morning, some councils benefit, subject to socioeconomic group — some community members leave their containers in the kerbside collection bin and in other areas they are very quick to take it to the recycling depot.⁴⁰

Mr Tony Circelli, acting Chief Executive Officer of the Environment Protection Authority (South Australia), informed the Committee that container deposit schemes mean lower revenues for kerbside operators, but also lower operating costs.

Really what they are saying is that with those containers taken out they do not need to do as many trips because their trucks do not get full as quickly. They can collect more bins in a day...From that perspective I think it would be complementary, no matter where it is brought in. There would be cost savings

³⁶ Ibid, 12.

³⁷ Hartland, above n 1, 15.

³⁸ Ingham, above n 2, 11.

³⁹ Environment Protection and Heritage Council Beverage Container Working Group, *Beverage Container Investigation: Revised Final Report* (28 April 2010) 19.

⁴⁰ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 71 (Mr John Phillips OAM).

to local government and to ratepayers because the contracts that you would arrange with waste management people would take these things into account.⁴¹

The Committee notes that kerbside recycling commenced in South Australia around 1988, approximately 12 years after the container deposit scheme was introduced. By contrast, the scheme proposed by this Bill would be established around Victoria's existing kerbside recycling scheme, which has been operating successfully for a number of years. As such, the context for the introduction of a container deposit scheme into Victoria is significantly different to when it was introduced into South Australia.⁴²

Local government

The Committee was particularly keen to hear the views of local government on the impact of the proposed Bill, as local governments fund kerbside collection schemes and have broader waste management responsibilities. The Committee received a total of 22 submissions from local governments (including from two peak bodies: the Municipal Association of Victoria (MAV) and the Victorian Local Governance Association (VLGA)). The majority of these submissions expressed some form of support for a container deposit scheme and its objectives, such as reducing litter,⁴³ and increasing recycling.⁴⁴ The Committee notes that the MAV passed a resolution in 2011 supporting a 'packaging/container recovery scheme supported by legislation; integrating initiatives such as container deposit legislation.'⁴⁵

While local governments were broadly supportive, there was some uncertainty in relation to the scheme's potential impact on kerbside collection services and

⁴¹ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 121 (Mr Tony Circelli).

⁴² Written submission number 40 from Whittlesea City Council.

⁴³ Written submission number 3 from Yarriambiack Shire Council; Written submission number 6 from Horsham Rural City Council; Written submission number 13 from Surf Coast Shire Council; Written submission number 31 from Northern Grampians Shire Council; Written submission number 32 from Yarra City Council; Written submission number 33 from Maribyrnong City Council; Written submission number 37 from Mildura Rural City Council; Yarra Ranges, above n 3.

⁴⁴ Yarriambiack, above n 43; Wyndham, above n 3; Written submission number 9 from Ararat Rural City Council; Written submission number 15 from Corangamite Shire Council; Written submission number 22 from Moreland City Council; Northern Grampians, above n 43; Yarra City, above n 43; Yarra Ranges, above n 3; Whittlesea, above n 42.

⁴⁵ Written submission number 42 from Municipal Association of Victoria, 1.

whether it would result in costs to local government.⁴⁶ Local governments in Victoria contract out their waste collection and recovery services.⁴⁷ These contracts may specify an ‘acceptable load density’, which would be altered if glass, plastic and aluminium beverage containers were removed from the stream.⁴⁸ The Mornington Peninsula Shire Council advised the Committee that its recycling contract enabled local schools to receive paper and cardboard recycling at no charge, and that this may not occur should a container deposit scheme make kerbside collection more expensive to provide.⁴⁹

Some of the written submissions from local government were more firmly opposed to the Bill on the basis of its potential impact on kerbside collection.⁵⁰ For example, it has been suggested that container deposit schemes remove the most valuable items from kerbside programs. This would mean the recyclate collected via kerbside collection has a lower value. This may undermine its economic viability,⁵¹ and ultimately increase costs to ratepayers.⁵² In its written submission to the Committee, Surf Coast Shire Council noted:

There is concern that removing the glass, PET and aluminium from the kerbside service will result in the recycling contractor receiving fewer high value products. Councils receiving payment for kerbside collected recyclables will also likely see a reduction in payments through the removal of beverage containers, particularly heavy glass items. This may ultimately impact on the sustainability of current contract arrangements if these contracts are not adequately considered in the scheme prior to implementation.⁵³

Bayside City Council also noted:

It may undermine existing kerbside recycling systems by removing the most valuable recyclates and setting up a competing system for bottles and cans. The

⁴⁶ Horsham, above n 43; Mitchell Shire, above n 16; Surf Coast, above n 43; Corangamite, above n 44; Written submission number 27 from Gannawarra Shire Council; Boroondara, above n 31; Northern Grampians, above n 43; Yarra City, above n 43; Bayside, above n 16; Written submission number 35 from Colac Otway Shire Council.

⁴⁷ Written submission number 24 from Mornington Peninsula Shire Council; Gannawarra, above n 46.

⁴⁸ Gannawarra, above n 46.

⁴⁹ Mornington, above n 47, 2.

⁵⁰ Horsham, above n 43; Mitchell Shire, above n 16; Surf Coast, above n 43; Corangamite, above n 44; Gannawarra, above n 46; Boroondara, above n 31; Northern Grampians, above n 43; Yarra City, above n 43; Bayside, above n 16; Colac Otway, above n 46.

⁵¹ James E McCarthy ‘Bottle Bills and Curbside Recycling: Are they compatible?’ 19, www.cnie.org/nle/crsreports/pollution/plgen-3.cfm accessed 12.12.2011 at 11.30 a.m.; Written submission number 46 from Barwon Regional Waste Management Group 2.

⁵² Gannawarra, above n 46.

⁵³ Surf Coast, above n 43, 1.

current kerbside recycling system is a cost effective system to support recycling at home. Council is currently receiving \$23 per tonne for recyclables collected from the kerbside and is negotiating to double the price. A container deposit scheme will reduce income to Council if our contractor is not receiving 100% of containers from households.⁵⁴

In a similar vein, the City of Boroondara advised the Committee that while it currently pays its recycling contractor over \$1 million annually, this is around 40 to 60 percent of the actual cost of the service, as the contractor recovers the balance from the sale of the collected recyclate.⁵⁵ Should the value of the collected recyclate drop, it is anticipated that the Council would be called upon to cover the shortfall, ultimately increasing costs to ratepayers. The Committee notes that a corresponding analysis was expressed in the *Independent Review of Container Deposit Legislation in New South Wales* by Dr Stuart White in November 2001.⁵⁶

By contrast, Yarra Ranges Shire Council anticipated a reduction in kerbside recycling costs if the proposed container deposit scheme were enacted. These savings would come not from reductions in the amount collected and operating costs as discussed above, but rather from an assumption that many residents would continue to dispose of beverage containers in their kerbside recycling bins. This would allow the Council to redeem these deposits.⁵⁷ Cr Dunn suggested to the Committee:

In terms of kerbside recycling, we think there are some wins for council there because of the increased value of what is in the kerbside recycling. We believe that households will continue to use their recycle bins to dispose of their beverage containers. We do not see that there will be a loss away from that, so that actually creates real benefits for council, because now there are some revenues attached to that — more than just the actual materials to sell themselves.⁵⁸

While local government may gain from claiming the unredeemed deposits on containers disposed of via kerbside collection, it appears likely that this would

⁵⁴ Bayside, above n 16, 1.

⁵⁵ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 57 (Mr David Powell).

⁵⁶ Institute of Sustainable Futures, *Independent Review of Container Deposit Legislation in New South Wales*, Vol II (November 2001) 99.

⁵⁷ Dunn, above n 23, 64.

⁵⁸ Ibid, 63.

require it to renegotiate existing contracts with recyclers.⁵⁹ The South Australian Local Government Association confirmed that in South Australia any costs associated with the separation of containers subject to a deposit from those without a deposit are included in contractual obligations.⁶⁰

Discussion

In evidence to the Committee, Mr Michael Eadie, General Manager, Commercial, Visy, suggested that a container deposit scheme would have a negative impact on his company's kerbside collection operations.⁶¹

Visy is the only kerbside processor operating in both South Australia and Victoria. By comparing data from our South Australian and Victorian materials recovery facilities we have assessed the impact of a beverage container deposit system in Victoria on kerbside volumes. We model that a like model to South Australia, which has a collection depot approach to collection, will reduce total volume on the high side of the 15 percent to 20 percent range. This is impacted by removal of 55 percent of the glass, 92 percent of the aluminium and 73 percent of PET. Should an extended model be considered for Victoria which includes return to retailers or reverse vending machines, we would expect this would further reduce total kerbside volume by another 1 percent, removing all the residual deposit containers still left in the kerbside stream.⁶²

The Committee notes that a March 2000 review of South Australia's container deposit legislation for the Environment Protection Authority (South Australia) found that when taken as a whole, the container deposit scheme has not had a significant impact on kerbside recycling.⁶³ It suggested that even if fewer containers overall are disposed of via kerbside recycling, the containers collected would have a higher value and offset any additional costs or lost revenue.⁶⁴

The Committee understands that recycle collected in South Australia generally attracts a higher sale price than that from the rest of Australia, because it is a

⁵⁹ Ingham, above n 2, 11; Powell, above n 55, 56; Phillips, above n 40, 73; Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 91 (Mr Marcus Fraval).

⁶⁰ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 142 (Ms Cate Atkinson).

⁶¹ Eadie, above n 17, 104.

⁶² Ibid, 105.

⁶³ Phillip Hudson Consulting, *Container Deposit Legislation: Public Report on the Review of the Economic and Environmental Impacts of the Beverage Provisions of the Environmental Protection Act 1993 (Container Deposit Legislation) in South Australia* (March 2000) 9.

⁶⁴ Ibid, 39.

cleaner product than that collected via co-mingled recycling.⁶⁵ Supporters of the Bill anticipate similar financial benefits would arise for local government and industry in Victoria. However, it should be noted that while a container deposit scheme may increase recycling, and improve the quality of recyclate, assumptions of the net operating costs of a container deposit scheme may be incorrect if higher prices for recyclate are not realised. Recyclate is a global commodity, subject to price fluctuations in relation to supply and demand.⁶⁶ For example, increasing the recycling of old newspapers in the United States resulted in prices decreasing in the 1990s.⁶⁷

Further, the capacity of recyclers also needs to be considered when proposing a substantial recycling scheme.⁶⁸ While it is important to increase recycling, for industry it is important to ensure the recyclate collected is of a consistent volume, quality and available at the lowest possible cost.⁶⁹

Given the range of conflicting claims and counter-claims on this topic, the variety of assumptions which are difficult to test, and the absence of sufficient data on which to base an independent critical analysis, the Committee is not able to make a judgement on the impact of the Bill on Victoria's kerbside recycling. Local government generally supports the objectives of the Bill. The South Australian experience has shown some councils may benefit more than others. The Committee is convinced, however, that Victoria's kerbside recycling system has worked well and, were the Bill to pass, the Government should monitor its impact on what is an important local government service.

⁶⁵ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 9 November 2011, 37 (Mr Dave West); Circelli, above n 41, 122.

⁶⁶ Pickles, above n 15, 28.

⁶⁷ McCarthy, above n 51, 12.

⁶⁸ COAG, above n 5, 18.

⁶⁹ Written submission number 12 from Alcoa Australia Rolled Products 6.

Finding 4

There are concerns about the financial impact of the scheme on existing kerbside recycling and waste recycling businesses. In the South Australian model, these businesses did not exist at the time South Australia's legislation was introduced. Any proposed container deposit scheme should be designed so as to minimise any financial impacts on kerbside recycling for industry and Victorian local government.

Finding 5

Submissions received from local government generally supported the objectives of the proposed scheme. However, many also considered there was insufficient evidence to determine the likely financial impact on their operations.

3.3 Litter

The potential for a container deposit scheme to reduce litter was raised with the Committee as a key benefit of the Bill. Ms Hartland predicted that the proposed scheme would see a reduction in litter of 12-15 percent.⁷⁰ A significant number of written submissions discussed the problem of beverage container litter in local areas, particularly affecting rivers and waterways. There was a strong view that the proposed scheme would substantially reduce the amount of this litter.⁷¹

I have taken it upon myself to collect these containers that lie on the banks of the creek especially following the flood periods. ... It certainly would be a step in the right direction to legislate for a commonsense scheme to control these ever present pollutants in our little creek. The worst offenders without doubt are the wretched sweet drink and water bottles.⁷²

* * * * *

... we observed that [in Scandinavian countries which have a container deposit scheme] the streets and parks of the cities which we visited were kept

⁷⁰ Hartland, above n 1, 1.

⁷¹ Written submission number 2 from Mr Bruce Jeffery; Benalla LPG, above n 3; Horsham, above n 43; Ararat, above n 44; Written submission number 10 from Mrs Nina Scott; Surf Coast, above n 43; Written submission number 16 from Clean Up Australia; Written submission number 20 from Vic Can; Written submission number 21 from Ms Mary Penney; Moreland, above n 44; Total Environment Centre, above n 3; Written submission number 26 from Friends of the Earth, Melbourne; Written submission number 30 from Mr Richard Allen; Northern Grampians, above n 43; Yarra City, above n 43; Maribyrnong, above n 43; Written submission number 36 from Ms Olivia Jacka; Mildura, above n 43; Written submission number 38 from Dr Ross Headifen; Yarra Ranges, above n 3.

⁷² Scott, above n 71, 1.

remarkably clear of containers by people collecting them as a means of earning pocket money or supplementing their income.⁷³

The Committee received evidence from several witnesses that there was less beverage container litter in South Australia than Victoria,⁷⁴ which was attributed to its container deposit scheme:

Ms INGHAM —The other guide to reduction in litter is the difference between litter in Victoria and South Australia. We have provided some information on page 18 of Ms Hartland's report. What we did there was we took the raw figures from the Keep Australia Beautiful annual litter report and the raw data from McGregor Tan Research and separated it into the different categories: plastic soft drinks and milk bottles; glass alcoholic drink bottles, metal alcoholic drink cans and so on to provide a comparison in different categories between Victoria and South Australia. That tells us two things. One is that basically there is about three times more litter of drink containers in Victoria than in South Australia, so at least that can provide you with some quantum.⁷⁵

Evidence received from Ms Cate Atkinson, General Manager, Intergovernmental Relations, Local Government Association of South Australia also noted that it is generally accepted that the scheme has been very successful in this regard:

... the basis of the legislation in South Australia was purely litter control, particularly on roadsides, and it has been very effective in relation to that.⁷⁶

While South Australia performs better than Victoria in relation to beverage container litter, Ms Kirsty Richards, Chair of Keep Australia Beautiful Victoria suggested to the Committee that the overall amount of litter recorded in Victoria was less than that for South Australia:

... South Australia does have fewer beverage containers on the ground — yes, definitely; I agree entirely — but they have more of everything else. That is the problem with the scheme: that people are focusing just on beverage containers.⁷⁷

The Boomerang Alliance suggested to the Committee that Victoria's positive record with respect to litter was due to the State and local governments spending over \$74 million per annum to remove it.⁷⁸ It is anticipated that a container

⁷³ Allen, above n 71, 1.

⁷⁴ Ingham, above n 2, 8; Pickles, above n 15, 31; Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 47 (Ms Kirsty Richards); Wyndham, above n 3.

⁷⁵ Ingham, above n 2, 8.

⁷⁶ Atkinson, above n 60, 144.

⁷⁷ Richards, above n 74, 49.

⁷⁸ Boomerang Alliance, above n 22, 8.

deposit scheme would reduce this amount, allowing funds to be directed towards other programs and services.

Some witnesses questioned whether a container deposit of 10 cents would actually provide an incentive to not litter or to actively collect containers discarded in public.⁷⁹

I do not believe 10 or 15 cents on a can is going to provide sufficient incentive. You are going to have to collect 100 cans to get \$10, and that is not a lot of money — 1000 cans to get \$100. Quite frankly, if you were organising that, you would be better to put your hand in your pocket and put the money in rather than go out and waste your time wandering up and down the streets looking for dirty bottles.⁸⁰

* * * * *

Under this scheme most families would have to store a reasonable amount of containers somewhere before driving to the collection depot to claim their refund. The vehicle emissions, fuel use and time involved doing this would likely exceed the cost of the refund and the benefits of the system.⁸¹

However, the Committee notes that South Australia has been able to realise return rates of around 80 percent with a 10 cent deposit, which suggests this amount is an effective incentive.

Conversely, other witnesses suggested that a container deposit provided such an incentive to collect beverage containers that it could result in people scavenging. Witnesses expressed concern that scavenging from kerbside or public bins may result in non-deposit items being removed and discarded, resulting in an increase in litter.

Mr EVANS —I might mention also that if you have redeemable deposits, then I think some of the garbage disposal units around the place will be attacked by scavengers, and I do not think they will be very tidy people. I think they will drag stuff out and leave it on the lawn in order to get those containers.⁸²

* * * * *

Mr POWELL —We are further concerned that the Bill would lead to scavenging for beverage containers on kerbsides and in public realm recycling bins, which, in our view, would result in other recyclables being removed during that scavenging and being spread around those bins as further litter.⁸³

⁷⁹ Barreto, above n 18, 111; Written submission number 1 from Port Phillip Conservation Council Inc.

⁸⁰ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 82 (Hon David Evans).

⁸¹ Written submission number 44 from Greater Shepparton City Council, 1.

⁸² Evans, above n 80, 82.

⁸³ Powell, above n 55, 55.

Ms Hartland advised the Committee that this issue has been addressed in other countries, giving the example of Germany where specially designed infrastructure allowed individuals to collect containers without resulting in litter being removed from bins and discarded.

Obviously one of the things people get quite concerned about is people going through bins et cetera to get containers. This (see Appendix D) was in Berlin. It was in a very large public park. There were probably about 12 or 13 of these. There were a lot of cafes on the edge of this park. I watched people having their drink and putting it in this stand and then other groups of people coming by, going through the bottles and taking the bottles, either putting them in their bag or in their trolley. Obviously they were going to take them off to a reverse vending machine.

The other one (see Appendix D) is of the rubbish bins ... These were very shallow bins. What I noticed again was that people were taking bottles from the bins, but because they were quite shallow it was very easy to do.⁸⁴

Finding 6

The scheme proposed by the Bill targets only one element of the overall litter problem. It would reduce beverage container litter and the amount spent by government to clean up this litter in public places, but measures to address other forms of litter would need to remain in place.

Finding 7

If the scheme proposed by the Bill were implemented, public infrastructure, such as bins, may need to be provided and/or altered to encourage separation of beverage containers, minimise littering and reduce the potential health risks of scavenging for containers.

Finding 8

If the proposed scheme were implemented, there may also be a need for a public campaign warning of the potential health dangers of scavenging for containers (especially in bins).

⁸⁴ Hartland, above n 32, 7.

3.4 Environmental benefits

Ms Hartland anticipated that the Bill would have a number of environmental benefits, including reducing the use of raw materials and reducing greenhouse gas emissions.⁸⁵ For example, during their manufacture, beverage containers consume finite resources. However these resources can be reused many times if the container is discarded correctly.⁸⁶ Manufacturing new containers uses more energy and virgin resources than recycling and reprocessing existing beverage containers into new ones.⁸⁷ This means that not only are resources conserved but also waste is diverted from landfill.⁸⁸

The Committee received evidence from Revive Recycling, a company that promotes emerging recycling technologies, that recycling avoids 93 percent of the energy required to make aluminium ingots and 76 to 80 percent of the embedded energy in common plastic granulates.⁸⁹ Clean Up Australia estimated that a container deposit scheme would save 5.6 gigalitres of drinking water per annum, equivalent to supplying 16,784 homes.⁹⁰ Further the Committee notes that the production of one tonne of Polyethylene Terephthalate (PET) produces three tonnes of greenhouse gasses.⁹¹ Given an estimated 12 billion beverage containers are purchased by Australians each year,⁹² the Committee notes the importance of encouraging beverage containers to be recycled.

These issues were considered by the Stakeholder Advisory Group in its January 2007 report into a container deposit system for Western Australia. The Stakeholder Advisory Group anticipated that a container deposit scheme would

⁸⁵ Hartland, above n 1, 13.

⁸⁶ www.cleanup.org.au/au/Whatelsewesupport/why-do-we-need-a-container-deposit-legislation-.html accessed 04.01.2012 at 11.00 a.m.

⁸⁷ Clean Up Australia, above n 71, 4; Hartland, above n 1, 13.

⁸⁸ Alcoa, above n 69, 15; Written submission number 43 from Revive Recycling 3.

⁸⁹ Revive Recycling, above n 88, 4.

⁹⁰ Clean Up Australia, above n 71, 4.

⁹¹ Ibid.

⁹² www.cleanup.org.au/au/Whatelsewesupport/why-do-we-need-a-container-deposit-legislation-.html accessed 04.01.2012 at 11.00 a.m.

produce substantial environmental benefits from reduced greenhouse gas emissions as well as reducing energy and resource consumption.⁹³

Recycling of materials provides a significant reduction in environmental impact when compared to use of virgin resources in production. Materials that are used in non-recycled containers become a lost resource. The metals, fibres and polymers that make up the containers have an associated embodied energy that is also foregone when these materials are not recycled.⁹⁴

In addition to conserving resources the Committee received evidence that increasing recycling rates may also save costs when compared to processing virgin materials.⁹⁵ The Committee notes that a report prepared for the Environment Protection Authority (South Australia) estimated that the container deposit scheme in South Australia meant virgin material use was 40 percent less by volume and value.⁹⁶

A review of 1991 Industry Commission figures indicates that recovery rates are up to 40% higher in South Australia. We therefore estimate that CDL in South Australia contributes in the order of \$720,000, or 40%, towards the total value of replacement of virgin materials.⁹⁷

While environmental benefits are realised by any form of recycling, the Committee received evidence that more benefits accrue when a 'closed-loop' system is employed. A closed-loop system is one where products can be remade infinitely. Aluminium cans, glass bottles and PET containers are all considered to be infinitely recyclable.⁹⁸ The Committee received evidence that closed-loop systems continually divert waste from landfill and save resources. By contrast, recycling glass into road base, for example, diverts waste from landfill but still requires resources to manufacture new beverage containers.

Mr FRAVAL -Really we should be focused not just on the amount of tonnage that we divert from landfill but on resource and life cycle impact optimisation, and what I mean by that is basically generating the highest value and the maximum avoided life cycle impacts from that material. As an example, if you are diverting glass from landfill, you can do that in a number of ways. One way is to divert it and put it into road base, and basically that is a one off so called recycling — a very low value application. It counts in all the numbers as exactly the same tonnage. Another way of doing it is to divert it to closed loop recycling to manufacture new bottles out of it; then it is a very high value application, and

⁹³ Stakeholder Advisory Group, *Final Report of the Stakeholder Advisory Group Investigation into Best Practice Container Deposit Systems for Western Australia* (2007) V.

⁹⁴ Ibid, 13.

⁹⁵ Phillips, above n 40, 74; Fraval, above n 59, 92.

⁹⁶ Phillip Hudson Consulting, above n 63, 11.

⁹⁷ Ibid, 20.

⁹⁸ Alcoa, above n 69, 5; Revive Recycling, above n 88, 17.

it is an application that is then potentially repeated numerous times over and over again. And yet those two, in terms of numbers of diversion of waste management, are effectively treated the same.⁹⁹

Adopting a container deposit scheme would mean it would be easier to establish a closed-loop system, because the recycle would have less contamination and be sorted into the various components to be reprocessed into new containers.

Finding 9

The number of beverage containers produced and sold each year is increasing. A container deposit scheme would conserve virgin materials through the re-use of this resource. Expanding the scheme to a greater range of containers could further expand the benefits of recycling.

3.5 Impacts on cost of living and employment

The Committee explored how the proposed Bill may impact on the cost of living and employment. The Committee considered these to be related issues as opponents of the Bill suggested that higher retail prices for consumers would lead to a fall in beverage consumption, thereby leading to job losses in the beverage industry.¹⁰⁰

Cost of living impacts

The Committee received a number of written submissions concerned that a container deposit scheme may increase costs for consumers and industry.¹⁰¹ However several witnesses observed that beverages sell for the same price in South Australia as in the rest of Australia.¹⁰²

Mr CIRCELLI —Looking at some of the evidence you have received so far, I want to make really clear that 10c is the deposit stated on the rear of the container. It does not necessarily mean that is going to be the price increase on the product. In fact, what we have seen in South Australia is that there has not been a significant price differential between the cost of our products and those nationally. To a certain degree the industry would argue that they offset our costs just to keep things simple and have consistent prices around the country.

⁹⁹ Fraval, above n 59, 88.

¹⁰⁰ Written submission number 17 from Australian Food and Grocery Council, 5.

¹⁰¹ Written submission number 8 from Mr David Evans; AFGC, above n 100; Northern Grampians, above n 43; Bayside, above n 16.

¹⁰² Hartland, above n 32, 15; Phillips, above n 40, 76.

The increases to the cost of beverages and the impact on consumers is a very complex thing.¹⁰³

The RIS noted that a national container deposit scheme may increase the price of beverages and impact on sales.¹⁰⁴ Container deposit schemes apply an equal cost on all beverage containers irrespective of their size. This means any price impact would be greater on smaller beverages than larger ones. Further, while it may be possible to redeem the deposit, it acts as an upfront cost to consumers and businesses until redemption occurs.¹⁰⁵ Although beverages may sell for the same price in South Australia the Committee notes that a report prepared for the Environment Protection Authority (South Australia) suggested that national beverage sellers factor costs associated with South Australia's scheme into their national pricing. As such, the cost of the South Australian scheme is borne by consumers nationally.¹⁰⁶

However, the Committee received evidence that container deposit schemes are cost neutral for consumers, because although consumers incur an additional charge for beverages up front, this cost is recovered by returning the container.

Mr FRAVAL —There is often discussion about price impacts on consumers. Certainly if you buy a container with an additional 10 cents on and you do not recycle, there will be a price impact on you. The key point here is that you have the choice. If you are price sensitive, you simply return it, you recycle it and there is no cost imposition.¹⁰⁷

In support, the Boomerang Alliance noted that a survey of 8,500 shoppers in Sweden, Finland, Holland and Norway suggested that shoppers who returned empty containers spent between 17 and 52 percent more than the average shopper.¹⁰⁸ This suggests that container deposit schemes may not impact on consumer spending. The RIS suggested that ultimately market forces will determine whether beverage manufacturers pass any costs they incur as a result of a container deposit scheme on to consumers.¹⁰⁹

¹⁰³ Circelli, above n 41, 118.

¹⁰⁴ COAG, above n 5, 36.

¹⁰⁵ Ibid, 54.

¹⁰⁶ Phillip Hudson Consulting, above n 63, 20.

¹⁰⁷ Fraval, above n 59, 90.

¹⁰⁸ Boomerang Alliance, above n 22, 12.

¹⁰⁹ COAG, above n 5, 54.

The Boomerang Alliance and Revive Recycling drew the Committee's attention to a study undertaken in Massachusetts, which examined the price of beverages in American states. The study found that the existence of a container deposit scheme did not have a discernible effect on beverage retail prices,¹¹⁰ with its evidence seeming to suggest that beverages were more expensive in states without a scheme.¹¹¹ However, the Committee notes media reports that Coca Cola increased its sale prices towards the end of 2011 in the Northern Territory just prior to the commencement of its container deposit scheme in 2012.¹¹² This suggests the container deposit scheme in the Northern Territory may have an impact on the cost of living. Based on this conflicting evidence the Committee is uncertain if there will be an impact on prices in Victoria should the Bill be passed.

The Committee also heard that any impact on the cost of living should be weighed against the scheme's likely role as a source of income for community groups.¹¹³

There are social benefits in increasing employment opportunity and by introducing a system that can assist community organisation such as Scouts and sporting clubs to raise funds.¹¹⁴

For example, the Committee understands that the recycling operations of Scouts South Australia provide income of around \$2 million per annum, which is used to subsidise membership fees and provide youth programs and services.

Employment impacts

The Committee received conflicting evidence in relation to the potential impact of the proposed container deposit scheme on employment. Ms Hartland anticipates that the scheme would create around 300-400 new jobs, mainly in the Hubs and depots but also in servicing and maintaining reverse vending machines. Many of the jobs would be located in non-metropolitan areas.¹¹⁵ A 2000 report

¹¹⁰ West, above n 65, 35; Fraval, above n 59, 90.

¹¹¹ Boomerang Alliance, above n 22, 12.

¹¹² Alyssa Betts "Their call if Coke wants to rip us off" *Northern Territory News* (09.12.2011).

¹¹³ Jeffery, above n 71; Yarriambiack, above n 43; Ararat, above n 44; Surf Coast, above n 43; FOTE, above n 71; Allen, above n 71; Northern Grampians, above n 43; Yarra City, above n 43; Maribyrnong, above n 43; Colac Otway, above n 46; Barwon RWMG, above n 51, 4.

¹¹⁴ Surf Coast, above n 43.

¹¹⁵ Hartland, above n 1, 14.

found South Australia's scheme had redistributed employment opportunities in favour of regional locations due to the number of collection depots.¹¹⁶ The Committee received evidence that approximately 1,000 people are directly employed in either full or part-time as a result of the container deposit scheme in South Australia.¹¹⁷

Visy anticipated that if volumes recovered from kerbside collection were reduced by 20 percent, it would mean a reduction in the number of shifts at its plants from five to four.¹¹⁸ Further in its written submission, the AFGC predicted significant direct and indirect job losses if the proposed scheme were introduced:

The AFGC's Packaging Stewardship Forum has recently commissioned research on the impacts of a national CDL on retail volumes and employment. The report, by economists ACIL Tasman, found that the a national CDL at 14 cents per container (ie including handling fee) would reduce employment levels in the industry nationally by 4,202 direct jobs and 5,164 indirect jobs. Extrapolating this result to Victoria means the loss of 1,105 direct jobs and 1,358 indirect jobs.¹¹⁹

The Committee explored whether the proposed Victorian scheme may lead to job losses and if so where they were likely to occur. Directly addressing this issue, Mr Vaughn Levitzke, the Chief Executive Officer of ZeroWaste South Australia stated:

I do not know where the job losses would be. All the indications are that we consume as much in terms of beverages as any other Australian population, so we are buying just as much—probably more. Beverage sales seem to be increasing, not decreasing, in ready-to-drink product. The only losses are probably in landfill where fewer people are probably being employed in burying this material, but I would argue that that is more than offset. I think there was a national report which said for every 10,000 tonnes buried in landfill you have about 1.2 jobs but there are 9.8 for every 10,000 tonnes recycled, so if anything I would expect the balance to be on the positive side in terms of container deposit systems.¹²⁰

¹¹⁶ Phillip Hudson Consulting, above n 63, 17.

¹¹⁷ Circelli, above n 41, 119.

¹¹⁸ Eadie, above n 17, 105.

¹¹⁹ AFGC, above n 100, 5. Note: AFGC was not able to provide the ACIL Tasman Report to the Committee on commercial-in-confidence grounds. However a copy was subsequently sourced from AFGC's website. The Committee notes that the figure of 5164 relates to the total direct and indirect job losses.

¹²⁰ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 127 (Mr Vaughn Levitzke).

The Committee notes that a report published by the Container Research Institute in December 2011 found that depending on system parameters, container deposit schemes can create 11 to 38 times more jobs than kerbside recycling schemes.¹²¹ A report by Philip Hudson Consulting, however, suggested that although container deposit schemes create jobs, they are funded by diverting money which may have been used for other purposes and therefore the schemes do not contribute to economic growth.¹²²

Finding 10

There is conflicting evidence about the likely impact of the scheme proposed by the Bill on beverage prices in Victoria and the cost of living. The extent to which prices will rise will depend on various factors including the ability of beverage manufacturers to cover costs associated with the scheme. The Committee was not in a position to establish and/or assess the cost impacts on beverage manufacturers if the proposed scheme were implemented.

Finding 11

A container deposit scheme may cause job losses in some areas of the economy, whilst creating new jobs elsewhere. There is insufficient evidence for the Committee to ascertain whether the net effect would be positive or negative.

3.6 Costs in relation to the Bill

This section will provide an overview of the evidence received by the Committee in relation to the start-up costs, operating costs (including potential costs to industry) and break-even costs of the scheme proposed in the Bill. In *Turning Rubbish into Community Money*, Ms Hartland presented data and an analysis of the Bill (prepared by Mr Dave West of the Boomerang Alliance) but acknowledged in evidence that this was not a full economic analysis. As noted previously, a number of witnesses expressed a preference for a full independent analysis.

¹²¹ Container Research Institute, *Returning to Work: Understanding the Domestic Job Impacts from Different Methods of Recycling Beverage Containers* (Dec 2011) 11.

¹²² Phillip Hudson Consulting, above n 63, 17.

Start-up costs

Ms Hartland suggested that it would take the scheme 12 to 18 months to operate at the expected container recovery rate of 83 percent. This would result in unredeemed deposits of approximately \$61 million, which could be used to promote the scheme and defray start-up costs associated with the scheme.¹²³ The scheme is designed to be funded from the private sector.¹²⁴ As such, other than providing incentives such as to establish collection depots (which would be covered by the unredeemed deposits), it is unlikely that the Government would incur any significant start-up costs.

Environment Protection Authority (Victoria) estimated that the one-off cost of implementing the Bill, excluding infrastructure, would be around \$1.2 million.¹²⁵ If the scheme operates as anticipated by Ms Hartland and the estimates are realised, there would be sufficient funds from unredeemed deposits to cover these start-up costs.

Ongoing operating costs

If the Bill is enacted, there will be further costs involved in implementation and ongoing administration.¹²⁶ Ms Hartland has argued that the container deposit scheme proposed in the Bill would not require funding from Victoria's Consolidated Revenue to operate. Unredeemed deposits and sale of recyclate would provide the funds needed to cover the scheme's operating costs.¹²⁷ It is anticipated that most of the administration and data collection would take place at the Hubs.¹²⁸

By way of comparison, the Environment Protection Authority (South Australia) expends approximately \$315,000 per annum on salaries to administer its container deposit scheme. The Committee notes, however, that the Environment Protection Authority (South Australia) does not have any role in relation to the

¹²³ Hartland, above n 1, 20.

¹²⁴ Ingham, above n 2, 16; Boomerang Alliance, above n 22, 11.

¹²⁵ Merritt, above n 10, 96.

¹²⁶ EPHC, above n 39, 89.

¹²⁷ Hartland, above n 1, 1.

¹²⁸ Ibid, 9.

administration or control of unredeemed deposits. As such the Victorian scheme is likely to require additional staff. As Mr John Merritt, Chief Executive Officer of Environment Protection Authority (Victoria) noted:

In regard to administering the scheme, the bill proposes to establish a beverage container deposit and recovery scheme which would be administered by EPA. In this regard EPA would have a more extensive role in the proposed scheme than in the existing South Australian scheme, or the Northern Territory scheme, which is due to kick off on 3 January. This is because the deposit funds are to be paid to the EPA, which will then reimburse collection depots and transfer stations for the refunds that they pay out. Additionally under this proposed scheme EPA would authorise the collection depots and transfer stations. We would enter into agreements — contractual arrangements — with these depots and transfer stations as to their terms for doing the collection. We would enforce the labelling requirements, and we would police the requirement that refunds only be claimed on beverages purchased in Victoria.¹²⁹

In its evidence, Environment Protection Authority (Victoria) estimated that it would incur costs of around \$750,000 per annum to administer and ensure compliance with the proposed scheme.¹³⁰ It has been proposed that under the Victorian scheme there would be \$1 million available to Environment Protection Authority (Victoria) to offset any additional administrative costs.¹³¹ In her evidence during the consideration of the Bill in detail, Ms Hartland submitted that the role of Environment Protection Authority (Victoria) could be undertaken by an independent authority. Without further information, the Committee cannot comment on how this alternative proposal would impact on the proposed scheme's operating costs.

Break-even costs

As noted above, Ms Hartland anticipates that the scheme will be self-funding. In support of this, the Boomerang Alliance informed the Committee that the scheme would operate at an estimated surplus of \$36 million per year.¹³² Environment Protection Authority (Victoria) submitted economic modelling suggesting that there was a greater tendency for the scheme to operate at a loss than a profit. The break-even point would be determined by the redemption rate, the net handling fee, the deposit in cents and the number of containers sold. The

¹²⁹ Merritt, above n 10, 96.

¹³⁰ Ibid, 97.

¹³¹ Hartland, above n 32, 16.

¹³² West, above n 65, 34.

net handling fee would be influenced in part by the prices paid for recycle in a global market – these would fluctuate according to supply and demand. Environment Protection Authority (Victoria) calculated that where the deposit was 10 cents and the return rate was 83 percent (the rate expected by Ms Hartland) the system would need to achieve a net handling fee of 2.048 cents per container to break even. Currently the South Australian handling fee is around 4 cents per container.

The Committee further notes that some jurisdictions require beverage manufacturers or the container industry to pay an annual processing fee to ensure that the scheme is cost neutral to Government. This fee is the difference between the cost of administering the system less the recycle's scrap value and any unredeemed deposits.¹³³ The inclusion of such a provision in the Bill would ensure the scheme was fully self-funded.¹³⁴ However, the Committee received evidence that such provisions were unnecessary as Government administered schemes in other jurisdictions can and do operate at a profit.¹³⁵

Further, the Committee heard that in South Australia the recycling depots are run at a profit without any ongoing government funding. (The Committee notes that the recycling depots in South Australia also accept and recycle items outside the scope of the container deposit scheme, such as scrap metal.¹³⁶) The Committee anticipates that depots in Victoria would be able to operate on a similar basis.

Mr ELSBURY —In relation to the CDL, as businesspeople does that scheme sustain itself or does it require other funds to come in from other areas? Does the government need to provide additional funding to you or do you get money from other sources to supplement—

Mr RAWLINGS —I have not received any government funds at all, and we have grown from nothing from the CDL to employing 70 people. I have a good location, so I am lucky there.

Mr MARTIN —I would say in general they are self-sustaining.¹³⁷

¹³³ McCarthy, above n 51, 5.

¹³⁴ In its written submission the Boomerang Alliance note that there would be sufficient funds in the scheme initially to cover any shortfall, which would give the Government approximately 12 months to determine whether to amend the legislation and require the payment of such a fee.

¹³⁵ Levitzke, above n 120, 128.

¹³⁶ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 135 (Mr Neville Rawlings).

¹³⁷ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Adelaide, 28 November 2011, 136 (Mr Phillip Martin & Mr Neville Rawlings).

Potential infrastructure costs for industry

A further key issue explored by the Committee in the Inquiry was the potential of the proposed scheme to impact on the viability of existing businesses in the recycling industry. The Committee received evidence suggesting that a container deposit scheme could require businesses to capitalise new equipment or adapt existing infrastructure. Mr Tony Gray, the Director of Public Affairs at Visy stated:

Our view would be that we would have to look at the CDL system once it was in place and see what the impact would be on the recycling stream and what the impact would be on our existing invested infrastructure and assess where it is going to go. ... we could certainly coexist with a CDL system. Whether we could do it as viably as we do now, having invested and in fact helped to grow the various other stakeholders in the kerbside system in Victoria, is a question we can only forecast; we cannot be certain about it.¹³⁸

It was also suggested that operating kerbside recycling alongside the scheme may result in infrastructure being duplicated, further increasing the costs for both industry and the community.¹³⁹ For example, Mr David Powell, Director, Environment and Infrastructure, City of Boroondara noted:

This bill proposes the creation of authorised collection depots for receiving used beverage containers directly from the public. Within the City of Boroondara there is already infrastructure to conveniently collect recyclables from the public via our kerbside service and at two free drop-off facilities. Beverage containers make up part of those recyclables. The kerbside recycling service will continue whether or not this bill becomes law; consequently, the creation of authorised collection depots for receiving used beverage containers will create duplication.¹⁴⁰

The Committee would be particularly concerned if the proposed scheme were to threaten the viability of the Victorian recycling industry. On the evidence presented to it, the Committee is not confident that this has been fully addressed by the Bill.

Finding 12

The scheme is likely to require existing recycling businesses to capitalise new equipment and/or adapt existing infrastructure. The financial impact on existing recycling businesses could not be established.

¹³⁸ Evidence to the Environment and Planning Legislation Committee, Parliament of Victoria, Melbourne, 17 November 2011, 106 (Mr Tony Gray).

¹³⁹ Richards, above n 74, 47.

¹⁴⁰ Powell, above n 55, 56.

Discussion

Ms Hartland and the Boomerang Alliance cautioned that comparing cost-benefit analysis of various recycling and container deposit schemes can be problematic as different analyses factor in different costs and benefits.¹⁴¹ In relation to the RIS, Ms Hartland stated:

The way the economic analysis is being formulated is guaranteed to show mandatory container deposit legislation as being expensive. For example, it will calculate the cost of a person walking to the shops but not the value of extra jobs.¹⁴²

Comparison across jurisdictions is also difficult, as key data, such as the cost to collect materials, is not publically available or may be influenced by different assumptions.¹⁴³

The RIS examined two different container deposit models. When compared to the other five options for reducing packing waste, the two container deposit schemes recorded the highest cost and the lowest benefit-cost ratio.¹⁴⁴ The Committee notes that both models considered in the RIS were to be industry managed, with the cost to Government limited to implementing and administering regulations.¹⁴⁵ The Net Present Value (NPV) (calculated by subtracting the estimated costs over the evaluation period from the benefits) for the two container deposit schemes were -\$1,414 and -\$1,761 respectively.¹⁴⁶ A positive NPV indicates the option would result in a net benefit, while a negative NPV would impose a net cost to the economy.¹⁴⁷ However, these figures did not place a value on the willingness of people to pay a premium to recycle materials and conserve resources, and therefore this is not reflected in the NPV. The RIS suggested that judgement was required to determine the extent to which people would be prepared to pay for increased recycling and decreased litter.¹⁴⁸

¹⁴¹ Boomerang Alliance, above n 22, 4.

¹⁴² Hartland, above n 32, 3.

¹⁴³ McCarthy, above n 51, 1.

¹⁴⁴ COAG, above n 5, 39.

¹⁴⁵ *Ibid*, 54.

¹⁴⁶ *Ibid*, 38.

¹⁴⁷ *Ibid*, 38.

¹⁴⁸ *Ibid*, 40.

The costs and benefits of individual state and territory schemes may not be confined to this jurisdiction. For example, the major beverage manufacturers have incorporated the costs associated with the South Australian scheme into their national pricing strategies.¹⁴⁹ At the same time, interstate beverage container manufacturers are able to purchase a higher quality recyclate, reducing the overall demand for virgin materials.¹⁵⁰ As such, it may be difficult to accurately calculate the costs and benefits to Victoria of the proposed container deposit scheme.

Finding 13

Notwithstanding the benefits of the proposed scheme identified in other parts of this Report, any deficit incurred by the scheme would ultimately be underwritten by the Victorian Government through its responsibility for Environment Protection Authority (Victoria), which would, under the Bill, manage the scheme.

3.7 Possible legal and constitutional impediments to the Bill

The Committee received evidence that there may be constitutional and legal impediments which may inhibit the Victorian Parliament's ability to enact this legislation. While the Committee deems these issues outside its terms of reference, it reports back on them briefly to enable the Legislative Council to explore them further should it wish.

The Committee notes that in the 56th Parliament Ms Hartland introduced the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2009. Although this Bill passed the Legislative Council, it was never introduced into the Legislative Assembly. The Assembly held that this Bill was unconstitutional and infringed its privileges, as it sought to impose an environmental levy.¹⁵¹

The Committee has received conflicting opinions as to whether this issue has been resolved by the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011.

¹⁴⁹ Phillip Hudson Consulting, above n 63, 17.

¹⁵⁰ Ibid.

¹⁵¹ Victoria, *Parliamentary Debates*, Legislative Assembly (24 June 2009) 2098.

In a letter to the Committee, the Clerk of the Legislative Council, Mr Wayne Tunnecliffe, advised that the Bill is capable of being introduced in the Council and did not infringe s 62 to 64 of the *Constitution Act 1975* (Vic) (see Appendix E). However, other opinion on the Bill was divided. The Committee was provided with legal opinions from Ms Hartland, the Boomerang Alliance, the AFGC and Environment Protection Authority (Victoria). All four legal opinions are available on the Committee's website: <http://bit.ly/z27MeI>

The legal opinions provided to the Committee by Ms Hartland and the Boomerang Alliance suggest that the Victorian Parliament is competent to enact the Bill, and that it can be introduced in the Legislative Council.

In evidence to the Committee, Ms Hartland suggested that the levy was not a tax, and that the Bill did not infringe any Victorian or Commonwealth constitutional provisions or statutes:

We believe the container deposit is not a tax, it is a levy and is similar to other Victorian levies, which is where I got ahead of myself a minute ago. We would refer people back to the speech of 29 July where we went into a lot of technical detail about this.

There is the advice from the WA Environmental Defender's Office on this issue as well, and section 90 of the constitution refers to customs and excise. Customs are obviously a fee imposed on imported or exported goods as a condition of importation or exportation, and I would refer the committee to paragraph 19 of the Environmental Defender's Office advice. Our Bill imposes a levy at the time of the sale into the market, not at the time of importation. An excise is a tax levied at the same point in their production or distribution which has the effect of increasing the cost of goods supplied to the customer. Also, I would refer the committee to paragraph 20 of the WA Environmental Defender's Office advice. Elements of an excise are that it is compulsory, imposed in the public interest as a solution to a problem of public importance and not a payment for services rendered. I would refer again to paragraph 25 of the advice of the Environmental Defender's Office in WA.

If the container deposit levy were a tax, then the port levy and the landfill levy would also be taxes. They are much closer to the definition of an excise than the container deposit levy, and obviously nobody wanting to use the port or dispose of waste can avoid these levies. The cost is passed on to all ratepayers and all consumers of imported goods. It is not compulsory to drink out of disposable containers, and water is freely available. Drinks can be sold in containers that do not attract a levy, such as cups. They can avoid the levies that way. The container levy, we believe, is avoidable. The container deposit levy is also refundable to the customer. It is true that the container deposit is designed to solve a problem of public importance, but a payment for services rendered is

not a tax — in this case, the service of gathering used drink containers together for recycling. The levy on that, at 10 cents, is intended to create that service, and it bears a close relationship to the amount of money that is required to provide that service. When you are looking at these schemes you want the deposit to be at the level that actually makes the scheme work but is not an added burden.¹⁵²

Legal opinions provided to the Committee by the AFGC and Environment Protection Authority (Victoria) (from the Victorian Government Solicitor's Office (VGSO) (see Appendix F)) suggested that if enacted the proposed scheme may infringe federal statutes and/or the Constitutions of both Victoria and Australia.

Concern was expressed to the Committee that the proposed scheme may be interpreted as an excise. (An excise is a tax on a step in the production, manufacture, sale or distribution of goods.) Section 90 of the *Commonwealth Constitution* reserves for the Commonwealth the power to impose excise. The VGSO suggested that the scheme may be regarded as an excise because the funds are paid to a public body (Environment Protection Authority (Victoria)) and can be used for public purposes. During the Committee's final hearing, Ms Hartland suggested that these matters could be addressed by handing administration of the scheme to an independent authority rather than Environment Protection Authority (Victoria).

In relation to the possible legal and constitutional issues, Environment Protection Authority (Victoria), which would be responsible for administering this scheme if the Bill is enacted, stated:

... in regard to the Commonwealth duty of excise, the VGSO's advice is that the Bill is likely to be considered a Bill that imposes a duty of excise on goods contrary to section 90 of the *Commonwealth Constitution*. Section 90 reserves the exclusive power of imposing duties, customs or excise on the Commonwealth. This would make the scheme prohibited under that provision. The restriction does not apply under South Australia's scheme and the Northern Territory's scheme because industry, not government, collects the deposits paid by consumers.¹⁵³

Under the *Victorian Constitution Act 1975*, section 62(1) of the Victorian Constitution provides that a Bill imposing a duty, rate, tax, rent, return or impost must originate in the Legislative Assembly, not the Legislative Council. The VGSO has advised us that the Bill imposes a tax, not a pecuniary penalty,

¹⁵² Hartland, above n 32, 19.

¹⁵³ Merritt, above n 10, 97.

forfeiture or fee, and nor is it a private Bill for a local or personal act. It therefore should be introduced directly to the Assembly.¹⁵⁴

It was also suggested to the Committee that if the Bill were enacted, it may contravene the *Mutual Recognition Act 1992* (Cth) unless the Victorian Government were able to obtain an exemption.¹⁵⁵ It was also suggested that if a national scheme was introduced, it would not need an exemption to the *Mutual Recognition Act 1992* (Cth).¹⁵⁶ The Committee notes that while the South Australian scheme has a permanent exemption under *Mutual Recognition Act 1992* (Cth), at the time this Report was tabled, the Northern Territory scheme only had a 12 month exemption.

Finding 14

The Committee received differing opinions as to the existence of legal or constitutional impediments to the Bill and whether the Bill can be introduced into the Legislative Council. Given the advice from the Victorian Government Solicitor's Office and the potential for the Bill to be interpreted as imposing a duty, rate, tax, rent, return or impost, it is a matter for the Legislative Council and ultimately the Victorian Government to consider these issues before determining a response to this Bill.

¹⁵⁴ Ibid.

¹⁵⁵ Pickles, above n 15, 25; Merritt, above n 10, 97.

¹⁵⁶ Ingham, above n 2, 10.

Chapter Four: Recommendation to the Legislative Council

Pursuant to the resolution of the Legislative Council of 30 August 2011 referring the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011 to the Environment and Planning Legislation Committee, the Committee has considered the Bill and recommends that the Legislative Council take note of the following:

1. A national beverage container deposit scheme is being considered by COAG and it may be premature to introduce a state scheme until this process is complete;
2. Many of the legal and constitutional issues raised with the Committee in relation to the Bill may be resolved by a national container deposit scheme;
3. The lack of independent economic modelling for the proposed Victorian scheme and the possibility that it would incur funding shortfalls which would have to be covered by Victorian taxpayers;
4. Concerns around the impact of the proposed scheme on established kerbside collection systems for local government and the recycling industry. The Committee notes that South Australia had no such system or infrastructure in place when its container deposit scheme was introduced;
5. Concerns about the viability of reverse vending machine technology. While acknowledging the sponsor's view that the proposed scheme could operate without this technology, this would alter cost assumptions provided to the Committee;
6. A series of suggested improvements to the Bill put forward by its sponsor in response to evidence received by the Committee. These would require

the Bill to be substantially redrafted and were not able to be explored in the Inquiry process due to the late stage that they were raised.

The Committee encourages the Victorian Government to continue to engage with the COAG process to further investigate the viability for the establishment of a national container deposit scheme which, in the opinion of the Committee, is a process better placed to resolve the issues identified in this Report.

Committee Room
22 February 2012

Appendix A: Submissions received

1. Port Phillip Conservation Council Inc
2. Mr Bruce Jeffery
3. Yarriambiack Shire Council
4. Wyndham City Council
5. Benalla Litter Prevention Group
6. Horsham Rural City Council
7. Environment Protection Authority South Australia
8. Mr David Evans
9. Ararat Rural City Council
10. Mrs Nina Scott
11. Mitchell Shire Council
12. Alcoa Australia Rolled Products
13. Surf Coast Shire Council
14. Mornington Peninsula Region Waste Management Group
15. Corangamite Shire Council
16. Clean Up Australia
17. Australian Food and Grocery Council
18. Mr Donald Chambers
19. Keep Australia Beautiful Victoria Inc
20. Vic Can
21. Ms Mary Penney
22. Moreland City Council
23. Total Environment Centre Inc
24. Mornington Peninsula Shire Council
25. Confidential Submission
26. Friends of the Earth, Melbourne
27. Gannawarra Shire Council
28. Boroondara City Council
29. Victorian Local Governance Association
30. Mr Richard Allen
31. Northern Grampians Shire Council
32. Yarra City Council
33. Maribyrnong City Council
34. Bayside City Council
35. Colac Otway Shire Council
36. Ms Olivia Jacka
37. Mildura Rural City Council
38. Dr Ross Headifen
39. Yarra Ranges Shire Council
40. City of Whittlesea
41. Confidential Submission
42. Municipal Association of Victoria
43. Revive Recycling
44. City of Greater Shepparton
45. Boomerang Alliance
46. Barwon Regional Waste Management Group
47. Confidential Submission

Appendix B: List of witnesses

Wednesday 12 October 2011, Parliament House, Melbourne

Ms Colleen Hartland, MLC
Ms Elizabeth Ingham, Electorate Officer

Wednesday 9 November 2011, Parliament House, Melbourne

Australian Food and Grocery Council
Ms Jenny Pickles, General Manager, Packaging Stewardship Forum
Mr Tony Mahar, Director, Sustainable Practices and Economics

Boomerang Alliance
Mr Dave West

Thursday 17 November 2011, Parliament House, Melbourne

Keep Australia Beautiful Vic
Ms Kirsty Richards, Chair, Board of Management of KABV Inc
Mr Bruce West, Secretary and Public Officer

Boroondara City Council
Mr David Powell, Director Environment and Infrastructure
Mr David Crowe, Manager Infrastructure Services
Mr Sam Di Giovanni, Coordinator Waste Management

Yarra Ranges Shire Council
Cr Samantha Dunn

KESAB Environmental Solutions
Mr John D Phillips OAM, Executive Director

The Hon David Evans

Revive Recycling
Mr Markus Fraval, Chief Executive Officer

Environment Protection Authority (Victoria)
Mr John Merritt, Chief Executive Officer
Mr Steve Watson, Project Officer

Visy
Mr Tony Gray, Director, Sustainability
Mr Michael Eadie, General Manager, Commercial
Mr Jon Ward, National Environment Manager

Monday 28 November 2011, Parliament House, Adelaide

Dr Raul Barreto

Environment Protection Authority South Australia and ZeroWaste South
Australia

Mr Tony Circelli, Acting Chief Executive Officer
Ms Fiona Harvey, Acting Director Strategy and Sustainability
Mr Jeff Todd, Manager Sustainability and Local Government
Mr Vaughn Levitzke, Chief Executive Officer, ZeroWaste

Recyclers of South Australia

Mr Philip Martin, President
Mr Neville Rawlings, Vice-President
Mr Bob Naismith, Executive Officer

Local Government Association of South Australia

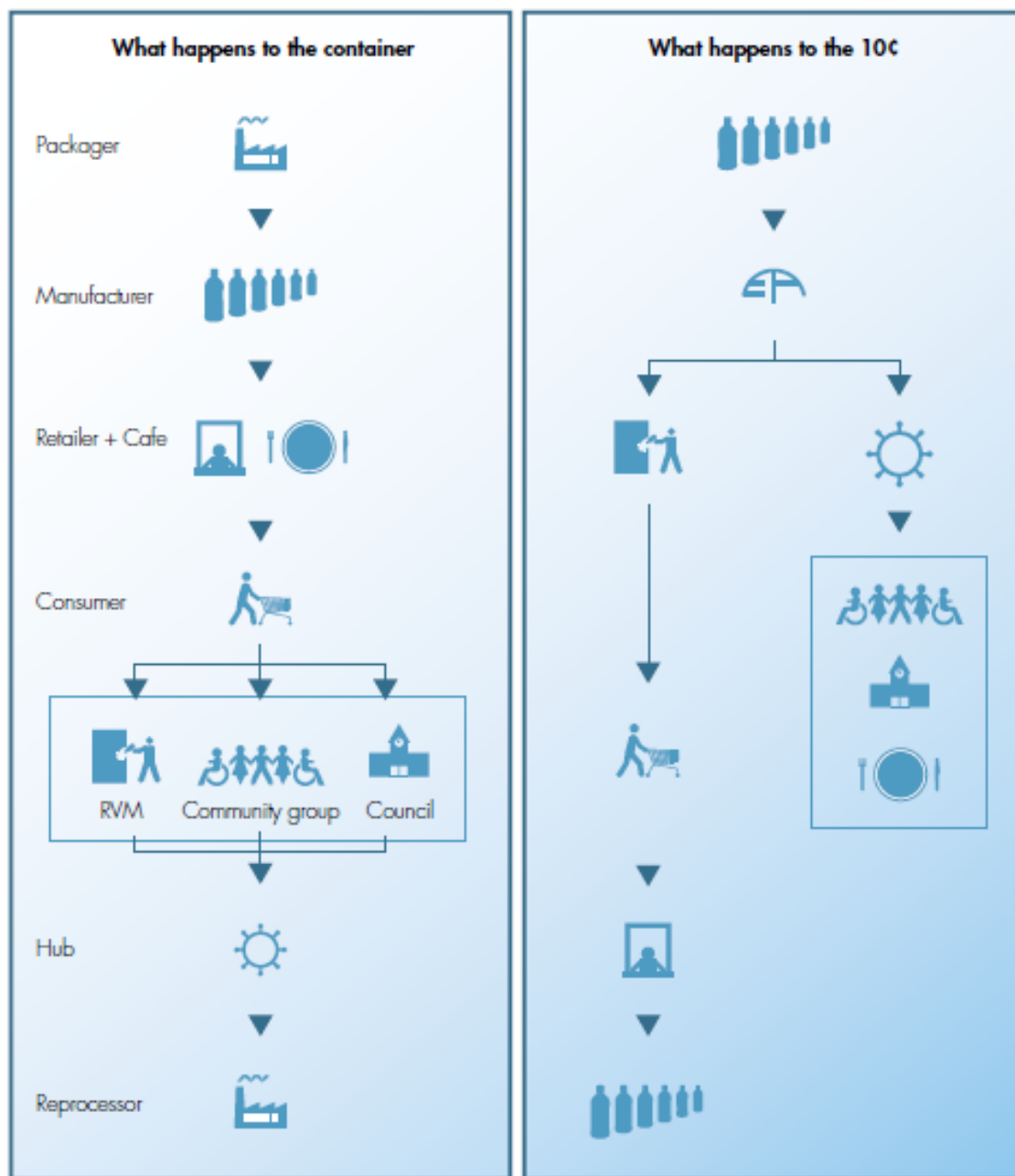
Ms Cate Atkinson, General Manager, Intergovernmental Relations
Mr Simon Thompson, Policy Officer, Waste and Environment

Wednesday 8 February 2012, Parliament House, Melbourne

Ms Colleen Hartland, MLC

Ms Elizabeth Ingham, Electorate Officer

Appendix C: Diagram of proposed Victorian container deposit scheme



Source: Colleen Hartland, *Turning Rubbish into Community Money* (2011) 8.

Appendix D: Away from home recycling infrastructure

Away from home recycling infrastructure



Away from home combined recycling and rubbish bins



Source: Ms Colleen Hartland.

Appendix E: Letter from the Clerk



14 November 2011

Mrs Inga Peulich MLC
Chair, Environment and Planning Legislation Committee
55 St Andrews Place
EAST MELBOURNE VIC 3002

Dear Mrs Peulich

I refer to your letter of 9 November 2011 relating to the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011.

As you are no doubt aware, the Bill in question is largely the same as that introduced in the Council in 2009.

In my opinion the Bill is capable of being introduced in the Council and does not infringe sections 62 to 64 of the *Constitution Act 1975* for the following reasons:

- The Bill establishes a Beverage Container Deposit and Recovery Scheme to be funded by the beverage container environmental levy (i.e., a self-funding scheme and therefore does not require additional funding from Consolidated Revenue).
- The Environment Protection Authority will administer the scheme from within existing operations and no new body is proposed to be established to operate the scheme. Indeed, the principles appearing in the *Environment Protection Act 1970* lend weight to the argument that the proposals of this Scheme are in-keeping with the Act.
- According to the Bill, the levy proposed will pay for re-cycling services, off-set collection industry costs, involve product development for improving recyclables and reusability of containers and consumers and importers or producers are able to claim back the levy and therefore pose no additional burden on the people.
- The levy collected is to be received by the Environment Protection Authority's Environment Protection Fund (which already exists) and monies will be paid out of the same Fund, thereby avoiding any payments from Consolidated Revenue and hence will not infringe the Assembly's financial prerogative.
- The penalties proposed for non-compliance or contravention of the Bill are not penalties under the *Infringements Act 2006* and therefore the question of

refunds of penalties (if any) from Consolidated Revenue does not arise
because –

- (1) if the penalty is imposed and paid, it goes no further; and
 - (2) if the penalty is imposed, it may be challenged in court and pending the
outcome, it may still be required to be paid or overturned and no refund
from Consolidated Revenue will occur.
- Nowhere in the Bill is it stated that any shortfall in the Fund is to be paid from
Consolidated Revenue.

I have also attached a chart concerning this matter which may be of assistance to
your Committee.

Yours sincerely

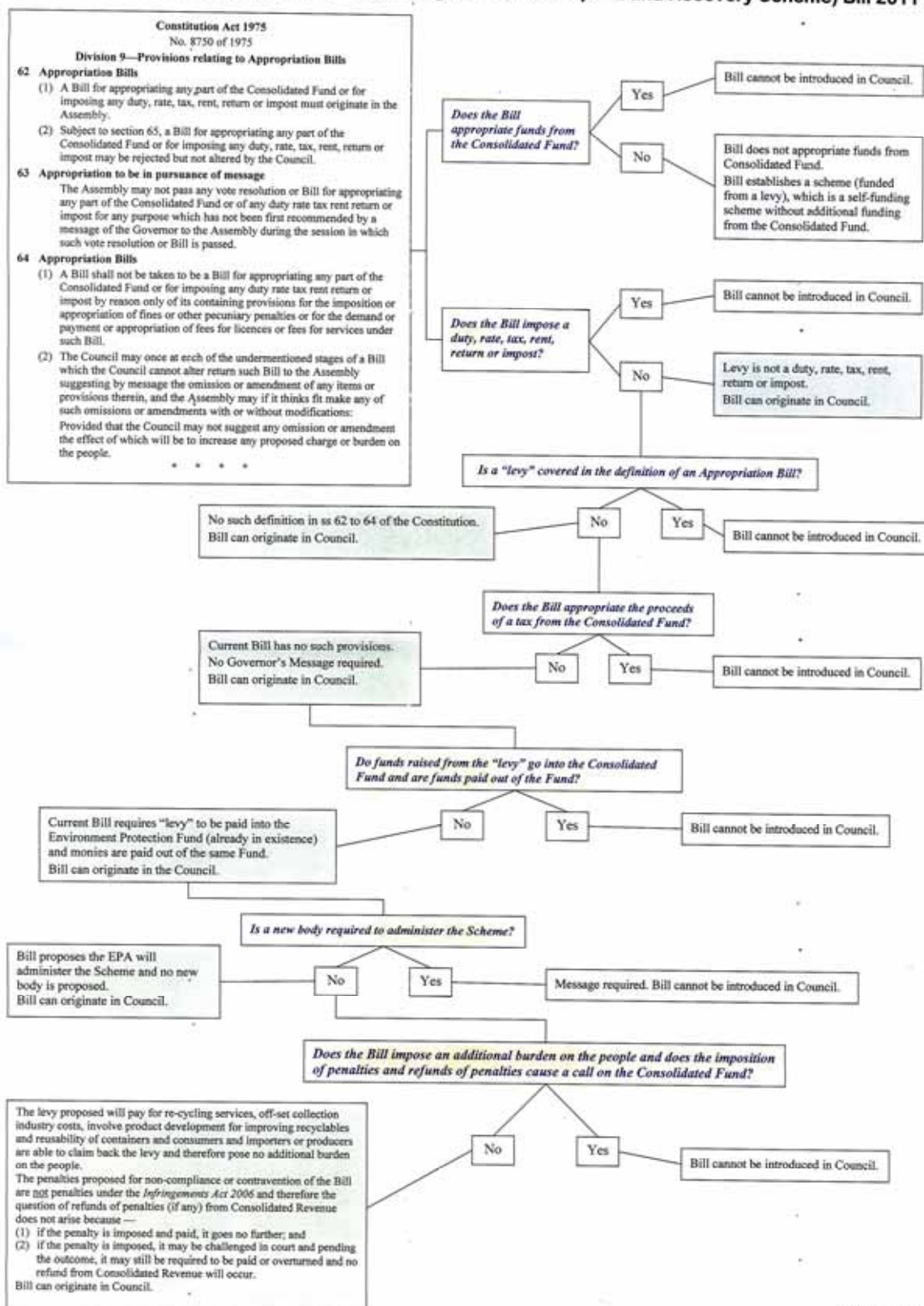


Wayne Tunnecliffe
Clerk of the Legislative Council

Attach.

Inquiry into the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011

Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011



20 October 2011

Appendix F: Legal Opinion from Victorian Government Solicitor's Office



VICTORIAN GOVERNMENT SOLICITOR'S OFFICE

Your reference:

Our reference: 1112762

All correspondence to:
PO Box 4356
Melbourne 3001 Australia
DX 300077 Melbourne

Contact details

Alison O'Brien, (03) 8684 0416 (direct line)
alison.o'brien@vgso.vic.gov.au

Rachel Amamoë, (03) 8684 0247 (direct line)
rachel.amamoë@vgso.vic.gov.au

22 June 2011

Mr Mark Payton
Solicitor
Legal Services
Environment Protection Authority
GPO Box 4395
Melbourne Vic 3001

By email: mark.payton@epa.vic.gov.au

And by post

Dear Mr Payton

Environmental Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011

Purpose

1. You have asked us to provide advice on the Environmental Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011 (**the Bill**).

Background

2. On 1 June 2011, Ms Colleen Hartland of the Victorian Greens introduced the Bill into the Legislative Council. The Bill's second reading speech occurred on 15 June and debate was adjourned until 29 June. The Bill raises various constitutional issues, specifically in relation to:

2.1 s 62 of Victoria's *Constitution Act 1975* (**the Victorian Constitution**); and

2.2 s 90 of the Commonwealth's *Constitution Act* (**the Commonwealth Constitution**).

3. Accordingly, you have asked us to advise on these issues.

Summary of advice

4. A duty of excise is a tax on a step in the production, manufacture, sale or distribution of goods. In our view, the levy provided for in the Bill most likely constitutes a duty of excise in contravention of s 90 of the Commonwealth Constitution. If the Bill is passed by the State Parliament we are of the view that, if challenged, it will be held by a Court to be constitutionally invalid in breach of s 90.

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5. Further, as the Bill provides for the imposition of a tax, s 62 of the Victorian Constitution requires that it originate in the Legislative Assembly, not the Legislative Council. Accordingly, unless the Bill originates from the Legislative Assembly, it should not be entertained by the Assembly.
6. This does not mean that container deposit legislation cannot be introduced by the State Parliament, merely that such a scheme should be carefully drafted in order to minimise the prospect of constitutional invalidity. Consideration should also be given to the interaction of any scheme with the proposed Commonwealth scheme.

Proposed legislation

Legislative history

7. On 1 April 2009, Ms Hartland introduced the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2009 (the **2009 Bill**) into the Legislative Council. The 2009 Bill was passed by the Legislative Council, but the Legislative Assembly refused to entertain the 2009 Bill for reasons discussed below at paragraphs 33 to 40. Apart from some minor amendments, the current Bill is the same as the 2009 Bill. Therefore, much of the Parliamentary debate and other information that relates to the 2009 Bill is also relevant to the consideration of the current Bill.

Legislative scheme

8. The Preamble to the Bill describes its purpose as being to amend the *Environment Protection Act 1970* (the *Act*) to "make further provision for environmentally sustainable uses of resources and best practices in waste management by establishing a beverage container deposit and recovery scheme to be administered by the Environment Protection Authority and for other purposes." Clause 4 of the 2011 Bill inserts a new Division (proposed ss 52-52O) in Part IX of the Act.
9. A critical element of the beverage container deposit and recovery scheme (the **Scheme**) is the imposition of a 'beverage container environment levy' (the **levy**). Section 52D provides for the imposition of the levy in the following terms:

Unless an exemption granted under section 52N applies, a person who imports a beverage container into Victoria for the purpose of sale within Victoria or produces a beverage container in Victoria for the purpose of sale within Victoria is liable to pay a beverage container environmental levy payable for each beverage container in accordance with section 52F.
10. The amount of the levy is specified by s 52E to be 10 cents or a higher prescribed amount and is payable in respect of each beverage container.¹ Section 52F requires that the levy is paid to the EPA within 14 days after the end of the month in which the beverage container was sold in Victoria.
11. Section 52 provides that the Scheme is to be administered by the EPA and s 52C(1) provides that the functions of the EPA in doing so are, relevantly, to:

¹ Pursuant to the Bill 'beverage container' means a container containing a beverage that is produced for the sale of the beverage in a sealed form to the consumer which has a capacity not exceeding 3 litres and 'beverage' includes carbonated or non carbonated soft drink, fruit juice or water, any alcoholic drink, milk and any other liquid intended for human consumption that is prescribed to be a beverage. Classes of beverages and beverage containers can be prescribed not to be included within these definitions.

- 3 -

- (b) collect the beverage container environmental levy;
- ...
- (d) authorise a premises to be an authorised collection depot;
- (e) authorise a premises to be an authorised transfer station;
- ...
- (g) facilitate the promotion of the Scheme;
- (h) provide grants or other financial incentives to encourage the use of recyclable and reusable containers and the increased use of recycled material from beverage containers;
- ...
12. The proponents of the Scheme assume that manufacturers will recover the amount liable to be paid to the EPA by way of levy, by incorporating that cost into the price of the beverage. The report *Turning Rubbish into Community Money*² (the **Hartland Report**), notes that the 'deposit' (ie levy) would be incorporated into the wholesale price of the beverage and passed on to the consumer.³ According to Ms Hartland, "the cost of a container deposit system is borne by those who create the litter - the ones who throw away the opportunity by not redeeming their 10 cent deposit."⁴
13. The 10 cent levy may be 'refunded' in exchange for the empty beverage container at 'authorised collection depots'.⁵ In addition, it is proposed that 'authorised transfer stations' will act as a collection depots for large-scale redeemers and will receive containers collected by depots, process the containers and transport them to the nearest recycler.⁶ Section 52L provides that an authorised collection depot or transfer station must pay a refund of the levy to a person returning a used beverage container in accordance with that section. Sections 52I and 52J provide for the EPA to approve premises to be 'authorised collection depots' and 'authorised transfer stations' respectively. Those sections provide for the EPA to enter into an agreement with an operator of an authorised collection depot or an authorised transfer station, which may include provision for the EPA to pay the relevant operator the "refund value"⁷ paid by the depot or transfer station.
14. Therefore, it is contemplated that the funds raised by the levy will be used, in large part, to reimburse authorised transfer stations and collection depots for the refunds paid to consumers who return beverage containers.⁸ However, according to the Hartland Report "14.4% of deposits will not be redeemed, creating a surplus of \$56.3 million per

² The first edition of *Turning Rubbish into Community Money* was commissioned by Ms Hartland before introducing the 2009 Bill. Ms Hartland released the 2011 edition of the report on 15 June 2011.

³ Hartland Report, pp 1 and 11

⁴ Hansard, 2009 Bill, Legislative Council, 24 June 2009, p 3260 (Ms Hartland)

⁵ See the Bill's Explanatory Memorandum, Clause 4, p 3

⁶ See the Bill's Explanatory Memorandum, Clause 4, p 3. Also see the Hartland Report, pp 9-11 which refers to authorised collection depots as "depots" and authorised transfer stations as "hubs."

⁷ Defined as 10 cents or any prescribed higher amount.

⁸ See the Bill's Explanatory Memorandum, Clause 4, p 3

annum."⁹ Assuming a surplus is indeed realised, s 52(2) of the Bill sets out a number of specific purposes¹⁰ for the use of available funds, being:

- (a) market creation and support for collected beverage containers and materials;
- (b) financial support for kerbside recycling services . . . ;
- (c) further offsetting the collection industry costs for the operation of the Scheme;
- (d) product development to improve the recyclability and reusability of beverage containers;
- (e) other activities and programs connected with recycling which the Authority considers will facilitate environmentally sustainable uses of resources and promote best practices in waste management.

Discussion

Section 90 of the Commonwealth Constitution

15. Section 90 of the Commonwealth Constitution provides:

On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

16. Accordingly, the States may not legislate to impose duties of customs or excise on goods. The rationale behind s 90 was to give the Commonwealth effective control over economic policy affecting the supply and price of goods within the Commonwealth and to prevent differential taxes on goods or differential bonuses on the production or export of goods diverting trade or distorting competition.¹¹
17. On current authority, a **duty of excise is a tax on a step in the production, manufacture, sale or distribution of goods**, whether of foreign or domestic origin (emphasis added).¹² Thus, a tax on the production, manufacture, sale or distribution of beverage containers that was imposed by a State would risk breaching s 90 of the Constitution.
18. Ms Hartland has stated that the levy imposed by the Bill is "not an excise."¹³ In order to determine the accuracy of that position, it is necessary to address two questions:
- 18.1 Does the levy imposed in accordance with the proposed s 52D of the Act comprise a 'tax'?

⁹ Hartland Report, p 9. Note that the first edition of the Hartland Report estimated that 17.7% of deposits would not be refunded creating a surplus of \$63.5 million.

¹⁰ Without limiting the generality of the functions referred to in s 52C(1)(g) and (h).

¹¹ *Ha and Hammond v NSW* (1997) 189 CLR 465 (*Ha*), 499 per Brennan CJ, McHugh, Gummow and Kirby JJ; *Capital Duplicators v ACT (No 2)* (1993) 178 CLR 561 (*Capital Duplicators*), 585-86 per Mason CJ, Brennan, Deane and McHugh JJ.

¹² *Ha*, 499 per Brennan CJ, McHugh, Gummow and Kirby JJ; *Capital Duplicators*, 589-90 per Mason CJ, Brennan, Deane and McHugh JJ.

¹³ Hansard, 2009 Bill, Legislative Council, 29 July 2009, p 3596 (Ms Hartland)

18.2 If the levy is a tax, is it a tax imposed 'on' goods?

The imposition of a tax

19. A 'tax' is considered to have both positive and negative characteristics. Focussing first on those positive characteristics, an impost which is "a **compulsory exaction of money by a public authority for public purposes, enforceable by law**"¹⁴ (emphasis added) is, prima facie, a tax. In our view, it is likely that the levy will meet this threshold criteria for a 'tax'.
20. In determining whether an impost is compulsory, it is enough that there is a *practical*, if not a legal, compulsion to pay the charge.¹⁵ In this case, however, there is plainly a legal obligation to pay the levy. Section 52D imposes a civil penalty in the case of failure to pay the levy and where the breach is continuing, a cumulative penalty accrues for each day of the contravention.¹⁶
21. There is no strict requirement for characterisation as a tax that the impost be paid into consolidated revenue or to a public body.¹⁷ In this case however, the levy is payable to the EPA under proposed s 52F and s 52C(1)(b), and is intended (consistently with the general functions of the EPA under s 52C) to be directed into the Environment Protection Fund.
22. Further, the Bill contemplates that the funds raised by the levy will be used for public purposes. The funds are to be applied to encourage consumers to use recycling facilities. Furthermore, it is contemplated that surplus funds will be directed to support and promote practices to protect the environment in line with the functions of the EPA under the Bill.¹⁸
23. It should be noted that an impost will not be a tax, even if it satisfies the description in paragraph 19 above, if it is a fee for services rendered, a charge for the acquisition or use of property (eg a royalty), a fee for a privilege (eg. a licence fee) or a fine or penalty.¹⁹
 - 23.1 However, the levy would only qualify as a 'fee for services' if it correlated with the receipt of some service by producers or importers of beverage containers in Victoria. As discussed, levy funds will be used to encourage the deposit of empty beverage containers at collection points. More generally, the funds may be used to promote the Scheme and broader community and industry participation in recycling of consumer packaging. It is difficult, in our view, to identify any benefit which will flow directly to producers and importers as a consequence of the levy. We consider it unlikely that the levy could be characterised as a fee for services.

¹⁴ See *Matthews v Chicory Marketing Board (Vic)* (1938) 60 CLR 263, 276 per Latham J. It is not essential that the impost be levied by a public authority or that it be levied for public purposes for it to be a tax: *Air Caledonie International v Commonwealth* (1988) 165 CLR 462 (*Air Caledonie*), 467; *Australian Tape Manufacturers Association Ltd v Commonwealth* (1993) 176 CLR 480 (*Australian Tape Manufacturers*), 501.

¹⁵ *Air Services Australia v Canadian Airlines* (1999) 2002 CLR 133, 189.

¹⁶ Bill, s 52D "Penalty: penalty units and in the case of a continuing offence a daily penalty of 1200 penalty units for each day the offence continues after a finding of guilt or after service by the Authority on the defendant of notice of contravention of this section."

¹⁷ *Australian Tape Manufacturers Association* at 503.

¹⁸ As discussed above, s 52C identifies a range of potential 'public' uses to which the EPA may direct funds available to it.

¹⁹ *MacCormick v FCT* (1984) 158 CLR 622, 639; *Air Caledonie* at 467.

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- 23.2 It is not possible to characterise the levy as a 'royalty' because it does not relate to the acquisition of property derived from the State.
- 23.3 Likewise, the levy could not on any view qualify as a fine or a fee for a penalty.
- 23.4 Further, we do not consider it likely that the levy would be characterised as a licence fee. Neither s 52D nor the surrounding 'implementation' provisions in ss 52E and 52F are consistent with the levy being a licence fee. The levy is not 'dressed up' as a licence fee. Most importantly, the total amount of the levy is not referable to the costs of regulation²⁰ – rather, its amount is directly referable to the number of beverage containers sold within a specified period.

A tax imposed 'on' goods

24. If the levy is a tax, as we believe it is, in order to determine whether it is a duty of excise we must consider whether "it is a tax imposed 'upon' or 'in respect of' or 'in relation to' goods or commodities (as opposed to persons, services or income).
25. It seems clear that a beverage container is a 'good': it is saleable and has a discernable value for the producers and importers identified in s 52D. It is, therefore, necessary to closely analyse s 52D (and the surrounding implementation provisions) to establish whether the levy is in respect of or in relation to the beverage container. In our view, this question must be answered affirmatively.
26. In *Anderson's Pty Ltd v Victoria*,²¹ Barwick CJ confirmed that the broad meaning of an excise as a tax upon or in respect of goods at any point including the point of manufacture or production, as they pass to consumption. He described the parameters for assessing the connection between the charge and the goods in the following terms:
- ...in arriving at the conclusion that the tax is a tax upon the relevant step, consideration of many factors is necessary, factors may not be present in every case and which may have different weight or emphasis in different cases. The 'indirectness' of the tax, its immediate entry into the cost of the goods, the proximity of the transaction it taxes to the manufacture or production or movement of the goods into consumption, the form and content of the legislation imposing the tax – all are relevant considerations.
27. The character of a tax as a duty of excise is indicated most plainly when the amount of the tax is determined by reference to the quantity or value of the goods.²² That is clearly the case here where the levy is imposed as an *ad valorem* rate that varies depending on quantity of the goods. However, in *Hematite Petroleum Pty Ltd v Victoria*,²³ Mason J said:

²⁰ This may be disputed by Ms Hartland who said that the 10 cent levy "is intended to pay for the recycling scheme and bears a close relationship to the amount required to serve that purpose (Hansard, 2009 Bill, Legislative Council, 29 July 2009, p 3596). The amount of 10 cents was also chosen to provide uniformity with the SA and NT scheme (Hansard, 2009 Bill, Legislative Council, 24 July 2009, p 3263)

²¹ (1964) 111 CLR 353 at 365.

²² However, for a tax to be found to be an excise, it is not necessary that its amount be determined by reference to the quantity or value of goods: *Matthews v Chicory Marketing Board (Vic)* (1938) 60 CLR 263, 304 per Dixon J; *Hematite Petroleum Pty Ltd v Victoria (Hematite)* (1983) 151 CLR 599, 633 per Mason J; *Mutual Pools & Staff Pty Ltd v Federal Commissioner of Taxation*

²³ *Hematite* (1983) 151 CLR 599.

To justify the conclusion that the tax is upon or in respect of the goods it is enough that the tax is such that it **enters into the cost of the goods** and is therefore reflected in the prices at which the goods are subsequently sold. It is not necessary that there should be an arithmetical relationship between the tax and the quantity of value of the goods produced or sold ... still less that such a relationship should exist in specific period during which the tax is imposed. This is because there are many cases where an examination of the relevant circumstances will disclose that a tax is a duty of excise notwithstanding that it is not expressed to be in relation to the quantity or value of the goods.²⁴ [emphasis added]

28. In our view, the levy will most likely qualify as a tax imposed "on" goods, as it is calculated by reference to the number of containers sold. The levy is also likely to enter the cost of containers (see paragraph 12 above).
29. Accordingly, the levy is likely to be considered a duty of excise for the purposes of the prohibition in s 90 of the Commonwealth Constitution. Several factors point to real difficulties in defending the constitutional validity of the levy imposed by s 52D: the levy is a mandatory exaction of monies by statute; the levy is payable directly to a public authority for a public purpose that is in "the public interest";²⁵ the levy is imposed at a time directly referable to the point of sale of a beverage container.²⁶ Moreover, the levy will most likely enter the cost of the beverage containers.

SA and NT's container deposit legislation

30. Both South Australia (SA) and the Northern Territory (NT) have container deposit legislation which, like the proposed Victorian legislation, provides for a scheme whereby refunds are made to consumers who deposit empty beverage containers with approved waste management operators. While we have not analysed the SA and NT legislation to determine constitutionality, we note that the Scheme proposed by the Bill in Victoria is quite different to the SA and NT container deposit schemes. The SA and NT schemes are based on an industry run arrangements. Neither scheme is funded by a levy paid to a public authority.
31. Neither the State nor any public authority receives monies under the SA scheme, other than basic regulatory fees paid to the South Australian Environment Protection Authority. Under the SA scheme beverage manufacturers pay a deposit to a supercollector who sets up a collection system and retains the manufacturer's funds until the consumer returns the used containers and redeems the deposit. The manufacturer passes the cost of the deposit and a handling fee to the consumer in the retail price. Refunds are paid to the consumer by retailers²⁷ and collection depots²⁸ depending upon the type of beverage container that is deposited. Unclaimed deposits are retained by the beverage manufacturer. The supercollector on-sells the use containers to beverage manufactures, distributors and wholesalers.²⁹

²⁴ *Hemalite*, 632.

²⁵ *Mathews v Chicory Marketing Board (Vic)* (1938) 60 CLR 263, 281 per Rich J, and *Australian Tape Manufacturers Association Ltd v Commonwealth* (1993) 176 CLR 480, 503.

²⁶ See proposed s 52F of the Act.

²⁷ *Environment Protection Act 1993* (SA) s 70

²⁸ *Environment Protection Act 1993* (SA) s 71

²⁹ The SA Scheme is helpfully summarised in the report of the Commonwealth's Environment, Communications, and the Arts Legislation Committee in relation to the Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2009 (Cth)

32. NT's container deposit legislation is based on SA's scheme. Although we have not analysed these schemes to determine whether or not they impose a duty of excise in breach of s 90 of the Commonwealth Constitution, it is relevant to note the comments made during the second reading speech of Northern Territory's Environment Protection (Beverage Containers and Plastic Bags) Bill 2010, which was passed by the NT Parliament in March 2011:

The bill establishes a container deposit scheme in which the beverage industry has a central role in the implementation. I understand some in the community believe government should run the scheme, or that it should be managed by an independent operator. **Government has looked very closely at those alternatives** and, while there are attractive elements with both, **it is quite clear that either would be at risk of being invalid under the Australian Constitution.** The provisions in the bill have, therefore, been modelled on those in the South Australian container deposit legislation.³⁰ [emphasis added]

Section 62 of the Victorian Constitution

33. As noted above, the 2009 Bill was passed by the Legislative Council and sent to the Legislative Assembly in 2009. However, the Legislative Assembly refused to entertain the 2009 Bill as it sought "to impose a levy, which is unlawful, being the exclusive power of the Legislative Assembly as set out in the Constitution Act".³¹

34. Section 62(1) of the Victorian Constitution provides:

(1) A Bill for appropriating any part of the Consolidated Fund or for imposing any duty, rate, tax, rent, return or impost must originate in the Assembly. [emphasis added]

35. For the reasons discussed above at paragraphs 19 to 23, we are of the view that the levy imposed by the Bill is a tax. Therefore, s 62(1) requires that it originate in the Legislative Assembly, not in the Legislative Council (the origination rule).

36. Further, the suggestion that the Assembly's Standing Order 93 provided the Assembly with an avenue for dealing with Council Bills that fit the description of those Bills mentioned in s 62 of the Victorian Constitution³² is not accurate. Standing Order 93 provides as follows:

Council's powers to impose fees

When any pecuniary penalty, forfeiture or fee is authorised, imposed, appropriated, regulated, varied or removed by any:

(1) Bill received from the Council; or

(2) Amendments to a bill returned to the House by the Council-

The House does not insist on its privileges when:

³⁰ Hansard, Environment Protection (Beverage Containers and Plastic Bags) Bill 2010 (NT), second reading speech (Mr Hampton), 25 November 2011

³¹ Hansard, 2009 Bill, Legislative Assembly, 24 June 2009, p 2098

³² Hansard, 2009 Bill, Legislative Council, 29 July 2009, p 3596 (Ms Hartland)

- (a) The object of the pecuniary penalty or forfeiture is to secure the execution of the Act or the punishment or prevention of offences; or
 - (b) The fees are imposed in respect of benefit taken, or service rendered under the Act, and in order to secure the execution of the Act, and are not made payable into the Treasury, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus; or
 - (c) The bill is a private bill for a local or personal Act.
37. According to Mr Taylor³³ in *The Constitution of Victoria*, the statement - "does not insist on its privileges" - refers to the Legislative Assembly's "general right to primacy in financial legislation supposed to be inherited from British Parliamentary practice rather than established by black letter law . . . almost all of which now seem to be covered by s 64(1)"³⁴ of the Victorian Constitution.³⁵ Section 64(1) excludes from s 62, Bills which contain provisions imposing fines or pecuniary penalties or which involve licence fees or fees for services. As Mr Taylor notes, this provision is essentially redundant as such Bills "would not normally come within the definition of taxation Bills anyway."³⁶
38. In any event, Standing Orders are merely rules adopted by each House for the conduct of their own business. Standing Orders "cannot change the ordinary law of the land, as they are not statutes"³⁷ and certainly cannot override the clear provisions of the Victorian Constitution.
39. In our view, Standing Order 93:
- 39.1 does not apply to the Bill (given that the Bill is a taxation Bill); and
 - 39.2 even if it did so, could not 'trump' the clear provisions of s 62 of the Victorian Constitution.
40. Therefore, there is no escape from the clear requirement of s 62(1) of the Victorian Constitution that taxation Bills must originate in the Legislative Assembly. Given these clear constitutional requirements, the Legislative Assembly should not entertain the Bill unless it is reintroduced directly into the Legislative Assembly.

Proposed Commonwealth scheme

41. The Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2010 (**the Commonwealth Bill**) was introduced into Federal Parliament on 30 September 2010³⁸ by Senator Ludlam. The Commonwealth Bill establishes the national Beverage Container Deposit and Recovery Scheme; enforces and imposes civil penalties on persons or body corporate for breaches of the scheme; provides for an annual report on the operation of the proposed Act; and contains a regulation making power.

³³ Senior Lecturer, Faculty of Law, Monash University

³⁴ Greg Taylor, *The Constitution of Victoria*, The Federation Press 2006 (*The Constitution of Victoria*), p 362

³⁵ Order 93 predates s 64(1) of the Victorian Constitution, *The Constitution of Victoria*, p 362

³⁶ *The Constitution of Victoria*, p 362. Also refer to our discussion of the definition of a "tax".

³⁷ *The Constitution of Victoria*, pp 372-373. See also *Stockdale v Hansard* (1839) 112 ER 1112 at [191]

³⁸ *Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2010* was introduced into the Senate and read a first and second time on 14 May 2010 and lapsed at the end of Parliament in 28 September 2010.

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42. The Commonwealth Bill has not yet passed the Senate. In March 2011, in response to a question from Senator Ludlam in relation to the status of the national container deposit scheme, Senator Conroy responded that the Regulation Impact Statement (RIS) on packaging and litter will provide an analysis of the net community benefit of a number of possible national measures, including a national CDS, for consideration by governments.³⁹ On 4 November 2010 the Environment Protection and Heritage Council said that they would release a public consultation RIS by the end of 2011.⁴⁰
43. Ms Hartland said in relation to the proposed Commonwealth Bill that the Greens would strongly support a national scheme and that "we designed the [Victorian] Bill so that one day it could become part of a national scheme."⁴¹ Indeed, many of the provisions of the Commonwealth Bill are identical to the Victorian Green's Bill save that the Victorian Green's Bill refers to the EPA instead of a government 'department' as administrator of the Scheme and replaces the term 'beverage container environmental deposit' in the Commonwealth Bill with 'beverage container environmental levy'.
44. Section 7 of the Commonwealth Bill states that it is "not intended to exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act." Nevertheless, if both the Commonwealth and State Bills were to become law, it would be advisable to give some consideration to the extent to which concurrent operation was possible. Section 109 of the Commonwealth Constitution may become relevant. We would be happy to advise on that question should the need arise.

Conclusion

45. The Bill to establish a beverage container deposit and recovery scheme in Victoria is likely to be considered a Bill that imposes a duty of excise contrary to the Commonwealth Constitution. Further, the Victorian Constitution requires that a taxation Bill such as the proposed Bill originate in the Legislative Assembly.
46. Should the State Parliament wish to proceed with establishing a container deposit and recovery scheme, we advise that the scheme is crafted in such a way that it minimises the prospect of constitutional invalidity.
47. We trust our advice has been of assistance. If you would like to discuss any aspect of this advice please contact Rachel Amamoo on 8684 0247 or Alison O'Brien on 8684 0416.

Yours faithfully
Victorian Government Solicitor's Office



Sue Nolen
Acting Victorian Government Solicitor



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22 June 2011

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And by post

Dear Mr Payton

**Environmental Protection Amendment (Beverage Container Deposit and Recovery
Scheme) Bill 2011 - Mutual Recognition Act issues**

Purpose

1. You have asked us to provide advice on the Environmental Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011 (**the Bill**).

Background

2. On 1 June 2011, Ms Colleen Hartland of the Victorian Greens introduced the Bill into the Legislative Council. The Bill's second reading speech occurred on 15 June and debate was adjourned until 29 June. We have provided you with separate advice on the constitutional issues raised by the Bill. You have also requested that we address any issues raised by the Bill in light of the provisions of the *Mutual Recognition Act 1992* (Cth).

Summary of advice

3. Should State Parliament wish to proceed with establishing a container deposit and recovery scheme, to ensure the integrity of any such scheme we recommend that an exemption from the Mutual Recognition Act is sought.

Discussion

Mutual Recognition Act


4. The principal purpose of the Commonwealth's Mutual Recognition Act is to promote the goal of freedom of movement of goods and service providers in a national market

in Australia. Victoria has enacted mirror legislation adopting the Mutual Recognition Act¹ as have each of the other States and the Territories.

5. The effect of ss 9 and 10 of the Mutual Recognition Act is that goods produced or imported into one State can be sold in another State without the need for compliance with certain requirements relating to sale such as:

A requirement that the goods satisfy standards of the second State relating to . . . their packaging, labelling, date stamping or age.²
6. In the Bill, proposed s 52G prohibits the sale of a beverage container unless the container is labelled "X refund at an authorised collection depot when sold in Victoria," where "X" means 10c or the higher amount prescribed by s 52E. Proposed s 52H states that a person must not sell a beverage container unless the container is labelled in accordance with the prescribed labelling requirements. The provisions of the Mutual Recognition Act mean that the Bill's labelling requirements would not have to be complied with in respect of beverage containers produced or imported in another State and sold in Victoria. Such an exemption would undermine the Scheme given that it purports to apply to beverage containers imported into Victoria for the purposes of sale within Victoria (see proposed s 52D).
7. However, this anomaly can be corrected. Section 14 of the Mutual Recognition Act provides for permanent exemptions to that Act. For example, exempt legislation (which includes any amendment or replacement of the exempt law to the extent that it deals with the same subject matter) is listed in Schedule 2 and includes South Australia's *Beverage Container Act 1975*. In order to maintain the integrity of a container deposit scheme in Victoria, should such legislation be passed in Victoria, it would be necessary to seek an exemption from the Mutual Recognition Act.
8. We trust our advice has been of assistance. If you would like to discuss any aspect of this advice please contact Rachel Amamoo on 8684 0247 or Alison O'Brien on 8684 0416.

Yours faithfully
Victorian Government Solicitor's Office



Sue Nolen
Acting Victorian Government Solicitor

¹ In Victoria, the *Mutual Recognition Act* is adopted pursuant to Victoria's *Mutual Recognition (Victoria) Act 1998*.

² *Mutual Recognition Act*, s10(b)

Appendix G: Minutes of the Proceedings

The Minutes of the public proceedings of the Committee in relation to consideration in detail of the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011 were as follows:

Wednesday 8 February 2012

The Committee met in the Legislative Council Committee Room to consider the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011.

Members Present: Mrs Inga Peulich, MLC (Chair)
Ms Gayle Tierney, MLC (Deputy Chair)
Mr Andrew Elsbury, MLC
Mrs Jan Kronberg, MLC
Mr Craig Onrarchie, MLC
Ms Sue Pennicuik, MLC
Mr Johan Scheffer, MLC
Mr Lee Tarlamis, MLC (substitute for Mr Tee, MLC)

Witnesses: Ms Colleen Hartland, MLC
Ms Elizabeth Ingham

Also in Attendance: Mr Keir Delaney, Secretary
Mr Anthony Walsh, Research Assistant

1. Meeting Opened

The Chair declared the meeting open at 8.04 p.m.

2. Consideration in detail

Clause 1

Discussion ensued.

Put and agreed to.

Clause 2

Discussion ensued.

Put and agreed to.

Clause 3

Discussion ensued.

Put and agreed to.

Clause 4

Discussion ensued.

Put and agreed to.

Clause 5

Discussion ensued.

Put and agreed to.

Clause 6

Put and agreed to.

Clause 7

Put and agreed to.

Public deliberations concluded at 9.36 p.m.

Appendix H: Transcript of the Proceedings

CORRECTED VERSION

STANDING COMMITTEE ON ENVIRONMENT AND PLANNING

LEGISLATION COMMITTEE

Inquiry into Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011

Melbourne — 8 February 2012

Members

Mr A. Elsbury
Mrs J. Kronberg
Mr C. Ondarchie
Ms S. Pennicuik
Mrs I. Peulich

Mr J. Scheffer
Mr L. Tarlamis
Ms G. Tierney

Chair: Mrs I. Peulich
Deputy Chair: Ms G. Tierney

Staff

Secretary: Mr K. Delaney

Witnesses

Ms C. Hartland, member for Western Metropolitan Region, and
Ms E. Ingham, Electorate Officer.

The CHAIR — Welcome, colleagues, and welcome to our proponents of the legislation that we have been asked to consider. The committee agreed to hold tonight's final public hearing with Ms Hartland to consider the bill clause by clause, following our research and taking of evidence, both intrastate and interstate. This attempts to replicate the consideration of legislation in the committee of the whole Council stage on the floor of the house. All past legislation committees have considered bills in a clause-by-clause manner. In this case Ms Hartland and Ms Ingham, her adviser, will answer questions from members in the same way that members would question a minister. The transcript usually forms a part of the committee's report. We have not been through this before; this is a new experience for the Legislative Council committees, so we are winging it a little and will feel our way as we go along.

I declare the Legislative Council Environment and Planning Legislation Committee public hearing open to consider in detail the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011. As I have outlined, the committee will adopt a similar procedure as that adopted by the house. I remind members that they may move amendments to the bill tonight; however, in the event that an amendment is unsuccessful, they will not be precluded from moving the same amendment should the bill proceed to a committee of the whole stage in the Legislative Council.

Welcome back to the committee, Ms Hartland and Ms Ingham, and I remind you that all evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and by the Legislative Council standing orders. You are protected against any action for what you say here today, but obviously that does not extend outside this room. All evidence is being recorded by Hansard. A copy of the transcript will be attached to the committee's final report. You will receive your copy of the transcript in a few days, and you will have an opportunity to correct any typographical errors. We have allowed about 5 to 10 minutes for you to make an opening statement or comments, and then we will proceed to consideration of the bill clause by clause.

Ms HARTLAND — I would like to speak on two issues that have been raised during the committee hearing — that is, legal issues and the commonwealth EPHC process. I would like to make some suggestions and commentary on possible changes to my bill that may address some of the concern raised during the committee hearing. This is the first piece of legislation to be examined by the new committee system, so this would be a good example of a committee examining a bill and suggesting improvements. I am actually more interested in Victoria having the benefit of a 10-cent deposit and refund system than I am in having a win for myself or the Greens or in just being right. If members of the committee think the concept is good but the detail is wrong, then let us talk about the detail.

I will give a brief summary of five potential changes that the committee might consider. The first is a big change that would impact on the entire bill. The EPA in my bill might be replaced by an independent body set up jointly by the drinks companies and recycling industry, at arms length from the government. This would bring my scheme closer to the South Australian system and deal with the excise issue in the same way the South Australian system does. If an independent body had the recycling industry on equal footing with drinks companies, we might not have the problems that were hinted at in the South Australian hearings where drink companies are in control.

Secondly, if the committee is concerned about the impact on households, it might consider exempting plain milk, which is also exempted in South Australia. I do not personally support exempting milk but I would accept a recommendation to do so. The argument in favour is that plain milk containers are used at home and are seldom littered. The argument against is that plain milk is also used away from home in places like cafes.

Thirdly, since there has been a great deal of interest and speculation on the EPHC process and what might come of it, the committee may recommend that my bill be set aside for a period of, say, 12 months to give that process time to be resolved. This might take the form of a trigger provision in the legislation, which is why I have raised it in the list of potential changes. It needs to be acknowledged that the current Premier, Deputy Premier and Minister for Environment and Climate Change are strong advocates of a national system. A 12-month delay or a trigger provision would give

them time to make some progress. The minister could go to COAG and champion a national scheme from a position of certainty. It would also give the opponents some incentive to come to the table.

Fourthly, this committee should certainly consider recommending that a Victorian scheme accept the return of containers that were purchased in South Australia and the Northern Territory, with a view to making reciprocal arrangements. Since I tabled my bill in the Victorian Parliament an almost identical one has appeared in Western Australia, tabled by the ALP. It is word-for-word identical to mine down to the smallest comma, except for two interesting differences. One is that WA already has a waste authority, but the other difference is that it provides for WA to accept containers that were purchased in South Australia and the Northern Territory. This is a common-sense measure for people travelling between states. It would not create any incentive to bring containers across the border, but it would pave the way for a national system.

The fifth potential change relates to the commencement date, which needs to be changed as July 2012 is now almost upon us.

Many committee members and those giving evidence anticipated the then-forthcoming consultation regulatory impact statement for packaging which has been prepared as part of the commonwealth EPHC process. The consultation RIS was released in early December, about two weeks after the last public hearing date for this committee, which was in late November. I would encourage the committee to seek an extension of time so you can call an expert witness such as Jeff Angel, who made a written submission to this committee and who has years of experience in the EPHC process. In the absence of any expert, I will give you a brief summary. You should have a copy of the RIS in front of you, and I will hand up my notes which include some page references for data analysis.

Firstly, and most importantly, the RIS is not about drink containers. It conflates all packaging, so it disguises both the drink container problem and the benefits of a container deposit system — see especially pages 8, 10 and 18 for this. Paper and cardboard really pad out the numbers because they have very high rates of consumption and recycling. This tends to hide the poor recycling figures for some drink container materials, especially away from home — see pages 17 and 18.

The RIS makes no recommendation, but it notes the estimate of recycling targets and costs is more reliable for CDL than any other options because it is less speculative, as you will see on page 35. This is confirmed on page 1 of the ABARE peer review, which says:

The increased beverage container recycling rate assumptions for CDL options are likely to be more precise than for other options.

The EPHC process confirms there would be very strong gains for local government. There is really no doubt that the financial position of kerbside recycling is improved by a container deposit system. I will hand out the summary prepared by Jeff Angel which is based on the last three EPHC reports before the consultation RIS. The RIS goes on to say that CDL has the most benefits before subtracting cost plus all the co-benefits — see page 39 where it says:

Highest benefits and avoided costs, due to savings to the kerbside recycling system and the price premium that was applied to materials collected through a CDS.

This confirms what you heard in South Australia about the benefits to kerbside and the price premium for clean, well-sorted recycle. It says on page 54 that the costs to government are low and notes that the costs are further offset by avoided costs of regulation. The RIS includes some extraordinary assumptions which bump up the apparent costs of CDL — for example, what it calls the household participation cost. It assumes that every single container would be returned by car on a journey that has no other purpose. It gives a money value to the time taken by each member of the public, plus the petrol and the wear and tear on the car — see pages 41 and 42. Conversely, it does not give a money value to some important benefits like recycling industry jobs, avoided costs from contamination and co-benefits to other recycling that the committee heard about in South Australia — page 43. Even with that bias, the calculated costs to the economy are low, but you have to drill down a bit to get to them. Table 19 on page 51 estimates that CDL would cost \$1.4 billion

over 20 years to the Australian economy. Option 4(a) is based on the same model as my bill. Victoria has about 30 per cent of the market share, so that is about \$21 million per year, including all the infrastructure. If you take into account that the household participation cost is nonsense and the benefit of more employment, the co-benefits for other recycling and all the rest, one thing becomes clear: if you are willing to allow private investment in infrastructure, then CDL works financially. Before I leave table 19, look at the figure of \$463 million over 20 years Australia-wide in the market value of resources. That is the value of material that is not presently being collected in kerbside bins and public place bins but would be collected by container deposits.

Before I finish with the financial issues I would like to say that the document provided to the committee by the EPA, which purports to be the sensitivity analysis, is completely inaccurate. They get gross figures mixed up with net figures, volumes mixed up with numbers; they make mistakes all over the place. It is very sloppy work indeed. I would welcome questions on that one, because if you use their own methodology and fix the mistakes in every scenario they present, the scheme would be wildly profitable.

The committee has been presented with several legal opinions since I last appeared. There is nothing new on mutual recognition. There is no conceivable reason why the commonwealth would refuse to issue an exemption while the 12-month state-issued exemption applied. Nor is there anything new in section 92 of the commonwealth constitution. This bill does not discriminate between Victorian and interstate manufacturers.

I presume that the committee has had the advantage of receiving advice from the Clerk of the Legislative Council about whether this bill may be introduced into the Legislative Council. I have not seen that advice of course. Indeed I will make a general point. If this bill is considered to be a money bill, it may be introduced in the upper house if the Legislative Assembly waives its privileges. This would have no effect on the legality of the legislation once it is passed. This is an issue for the government — does it want it or not?

The only remaining controversial issue is excise — the section 90 tax issue. Even then the VGSO does not rule out a container scheme for Victoria but advises:

... merely that such a scheme should be carefully drafted in order to minimise the prospect of a constitutional invalidity.

It notes that the South Australian and Northern Territory schemes do not involve the state or a public authority. It implies that the Northern Territory government opted not to run its own scheme to avoid creating an excise. That is why I have suggested that the committee discuss whether the scheme should be amended to include an independent body run by the recycling and bottling industries instead of the EPA. The joint body could administer the scheme, respond to changes in the commodities market and create market opportunities for recycle, minimise red tape for the drinks company and head off any problems in the scheme before they manifest. This would also eliminate any controversy about the bill originating in the upper house. That is where I will leave it.

The CHAIR — We will now move to the clause-by-clause consideration of the bill.

Ms HARTLAND — If it is acceptable to the committee, Ms Ingham and I will both be answering questions, as we have in the past.

The CHAIR — Yes, interchanging. Thanks.

Ms HARTLAND — Thank you; I appreciate that.

Clause 1

The CHAIR — In relation to clause 1, the purposes clause, does any member have any questions for Ms Hartland or general questions in relation to the bill?

Ms PENNICUIK — Ms Hartland, you mentioned that one of the possibilities for change could be to replace the EPA in your bill with an independent body similar to that in South Australia. That would mean the purpose would obviously alter. It would be administered by an independent body. You would not name the independent body?

Ms HARTLAND — No, I think you would just name it as an independent body because then the government could look at the structure of what that could be. We are trying to be really flexible about this, because, as I said in my remarks, we want the scheme, so we want that cooperative way of doing it.

Ms PENNICUIK — Ms Hartland, do you think that would make many substantial consequential changes to the bill?

Ms HARTLAND — Yes, it would.

Ms INGHAM — It would require almost a complete redrafting.

Ms PENNICUIK — That is what I thought.

The CHAIR — It is such a significant change and there are implications.

Ms HARTLAND — It has also been, I would have to say, through this hearing process, which I think has been hugely beneficial, that we have been able to look at a way of actually making this better. From listening to the transcripts and by listening to your questions, I can only say how valuable I think this process has been.

The CHAIR — Is there a question on this side?

Ms TIERNEY — It is not so much a question. I suppose I am just questioning the process, or putting on the table the process we are going through now, given that what is being proposed is dramatically different to what we have in front of us.

Mr SCHEFFER — I guess all we can do is, taking note of what Ms Hartland has said, deal with the bill as is. Then it would be Ms Hartland's prerogative, if she wishes, to withdraw it and then review the bill.

Ms HARTLAND — I think that what we are suggesting is that by putting this up in this way it is an opportunity for the committee to consider how it might like to amend the bill. We are making a number of suggestions as to how it might be amended, but it is up to the committee to do that. I know I am putting forward something vastly different, but it is very much from what we have heard.

The CHAIR — My proposal, if I may, and I would certainly welcome the committee members' comments, is to work through the program as set out and offer members the opportunity of moving any amendments, and then following this process we will have a private discussion as to the way forward.

Mr ELSBURY — On that clause and with the possible amendment in mind, basically all of the studies that we have been doing and all of the work we have been doing has been based on the EPA actually being the authority. That makes it rather difficult for the report to be finalised. I am just concerned, with this new information coming to hand, about whether or not any costings have been done for a new authority being developed outside of the EPA. Once upon a time we were talking about it being a function of the EPA to conduct. Now we are talking about a new office undertaking the work. That suggests to me there could be additional funding constraints brought in because of the fact that we are bringing in a new organisation.

Ms INGHAM — First of all, we still stand by the bill as it is. The greatest benefits for the state of Victoria are with a public authority like the EPA running the scheme, because the state retains control of the purse strings and can use the unredeemed deposit fund and so on to create benefits for the state that the state directs. The advantage of an industry body at arms length from government is

purely to get around the excise issue, and it eliminates any financial implication for the government. It would mean that it would actually not be a money bill; there would be no implication at all, as there is not in South Australia or the Northern Territory.

The CHAIR — Although not entirely, if I may, Ms Ingham, because it is always possible for a government to subsidise if there is a deficit. So I accept what you are saying except there are examples where government subsidies can be put in place to support or prop up a financial business case.

Ms INGHAM — In terms of the figures for recycling and the value of the recycle, none of that would change.

Mr ONDARCHIE — Can you just run through for us again why you would want to shift away from the EPA? What was the thinking behind that?

Ms HARTLAND — As Ms Ingham has said, we actually still believe it should be in the EPA, but this has come about because we want to be flexible about this. We are making suggestions to the committee that there might be other ways it might want to consider. As Ms Ingham has said, we still think it should be the EPA, because then the government is the one getting the money, so then that money can be used on recycling projects, helping with kerbside et cetera. We are putting out suggestions for the committee — —

Ms INGHAM — Because of the very strong advice provided to this committee by the Victorian Government Solicitor's Office, which raised constitutional issues to do with excise in section 90 of the commonwealth constitution. It suggested that for a bill to be constitutional it would need to be very carefully worded, and it seemed to us that the advice suggested that the way to do that is the way that it outlined. It said that similar problems do not exist in South Australia because the government does not touch the money. Parliament legislates, but it is not a public body. The disadvantage of that was hinted at in the transcript that we read from South Australia. But the advantage is if this committee feels that the excise issue is an insurmountable barrier to the EPA running the scheme, and if that is the only barrier, then let us get over that barrier.

Mrs KRONBERG — I would just like to pick up on your tone in how you are bringing us up to date, and I am happy for Ms Hartland or Ms Ingham to answer this. It seems to me that there are still a lot of exploratory elements here in terms of the shape of an overarching authority or agency or whatever we want to call it. There are things that are yet to be plumbed; we cannot dimension it, so I must say that I have a rising consternation coming through from the revelations in this session on the basis that sometimes when you have the opportunity to drill down through things there are all the things that can delay and derail. In terms of the advice that you have received on the issue of excise it is a really fundamental problem for what is generally an important and laudable concept.

My question is: can either of you let me know of other areas — because this is a seismic shock issue, an issue that is hard to dimension. This is an issue that would be an impediment because there is unexplored territory. There is a range of things, and all of the competing interests from sovereign states too, whether it was ever to be accepted in a COAG setting as well.

Ms HARTLAND — If I can maybe answer the part about why we have done this, and then I will hand over to Ms Ingham to talk more about the details. What we are trying to do here today is give the committee some room to move because of what we have heard from the committee — these are the concerns that have been repeatedly raised. So we are putting forward some scenarios about how we could fix it. I realise that what we have also done — and I think the term you used was a 'seismic shift', and I know that that has probably made it somewhat difficult for the committee too. But we wanted to be able to present some other ideas, and these ideas are coming from the transcripts, from the witnesses and from your questions. I will hand over to Ms Ingham- — —

Ms INGHAM — The only thing I would add is that in terms of packaging, recycling and the process that has been going on with reports at the Victorian and federal level over a number of years, if there is one thing we know, it is that container deposits work. So that at least is a level of certainty

that we can start with. We have this EPHC report that has just come out. It is the latest in a series that have all said the same thing: that it is good for kerbside; it works. We have had additional confirmation on this occasion, so if you are looking for certainty, it says the figures for container deposits have the higher certainty, and the ABARE peer review confirmed they have the highest certainty.

We have perhaps shaken things up a bit by turning up at the 11th hour and saying, 'Here are some options'. Sorry about that — —

The CHAIR — Could I just ask a follow-up question as well. The EPHC process — I think you are generally respectful of this, because obviously if we could have a national scheme that irons out all of those things, brings all the stakeholders around the table and takes away the controversies, there is the greater chance of it, firstly, going through and, secondly, being successful. You have suggested that the committee may consider it. I do not wish to pre-empt anything, of course; it would be inappropriate to do so. The committee may decide to recommend that the bill be set aside for 12 months to see the EPHC process conclude. Are you able to tell us, given your recommendation, does that mean that the EPHC process is to last for 12 months? Is that the indication?

Ms INGHAM — I neglected to find out the date of its final report.

Ms HARTLAND — It has been going on for some time, as you would be aware.

Ms INGHAM — It has been going on for years.

Ms HARTLAND — It is about 10 years.

The CHAIR — But it seems to be gaining some momentum?

Ms INGHAM — Yes.

Ms HARTLAND — Yes. The other thing, too, is that a number of states have talked about the need for a national scheme. Every state agrees that there is a need for a national scheme, but we just do not seem to be able to, as yet, get over the hurdle. Obviously the environment minister has indicated his support but said that he wants a national scheme, as has the Premier, as has the Deputy Premier. That was one of the other reasons we put that in to give it that bit of space.

The CHAIR — And if that were to occur, that recommendation, then that would give us the opportunity and perhaps the proponents an opportunity to finetune the bill in line with obviously what may or may not have transpired.

Ms HARTLAND — Yes, because we have always thought that a national scheme was the logical way to go.

Ms INGHAM — And given that this COAG process has been going on for donkey's years, we think the most likely way for a national process to come about is for an enthusiastic advocate — an environment minister from Victoria — to negotiate with proponents in other states and make it happen despite the COAG process rather than because of it.

Mr SCHEFFER — I just want to come back to your comments, Chair, earlier on that this is the first time this committee has done this and therefore in a way we are trying out how we operate. In light of that I support your proposal on the way we go forward, which was that we deal with the bill as is, and I will add the comment that I do not think it is the job of this committee to renegotiate a piece of legislation that is before the Legislative Council. That is the proponent's prerogative and obligation, and I personally do not think we should be getting into the whys and wherefores and what-ifs and what-may-bes. This is the document that you have tabled in the chamber and this is the document that we will deal with, and while we might make some amendments in the way we would in the committee of the whole, that would be as far as it goes. I think, as Mrs Kronberg was saying before,

that these are pretty fundamental changes in the bill, and I do not want to be thinking about another bill that I have not thought about before. I want to deal with this bill.

The CHAIR — I do not disagree with your comments.

Ms TIERNEY — I agree with Johan in terms of the way forward, but before we start that, can I just ask a practical question? You mentioned that there is a bill in Western Australia. Has it actually been tabled, and who was sponsoring it?

Ms HARTLAND — It is the ALP.

Ms INGHAM — Yes, the opposition leader, I believe, tabled it. Sorry, I do not have a copy with me.

Ms TIERNEY — And that is based on an EPA-type model?

Ms HARTLAND — Yes.

Ms INGHAM — Yes. It is based — —

The CHAIR — You are saying that it is based on your bill, with very little difference, and obviously imitation is a very high form of flattery.

Ms INGHAM — We were delighted.

Ms HARTLAND — And the difference is that WA already has a waste authority. So that is — —

Ms TIERNEY — That is the vehicle.

Ms HARTLAND — Yes. So they already have — —

The CHAIR — Machinery.

Ms HARTLAND — A way of dealing with it.

Ms TIERNEY — Yes.

The CHAIR — Okay. In view of the comments, and I do not think there is too much disagreement — I am just trying to read between the lines — I suggest that we move forward then.

Ms HARTLAND — I do understand, Mr Scheffer, what you are saying, and I think we are all a bit new to this. What we are trying to do is be of assistance, and it may have actually made it more difficult but we are not actually doing this to try to undermine the process of the committee, because we actually think it is really important.

The CHAIR — We may judge the outcome in two years time.

Mr ELSBURY — I was just about to say that by showing us all of these amendments that you are willing to put forward, you are showing a flexibility in the proposal that is being put forward, and that is admirable, but certainly it has caused a bit of a culture shock here, considering what we have been exploring over that time.

Mrs KRONBERG — In trawling through the history of the deliberations of COAG, where would you rank your proposition in terms of erudite input, research, the product that we see today, your bill — —

Ms INGHAM — If it is of assistance — —

Ms KRONBERG — Just in terms of your own analysis of what have been the barriers in the deliberations of COAG and how you feel you are offering — perhaps if I could just indulge by saying — in a ‘generic’ sense, in terms of how broad your research has been and how engaged you have been in this process for some time, in terms of the offering to COAG for its deliberation over the decades? We have not had some sort of contextualising.

Ms INGHAM — We have not been involved in the EPHC process, which I understand has only recently become a COAG process — just for terminology’s sake. We have not been involved in that, but in the consultation RIS option 4A is our model. So certainly our model for legislation at a state level which could be rolled out nationally has been on the table for some time and is well accepted. So it has all of those elements that we may appear this evening to have put up for grabs. That model does not include the authority because it does not have any impact on the figures for recycling, whether it is run by a state authority or otherwise, but it includes milk, for example, which we have put on the table tonight. It is very much our model that they are discussing as one of their options, one of their five options.

The CHAIR — Thank you, Ms Ingham. If I could actually bring the discussion on the purposes clause to a conclusion and try to get a bit of momentum. My intention is to put the question that clause 1 stand part of the bill.

Clause agreed to.

Clause 2

The CHAIR — Do any members wish to move any amendments to clause 2?

Mr SCHEFFER — I just have a question. That date is obviously not right, as you said, but would you substitute that for another time?

Ms HARTLAND — Yes.

Ms INGHAM — It would depend on what was recommended, whether a trigger clause ended up in the bill. Ms Hartland tabled the bill in June, with 12 months, so we would imagine a 12-month period would be appropriate.

The CHAIR — Does any member wish to move any amendments to clause 2?

Mr ELSBURY — Given the evidence we have got in front of us, or that we are dealing with here and now, you would probably be looking at a 2013 start date — —

Ms INGHAM — Indeed.

Mr ELSBURY — So 1 July.

The CHAIR — I am also noting Mr Scheffer’s comments that it really is up to the proponents to amend the legislation.

Mr ELSBURY — Okay.

Ms HARTLAND — Yes, that is fine.

Mr ELSBURY — Fair enough.

Clause agreed to.

Clause 3

The CHAIR — Does any member have any question for Ms Hartland in relation to clause 3, in terms of definitions?

Mr SCHEFFER — I do. I just have a quick question about 'beverage container'. The definition says:

beverage container means a container containing a beverage ...

I gather it means a container that contained a beverage; you are talking about the empties. That implies to me that it is still full. There is a very slight ambiguity. It should read 'a container that contained a beverage'.

Ms INGHAM — Yes, contains or has contained.

Mr SCHEFFER — Yes. That is right.

Ms INGHAM — Indeed.

The CHAIR — Good pick up, Mr Scheffer.

Ms INGHAM — You may want to propose that change.

Mr ELSBURY — I have a question, and possibly I am missing something here, but I have also picked up in the definition of 'beverage' that at the very end it says 'but does not include a beverage container of a class that is prescribed not to be a beverage container'. By its very definition, if you are saying it is a beverage, it is a beverage. Are we saying a liquid?

Ms INGHAM — Clause 6 provides for the EPA to prescribe a beverage not to be a beverage for the purposes of the definition of 'beverage'.

Mr ELSBURY — Okay.

Ms HARTLAND — Try to say it really quickly.

Mr ELSBURY — Three times?

Ms INGHAM — What that means is there might be discussions about whether, for example, vinegar is a beverage.

Ms HARTLAND — That is a classic one.

Ms INGHAM — The EPA would be able to say that.

Mr ELSBURY — Would that also include some imported beers that are using glass of an inferior quality that would cause a contamination of the glass products?

Ms INGHAM — We would love to do that, but we are not sure that it would be allowed. For example, it would be delightful to give the EPA the power to get rid of composite containers that are not easily recycled and cause that Pyrex mountain that you spoke about, but we were advised early in the piece that we cannot do that.

Mr ELSBURY — Even if it is an imported beer in an imported bottle, we would not be able to exclude it from this process?

Ms INGHAM — That I do not know. I think we were only advised on interstate trade.

Mr ELSBURY — Although I am concerned that I immediately went for an imported beer, but anyway that is my problem.

Ms HARTLAND — Yes. You are not supporting the local industry.

Mr SCHEFFER — Also on the definition of 'beverage container', paragraph (c) says 'a liquid paperboard or composite carton'. You would be aware, of course, that those containers also contain

custards, creams, sauces and various other products. My question is: is there a technology that distinguishes by some coding that it is in fact a beverage?

Ms INGHAM — Yes, the bar code. If it is based on reverse vending machines, as this legislation is, the bar code readers are very fast and can easily do so. Of course it is not just liquid paperboard; glass containers and glass bottles contain things that may be prescribed not to be a beverage for the purposes — —

Mr SCHEFFER — You said the bar code contains all the necessary information to effect these laws.

Ms INGHAM — Yes.

The CHAIR — Ms Hartland, the bill defines a 'beverage container' essentially as a sealed container not exceeding 3 litres. Why is it limited to beverage containers that are less than 3 litres.

Ms HARTLAND — It is the size of the reverse vending machines. At this stage they can only take materials up to 3 litres.

The CHAIR — So they are limited by existing technology.

Ms HARTLAND — That might change in five years time, but at this stage it is up to 3 litres. There is very little that is over 3 litres as well.

Mr ELSBURY — Just on that, is the use of a reverse vending machine a deal breaker? If it is found that the vending machine technology is just not up to the work that we expect of it — —

The CHAIR — The volume.

Mr ELSBURY — The volume, is that a deal breaker for this particular legislation, or are we able to continue on with a more manual or alternate means of sorting.

Ms INGHAM — Yes, it could be done.

Mr ELSBURY — Yes, it is a deal breaker or yes, it is okay?

Ms INGHAM — We think the reverse vending machines make it a lot better and bring it into urban areas and so on, but it is not a deal breaker at all.

The CHAIR — It does not hinge on that?

Ms HARTLAND — The reverse vending machines are obviously the part that is the absolute convenience for families to be able to deal with this.

Mrs KRONBERG — My question is related to the question from Mr Elsbury. One thing has just struck me. With the reverse vending machine, the absorption offering and the cash or voucher offering, what is your thinking about it being a honey pot for children?

The CHAIR — Did you say 'honey pot' or 'money pot'?

Mrs KRONBERG — A honey pot for children and therefore a place where you could see criminal or predatory behaviour ancillary to the noble activities in what you are trying to achieve. Have you thought that through from a public safety perspective?

Ms HARTLAND — No, I cannot say that I have. At the last hearing at which I appeared I brought some photos from my trip to Germany, and the machines were all inside the supermarket. They were not on the outside; they were on the inside. There is lots of supervision and lots of oversight. I saw them in very crowded places, so it is not something I have thought about. But where I saw them it was very crowded, with lots of adults around. I do not think it would be a huge

problem. I would presume too that it is going to mainly be adults taking the bottles back, because they will be taking multiples back.

Ms INGHAM — We do envisage them being in schools, which would be safe places, supermarket car parks and so on where there are large numbers of people.

Mrs KRONBERG — Do you see your having oversight of the placement of them in some kind of accreditation process or who is entitled to have them on their property?

Ms INGHAM — Yes. The bill provides for the EPA to licence these places.

The CHAIR — Can we just restrict ourselves to the consideration of definitions in this clause. I have a quick question. Is it intended the scheme would apply to therapeutics, such as cough medicines?

Ms INGHAM — No, it is not intended to apply.

The CHAIR — How is 'sealed form' to be interpreted? Could this mean the scheme applies to takeaway coffee containers if they have no spill lids put on them?

Ms INGHAM — That is not intended. We drafted the definition of 'container' with the intention to preclude those containers.

The CHAIR — Does the scheme apply to beverages sold in casks?

Ms INGHAM — It does, but that is when Ms Hartland spoke about difficulties. One of the difficulties would be beverages sold in casks. We hope by giving the EPA the regulatory powers that are in clause 6 that down the track, when it becomes easier to deal with large casks, they would be able to be included.

The CHAIR — Are there any further questions on the definitions?

Mr SCHEFFER — If it does not have a bar code that gives the right sign, then it is not in it; is that what you are saying about coffee containers?

The CHAIR — However, at the same time we did hear Ms Ingham and Ms Hartland say that the vending machine was not necessarily the deal breaker and a more manual sorting would not necessarily preclude them.

Ms INGHAM — Having said that, later on when we go through the bill you will see that a depot must give a refund. So we have drafted the legislation to make it possible for a reverse vending machine to give a refund on every occasion.

The CHAIR — Are there any further questions in relation to definitions contained in clause 3?

Clause agreed to.

Clause 4

Mr SCHEFFER — In new section 52, headed 'Objective', in the third line it says it regulates the use. I understand that it regulates sale and recovery of beverage containers. I was not sure what you meant by 'use'.

Ms INGHAM — Indeed. No, use only in terms of collecting together for recycling, but in no other sense.

Mr SCHEFFER — Okay, so it should not be there; right.

The CHAIR — Are there any further questions in relation to clause 4?

Mr ONDARCHIE — I am at new section 52C, specifically paragraph (2), which is on page 5. I said when we last met that I wanted to give this bill the best opportunity to get through. I am worried about this. In relation to the potential use of available funds by the authority, I draw your attention to proposed section 52C(2)(b) and (2)(c) vis-a-vis financial support for kerbside recycling and offsetting the collection costs of the industry. Prima facie this could mean that a council which has a revenue shock because of the downturn in kerbside recycling could seek compensation from the authority. It has a significant budget impact on any government in this state, and I respectfully suggest to you that on the basis of that this bill will struggle to get up.

Ms INGHAM — There is no trigger for the government to compel the authority to pay compensation, but the authority may use any available funds for any of the following purposes. We put these things in to guide the authority as to things that they may use and also to guide the Parliament for the sorts of things that the bill envisages the authority doing, but there is nothing to —

Ms HARTLAND — There is nothing to say that compensation — —

Mr ONDARCHIE — I know you are not saying it compels anybody to do anything here, but in a sense it does allow a discussion between local government and the state government of the day to seek compensation through this bill.

Ms INGHAM — Clause 2 would stand; in fact the bill would stand without clause 2 because it is merely guidance. It would guide conduct and guide regulation, but — —

Ms HARTLAND — We also do not envision that for local government — —

The CHAIR — You mean part 2 of clause 4?

Ms HARTLAND — We actually believe that this would be a financial benefit.

Ms INGHAM — Sorry, new section 52C.

Mr ONDARCHIE — We will talk about it at another point.

Mr SCHEFFER — I could not hear what Ms Hartland said.

Ms HARTLAND — Sorry. We do not envision that it would be an economic problem for local government. Everything that we have researched and everything that we have presented says to us that this is actually a benefit to local government and, while I accept that some local governments have said that they need more time and more research into it, I think it has huge benefits for local government.

Mr SCHEFFER — Through you, Chair, that is not an answer to Mr Ondarchie's question, though.

Ms HARTLAND — Yes, I accept that.

The CHAIR — Do you have a follow-up question, Mr Scheffer?

Mr SCHEFFER — I did not understand what (a) meant, subclause (2)(a).

Ms HARTLAND — Market creation and support for collector beverage containers and materials?

Ms INGHAM — That goes to the issue of secondary markets.

Mr SCHEFFER — Is 'market' the verb there? To market creation and support, or is it — —

The CHAIR — It is a noun.

Ms INGHAM — To create markets. It is a noun.

Mr ONDARCHIE — It is a market development function?

The CHAIR — Market as in the private sector.

Mr SCHEFFER — Market creation.

The CHAIR — The private sector may create schemes that complement, or for the other — —

Mr ONDARCHIE — I am with Mr Scheffer. There is a problem with that first word.

Mr SCHEFFER — I just cannot quite get my head around it. I think I know what it is dancing around.

The CHAIR — Could you clarify?

Ms INGHAM — What the intent is — that market is intended as a verb to create — —

Ms HARTLAND — To create markets.

The CHAIR — To create markets?

Ms INGHAM — Or to create opportunities for — —

Ms PENNICUIK — Is it more to facilitate?

Mr ONDARCHIE — Promotional?

Ms INGHAM — Facilitate, promote, yes.

Mr ONDARCHIE — You are talking about some sort of promotional effort here, are you?

The CHAIR — Right. The scheme of collection, is it?

Ms INGHAM — No. Once the materials have been collected — because the thing that the bill does, which has been pointed out to us, is it only collects together the containers for recycling. The challenge then is to have them recycled and for those jobs to be in Victoria, so we want some of the money that is brought in through the scheme to be used for that, or the opportunity to use the fund for that.

Ms HARTLAND — But we can see the difficulty that you are raising.

Mr SCHEFFER — Chair, if I could just ask procedurally, given that this proposed section 52 is quite long and there are some overlapping bits, would you be stepping us through each separately? The reason I am asking that is because if we wanted to talk about the EPA costings, we could talk about it at proposed section 52A or we could talk about it at 52E.

The CHAIR — So you want to break it down into steps?

Mr SCHEFFER — Yes.

The CHAIR — Could I just gain an indication as to how many questions there may be in relation to this particular clause altogether?

Mr SCHEFFER — Are you taking proposed section 52 as a clause?

The CHAIR — As in clause 4.

Mr ONDARCHIE — I have a few.

Mr SCHEFFER — But then clause 4 has proposed section 52 and it goes for pages.

The CHAIR — That is right. Let me gauge how many questions there may be from committee members. Mrs Kronberg, do you have questions that you will be asking, several questions? Do we need to break it down, Mr Ondarchie?

Mr ONDARCHIE — I reckon I have a dozen.

Mr ELSBURY — It is quite substantial, Chair.

The CHAIR — Let us take it step by step. Division 6, proposed section 52, are there any further questions in relation to 52? That is at the bottom of page 3, clause 4.

Mr ONDARCHIE — We talked about use, did we not?

Ms HARTLAND — Yes.

The CHAIR — So 52A, 52B, 52C.

Mr ONDARCHIE — I would take you to proposed section 52C(2)(d), which is second from the bottom on page 5, about product development. I am not quite sure what the intent of this is. Typically product development in any industry is driven by the market, not by some regulatory authority. Are you using this in terms of potential R and D grants or to drive the research and development? Are you expecting a state-owned authority or a state department to drive product development that is typically driven by the market?

Ms HARTLAND — What we are trying to achieve there is to be able to look at this kind of R and D because there are some products now that are very difficult to recycle, so we want to be able to come up with suggested products that will be simple to recycle, and we would have thought that was quite a logical way to do that, and because of the money that would be earned by the EPA that it would be a way of developing those kinds of grants.

Mr ONDARCHIE — Typically in a free enterprise, though, the manufacturers sink investment in research and development to make their product more stable, more competitive et cetera. I am just curious about why you would expect a government authority to do that.

Ms INGHAM — It is not unknown for the government to provide grants and incentives to industry to set up in Victoria.

Mr ONDARCHIE — That is what you really mean here — grants rather than leading the development activity.

Ms INGHAM — Indeed.

The CHAIR — Are there any further questions in relation to 52C?

Mrs KRONBERG — Further to that, I just want clarification because I react to the term 'product development' as well, with a background in business. I just want a clear understanding that we do not see anything of a prescriptive nature flowing back to industry. If you like, the genesis would originate in terms of the industry's response to the marketplace. This process would not be prescriptive. I start to get concerned if it gets to be prescriptive.

Ms INGHAM — If it would be of assistance, subsection 2 of proposed section 52C refers back to proposed subsections 1(g) and 1(h), and (h) is 'provide grants and other financial incentives', so subsection (2) is simply a fleshing out of the sorts of things that those grants or financial incentives might be spent on. I hope that assists in backing up that we are not intending to drive it simply to assist industry to create jobs in Victoria.

The CHAIR — Ms Pennicuik?

Ms PENNICUIK — I think I was going to say something similar.

The CHAIR — Any further questions in relation to — —

Ms PENNICUIK — I just wanted to remind Ms Kronberg that subsection (2) has the word 'may' in it, which means nothing is prescriptive in it.

The CHAIR — Are there any further questions in relation to proposed section 52C? Proposed section 52D?

Mr SCHEFFER — I have a question on that. That can all be done technically — I do not know enough about it myself. There is an international standard, like the bar code you were referring to before, that enables this to happen. That is what you are saying — because that is easy?

Ms INGHAM — Yes.

Ms HARTLAND — The bar code, yes.

Ms INGHAM — Yes, and if a product does not have a bar code because it is being made in too small a quantity, they can apply for an exemption.

Mr SCHEFFER — Yes.

Mr ELSBURY — I am just interested in whether any costings have been done about the impost put on an importer actually seeking the exemption. As you are well aware, there are numerous subcontinent shops dotted right across the western suburbs. You even have the various Vietnamese groceries and Chinese groceries around who have been importing all sorts of interesting and tasty beverages, so for a small importer who just brings in a couple of dozen crates every so often, what kind of cost are we talking about for them to apply for the exemption?

Ms INGHAM — That is stepping ahead a little in the legislation, but really, filling in a form and applying to the EPA, there is no indication of what the application fee might be. That really would be up to the EPA.

The CHAIR — Are there any further questions in relation to proposed section 52D? Proposed section 52E?

Mr SCHEFFER — Just a comment. You mentioned in your opening remarks that the work that had been done by the EPA was not sound. I have not had time to go through the additional material you presented but personally I was persuaded by what the EPA indicated, and I think that is a major problem with the legislation.

Ms HARTLAND — Sorry, could you just — —

Mr SCHEFFER — I am saying that I think that this particular clause about the 10 cents and then the flow-on implications of the cost structure to me is a serious issue that requires a lot of work and I do not think it has been done.

Ms INGHAM — Would you like us to flesh out the errors made by the EPA in their analysis?

Mr SCHEFFER — No, I do not think so because I would not be able to judge whether what you are saying is right or not and I am saying that I think — —

The CHAIR — That it is a difficulty.

Mr SCHEFFER — And the house has a dilemma about how we have the competence to assess it.

The CHAIR — And also weighing the status of the comment and the advice is something that I think most members of this committee have had to contend with, and it is not easy. Is it the advice?

Mr SCHEFFER — No, I am talking just about the costings — —

The CHAIR — No, I am just saying that generally speaking we are not in a position to form those types of sophisticated judgements. Are there any further questions in relation to proposed section 52E? Proposed section 52F?

Ms TIERNEY — I want to ask a question about the 14 days. How was that arrived at, and is that practicable?

Ms INGHAM — The intention is that the people who are paying a deposit will have recouped it from the retailers in time. The retailers tend to pay their suppliers on a 7 to 10-day basis, so by having 14 days — —

Ms HARTLAND — We thought that would be enough turnaround but it can be extended out. One of the things we want to — —

Ms INGHAM — After the end of the month, that is. Not 14 days — 14 days after the end of the month.

Ms HARTLAND — And because one of the things that quite concerned as was the burden on small business et cetera, and that was why we looked at it that hard.

The CHAIR — Are there any further questions on proposed section 52F?

Mr ONDARCHIE — In the FMCG market — the fast-moving consumer goods market — —

The CHAIR — The fast-moving?

Mr ONDARCHIE — Consumer goods market. The retailers would tell you that a 45-day payment scheme to suppliers is ambitious. There are many major retailers paying suppliers well outside a 45-day window now. There are significant cash flow implications for businesses here if you embark on a scheme that gives them a 14-day window outside of the end of the month.

The CHAIR — Are there any further comments or questions in relation to proposed section 52F? Proposed section 52G? Proposed section 52H?

Ms TIERNEY — Proposed section 52H talks about prescribed requirements. Can you give us some indication about what is envisaged beyond what is contained in 52G as being on the container?

Ms INGHAM — Proposed section 52H refers through to clause 6 and the regulations, which inserts proposed subsection (je):

prescribing labelling requirements in relation to beverage containers for the purpose of section 52H;

It just means that if something comes up down the track, for example — —

Ms HARTLAND — Suddenly every state in Australia starts it and we have to change the label to indicate that. At this stage the labels will only indicate the Northern Territory and South Australia.

Ms TIERNEY — So it is an enabling clause; it is not a prescriptive addition to what is described in 52G?

Ms INGHAM — Yes.

The CHAIR — Mr Ondarchie, did you have another question?

Mr ONDARCHIE — Proposed section 52G is explicit by nature. It bears no relationship to proposed section 52N in the bill.

The CHAIR — You are jumping ahead of yourself.

Mr ONDARCHIE — If you have an exemption — —

Ms INGHAM — Yes.

Mr ONDARCHIE — It is not catered for in 52G, because you are saying that everything that says that it is a beverage container must have this label on it. If a business has a short run and you have an exemption under 52N because you are a cottage industry or something like that, it does not allow for that. You are saying that every single container must have this label on it.

Ms INGHAM — The bill relates to a container deposit scheme. Once you are exempted from the scheme then the other requirements do not take — —

The CHAIR — They are exempt from the requirements — —

Mr ONDARCHIE — So there are the manufacturing costs associated with labelling; that is my point.

Ms INGHAM — Excuse me, sorry; I missed that.

Mr ONDARCHIE — I am trying to think of a good example. Come back to me; I will think of a good example.

The CHAIR — I think what Ms Ingham has said is that once they are exempt, they are exempt from all provisions.

Mr SCHEFFER — In relation to proposed section 52I(3)(b), the payment to the operator of the authorised collection depot of the refund value paid by the authorised collection depot looks circular with the exception of the word 'operator'. So the operator of the authorised collection depot — I did not understand that; that is what I am saying.

Ms INGHAM — The authorised collection depot, which in this case would most likely be a reverse vending machine, pays 10 cents to the member of the public who returns the container.

Mr SCHEFFER — So that is the operator?

Ms INGHAM — We are on (3)(b), so that is the agreement between the authorised depot and the authority.

Mr SCHEFFER — Yes.

Ms INGHAM — The authority has an agreement with them that includes, basically, the refund to them of the money they have paid out to the public — the 10 cents.

Mr SCHEFFER — Yes, my point is that the four lines in the bill under (b) — —

The CHAIR — Lack clarity.

Mr SCHEFFER — I do not think they are clear. I had to struggle with it; I do not get it. That is all.

Ms INGHAM — I take your point.

Ms PENNICUIK — I am just saying that I think it is clear.

The CHAIR — It is clear?

Ms PENNICUIK — Yes. It is clear to me what (3)(b) means.

The CHAIR — Would you like to just — —

Ms PENNICUIK — Proposed section 52I(2) is a general subsection and proposed subsection (3) just says that without limiting that generality, these are the types of things. It is like what we were going through with the previous section. These are the types of things that that will include, which is that the authority pays back the money to the operator that the operator has already paid out to the people for their — —

The CHAIR — For running the scheme?

Ms PENNICUIK — No, already paid out to the people who put in the beverage containers.

Mr SCHEFFER — In my view, it does not say it. I hear your point, but it does not say that.

Ms PENNICUIK — I think it says that.

Mr ELSBURY — Just as a suggestion, perhaps we would need to look at making the operator a definition in the bill so it is clearer. I believe Mr Scheffer is having some issue with the word 'operator' — that is the case?

Mr SCHEFFER — I am saying that is ambivalent, yes.

Mr ELSBURY — If it is defined more in the definitions, I think it would clear up the issue.

Mr SCHEFFER — In proposed section 52I(c), which is just below that, I just want to know about those penalties. Do the revenues gathered from the penalties go to the EPA or do they go into general revenue?

Ms INGHAM — They would be penalties imposed by a court, not under the Infringements Act where we come up in with some problems.

Mrs KRONBERG — In terms of the stability and the integrity of the operator, is it something that could be on-sold? How do we keep that relationship between the authorising body and the actual operator? It is a cash business and it probably has a lot of other attractors for people with nefarious pursuits. Can it be sub-let — —

Mr ONDARCHIE — Second tier.

Mrs KRONBERG — Second tier, yes. That was the term I was looking for.

Ms INGHAM — I do not think so. The contract would be between the EPA and the operator of the depot.

Ms HARTLAND — So there would be oversight from the EPA.

Mrs KRONBERG — Is that economically feasible in terms of the cost burden to the EPA or the agency that takes on the authorising role? There are things here that are a little bit hard to define.

Ms INGHAM — In South Australia the depots you visited are all authorised under their scheme.

Mr ONDARCHIE — If I could just pick up Mr Scheffer's very good point about the definition of 'operator', and following on from what Mrs Kronberg just said, it is around the authorised collection depot. Is a Lions Club trailer in a shopping centre car park an authorised collection depot, because they are a second-tier collector?

Ms INGHAM — If they are going to be giving out a refund — —

Mr ONDARCHIE — Yes.

Ms INGHAM — Yes. If they are not going to be giving out a refund and you are simply donating your container to them because you love the Lions Club, then no.

Ms HARTLAND — Which is what happens in South Australia with the scouts.

Mr ONDARCHIE — If the Lions Club is bulking up to sell it to a higher order depot, then the Lions Club needs to have an arrangement with the authority. Is that what you are saying?

Ms INGHAM — Indeed. As Ms Hartland just said, that is what happens in South Australia where the scouts operate with the collectors.

The CHAIR — But you are not suggesting that they operate as super-collectors; you are suggesting that they are merely collecting — —

Mr ONDARCHIE — Aggregating.

The CHAIR — Aggregating with a view to actually taking it to a collection depot.

Ms INGHAM — They will then not need to be authorised. If they are not giving refunds — —

The CHAIR — No.

Mr ONDARCHIE — But they might be. They might be giving less than the 10 cents, because in the past cash-a-can used to operate like this: the Lions Club would turn up with a trailer in a shopping centre, pay the recipients X cents per kilogram or whatever it was, aggregate it all up, sell it to the first-tier depot and use those funds for community facilities.

The CHAIR — The question is: would the bill need to legislate against that sort of entrepreneurship?

Mr ONDARCHIE — That is what I am worried about.

Ms INGHAM — They would not need to. They can take a container and give someone whatever amount of money they want. But the EPA is not going to reimburse them the 10 cents.

The CHAIR — I think what Mr Ondarchie is saying is that some entrepreneurial type could easily go through, say, Toorak or Chapel Street where there might be lots and lots of containers after a hot summer, and say, 'I will take all of these away for 5 cents a container and go and earn a tidy profit by going to a collection depot'. Is that what you are talking about, Mr Ondarchie?

Ms INGHAM — Yes. Whatever that second-tier operator — —

The CHAIR — Are you able to comment on that scenario?

Mr ONDARCHIE — It is going to knock them out.

Ms INGHAM — Ms Pennicuik looks like she has something to say.

The CHAIR — Ms Pennicuik, did you want to comment on that?

Ms PENNICUIK — I think Ms Ingham has said it — that if they are not giving a refund, they cannot claim — —

Ms HARTLAND — They are not operators — —

Ms PENNICUIK — They might be doing it out of the goodness of their heart, but they cannot get that money reimbursed by the authority, so they are not very entrepreneurial if they are going to — —

The CHAIR — I do not think he is saying that. I think what he is saying is that as an intermediary they would collect that and be able to take it to a collection depot where they would cash in the 10 cents per container, for which they may have issued a 5-cent reimbursement per container, to someone who just wants the bottles out of their backyard or restaurant or hotel.

Ms INGHAM — Collectors will be collecting containers all over; they will not need to be authorised.

Mrs KRONBERG — Just pertaining to that very thing, if we have community organisations, service clubs and entities like that with that aggregation, if they have the means to encourage that and deliver that, what spot do they actually deliver that to, and how is that actually handled if they come with a very high cage full of aluminium cans, as we see now?

Ms INGHAM — They would go directly to the hubs.

Ms HARTLAND — Because they are bulk amounts, they would need to do that, yes.

Mrs KRONBERG — So those hubs have some fast way of counting?

Ms INGHAM — Indeed.

Mrs KRONBERG — Because we are looking at an individual thing, we are not looking at waste then; we are changing weight to individual units.

Ms HARTLAND — Items.

Ms INGHAM — The South Australian transcript indicates that at one of the places you went they had very fast bar code readers that could count considerably faster than a reverse vending machine; containers just fall through a hopper and get read as they go. It would make a lot of sense for that sort of collector to go directly to a hub and return in bulk. There are also provisions later in the bill that in the future permission may be given for return by weight and so on.

Mr SCHEFFER — My question relates to 4(b) and the seven locations that are listed there. They are not actually collection depots; they are sites, all of these, when you look at them, but my question is: a facility that occupies those sites, what delimits its size? I am thinking if it was not a transfer station but quite large, it could have an amenity impact on neighbours — you know, schools — —

The CHAIR — Noise, smell.

Mr SCHEFFER — Does council play a role in a permit system here? How does that work?

Ms HARTLAND — I would have thought councils would be involved with a permit, because, say, if it is a large reverse vending machine in a supermarket car park, you would presume that there would have to be a permit process.

Mr SCHEFFER — Right. Therefore in the bill there needs to be something that points to how that community impact would be managed by local government.

The CHAIR — We saw that collection depot in Adelaide, and the strength of that depot rested with the fact that it was open seven days a week and that it was within a prescribed distance; otherwise people would have — —

Mr SCHEFFER — That is right.

The CHAIR — Therefore finding that in the inner urban parts of Melbourne would be a challenge at the best of times. Are you able to comment on that?

Ms HARTLAND — That is why we believe that reverse vending machine technology is really important, because then they become, I suppose, like mini-depots, if you wanted to call them that. We

totally agree that the convenience element of this is what is going to make it work. If someone goes to the supermarket with their bag of bottles, they have to be able to do it there.

The CHAIR — The problem is that evidence that was tendered suggested that the vending machines based on existing technology were not fast enough, did not have a sufficient capacity for the volume of containers that we would need to be processing. Mr Elsbury asked whether the vending machines were a deal breaker; you indicated that they were not entirely — —

Ms INGHAM — No, but they are certainly big enough for the volume of the ordinary person returning their containers.

The CHAIR — But many of them are not ordinary — —

Mr ELSBURY — Can I just pick up on that, because we did have an operator come out and say, ‘If the vending machines were so good, I would have 20 of them in my yard tomorrow’, and he does not, simply because he does not believe the technology is up to the task that a human can do for him in a depot.

Ms HARTLAND — But in a depot you are talking about bulk amounts, and when we talk about reverse vending machines we are talking about them being for household amounts. That is where we think that technology really fits well — —

Mr ELSBURY — If he thought he could put one in the mall, he would have.

Ms HARTLAND — But there are other recyclers, and you had evidence from Revive Recycling, which is very keen on this technology. I think there are differences of opinion on it, and what I saw in practice is — —

Ms INGHAM — The existing recyclers may not want to fit reverse vending machines, but the supermarkets certainly do, because it is the greatest loyalty scheme ever invented.

The CHAIR — We will not deviate, but those costs on the existing businesses have not really been factored into the cost-benefit analysis. Mr Elsbury, do you have a follow-up question?

Mr ELSBURY — Yes, I did, on 52I(4)(b)(v) — using schools as a collection point. I can see an advantage to that in that parents or caregivers can come along, pick up the kids and drop off their — —

Mr ONDARCHIE — Stubby.

Mr ELSBURY — Bottles — not necessarily stubbies — but by the same token, as a parent who is just about to send his kids off to school, you are very wary of the sorts of people who hang around those places, so my concern is that by including an educational institution as a collection point, you are welcoming people who are not necessarily controlled by the school to hang around.

Ms INGHAM — The EPA has a contract with each depot. Ms Hartland said in her second-reading speech — in both of them, I hope — that it is envisaged in terms of schools that the school would be able to use the facility as part of its recycling drive, but instead of playing advertising it might play something like a road safety message and so on. Part of the contract could include whether refunds are paid out or donated entirely to the school library, school sports team or the arts club. All of those things could be in the contract. All reverse vending machines should have the facility to donate.

Mr ELSBURY — But in the explanation we just got about people setting up a business where they pay out 5 cents a bottle for the refuse that is being reclaimed you said that those operators would not have to be registered. Why then would a school register itself if it just collects the bottles and the bottles are included as being a donation to the school?

Ms INGHAM — It would still be a transfer of 10 cents or a voucher for the school cafeteria or something like that. But if the depot then wants to deal with the hub, they will need to be registered under the scheme to have all of those benefits — if they want to get a transaction fee and so on.

Mr ELSBURY — I have to say if I was on a parents and friends committee, what I would be doing is having a trailer that everyone as they walk past into the school can toss whatever they want into, within reason of course. Then at the end of the week someone would be allocated to go and take that to a transfer station. The school itself would not deal with the vouchers. It would not deal with having the transaction occur on its premises. Schools have been put in this particular section of where depots would be authorised, and the suggestion to me is that a depot is open to anyone to refund their deposit.

Ms HARTLAND — I understand the difficulty you are having. We have always envisioned with schools that it would be next to the canteen or in a place that is accessible to the school. I can see what your problem is: you envision people coming onto the grounds on the weekend or just coming in or whatever.

Mr ELSBURY — Some bloke just wanders in and says, 'I'm here to drop off my cans'.

Ms HARTLAND — Yes, and we see it as an exclusive use for the school.

Ms INGHAM — There is nothing stopping the school preventing somebody from coming onto the premises. You practically need a passport these days to get onto a school premises. Nothing is going to change that.

Mr ELSBURY — True.

The CHAIR — I will intervene and say we have now been probably more protracted in some respects than the Leveson inquiry and certainly far less controversial. We are now 1½ hours into it — and I thank Ms Ingham for her generosity with her time — and we are only halfway through. If we could speed it up a little, I think that would be very useful.

Ms HARTLAND — The other thing is that if people want to email us tomorrow, and we have in our heads a number of concerns about location et cetera, we would be happy to take that on board.

The CHAIR — Further questions in relation to new section 52I?

Mr ONDARCHIE — Yes, I want to pick up the point I think Mr Elsbury was trying to make then. You are not expecting schools to capitalise the cost of reverse vending machines, are you?

Ms INGHAM — No, you heard from Revive Recycling that that would not be the case. There would be an arrangement, the advantage for the school being cleanliness and order. If the school decided to have a bin out the front, as Mr Elsbury suggested, they would also be able to do that. Certainly having a reverse vending machine in the school would not provide a right of way for anyone who does not belong at the school to go onto the schoolgrounds.

The CHAIR — New section 52J — any questions? New section 52K, 'Offence to claim refund on beverage container purchased outside Victoria' — any questions?

Mr ELSBURY — Yes. What would be the burden of proof? I mean if I was to go to Albury, not that I am frequenting Albury all too often, and I went and grabbed a Coke, which I do quite frequently, and then came back across the border, what is the burden of proof that I actually purchased that drink in New South Wales?

Ms INGHAM — If the person you have asked to refund you has any suspicion, then they can ask you to sign a form. They can ask you to sign a declaration under new section 52K(2).

Mr ELSBURY — I am not saying that I am going to see a rampant black market of truckloads of Coke bought in Albury.

Ms INGHAM — The border between South Australia and Victoria is porous. I am sure there is a certain amount of individual containers going across, and it has not brought the South Australian system to its knees.

Ms HARTLAND — And it is why we need a national scheme.

Ms INGHAM — Indeed. There is no way of guaranteeing it in the system as it is set up, but the things that you heard from Revive Recycling about not accepting crushed cans and so on prevent wide-scale fraud.

The CHAIR — The crushed cans are obviously an issue for the vending machines but not an issue for manual separation.

Ms INGHAM — Yes, but anyone bringing a large amount — 3000 units— must sign a declaration, and there are huge penalties. In terms of an unstaffed thing, like a reverse vending machine, it will not take crushed containers. There is no economic incentive for any large fraud, but it may occasionally happen, if you take your single container across, and if you are so dishonest as to do so, that you are given a 10-cent refund.

Ms HARTLAND — I am sure it is going to happen on a small scale, but there are penalties for the large-scale fraud.

Mr ELSBURY — Okay, so this is more for large-scale?

Ms HARTLAND — Yes.

Mr ONDARCHIE — On new section 52K(3), I am worried about my friends from the Lions Club here. They do a good job, and you are now asking them to commit to a signed authority that says, 'We do not believe that any of these cans were purchased outside of Victoria'. Is that too onerous for a community service group?

Ms INGHAM — If the Lions Club is operating in Boroondara, the likelihood of any of those containers having come from New South Wales or Tasmania would be quite low.

Ms HARTLAND — I think this is around border areas.

Mr ONDARCHIE — I understand why.

Ms INGHAM — Which might mean that the Lions Club of Bordertown may not get involved.

Ms HARTLAND — Everything around this kind of legislation and these conditions will be simple one-page declarations. It is also very much for the operator to protect themselves so they can say, 'That person brought 3000 cans, they signed this declaration and we accepted the declaration'. We do not want to make this difficult. It is very important not to make it difficult.

Mr ONDARCHIE — It is a little cumbersome in the sense that, given we are prescribing a refund per unit, if my memory serves me correctly, collection agencies used to buy by weight, so we expect in a large club to count that trailer one by one, do we not?

The CHAIR — Are you discriminating against Rotary?

Mr ONDARCHIE — No! I used to be a president of Apex; I like Apex as well.

Ms HARTLAND — As I understand it, the machines that you saw in South Australia can do the bulk count, which would be a much more accurate count than someone from the Lions having to spend all that time. You would presumably take it and it would be counted through those machines.

Mr ONDARCHIE — And how did you arrive at the penalty units — the value?

Ms INGHAM — Ah! The penalty units I have an extensive file note on, but basically South Australia and the Northern Territory are trying to make it commensurate, particularly with the larger penalties in other sections of the EPA act for similar offences, so high penalties for very serious offences.

The CHAIR — Proposed sections 52L; 52M; 52N; 52O? That brings us to the conclusion of this. Are there any members who wish to move any amendments to clause 4? The question is:

That clause 4 stand part of the bill.

Clause agreed to.

The CHAIR — Clause 5 amends section 70 of the principal act. Are there any questions of Ms Hartland? There being no questions, does any member wish to move any amendments to clause 5? The question is:

That clause 5 stand part of the bill.

Clause agreed to.

The CHAIR — Clause 6 amends section 71 of the principal act in relation to regulations. Does any member have any questions for Ms Hartland in relation to clause 6? Does any member wish to move any amendments to clause 6? The question is:

That clause 6 stand part of the bill.

Clause agreed to.

The CHAIR — Clause 7, 'Repeal of amending Act'. Does any member have any questions for Ms Hartland in relation to clause 7? Does any member wish to move any amendments to clause 7? The question is:

That clause 7 stand part of the bill.

Clause agreed to.

The CHAIR — That was a home run. This brings us the conclusion of tonight's public hearings. On behalf of the committee, I extend our thanks to Ms Hartland and Ms Ingham for their time and all their information and for their willingness to cooperate with the committee — and not just tonight but obviously since the bill was referred to this committee. The committee will commence a private meeting in this room. Do we need a 5-minute break?

Ms HARTLAND — Can I just say before we close that I think this has been a great process. It has been difficult. It has caused our office a lot of work, and I know that for this committee it has caused a lot of work, but I really think this is a great way of scrutinising legislation to make it better. I really appreciate the time and thought the committee has put into it, especially the grammatical issue. Thank you.

The CHAIR — The interesting thing, Ms Hartland, is that New Zealand does that before legislation is introduced.

Ms HARTLAND — Yes, and that is what I was thinking when we were sitting here doing this process. It would probably be worth having some kind of assessment. I am not quite sure how we would do that, but how it worked and what can we make better. I was actually thinking that when we were sitting here it would have been great for us to have been able to bring this legislation to a committee like this before we took it to the house. It would have been the grammatical things. It

would have been, 'I do not quite understand that; can you word it better?', making us go away and do that. I think it could be of huge benefit, and I have really appreciated the assistance.

The CHAIR — Thank you very much. I think the New Zealand model is probably something of interest to you. We will pause for a couple of minutes while Hansard dismounts and our witnesses get up and leave. Thank you very much.

Committee adjourned.

Appendix I: Extracts of the Proceedings

Legislative Council Standing Order 23.27(5) requires the Committee to include in its report all divisions on a question relating to the adoption of the draft report. All Members have a deliberative vote. In the event of an equality of votes the Chair also has a casting vote.

The Committee divided on the following questions during consideration of this Report, with the result of the divisions detailed below. Questions agreed to without division are not recorded in these extracts.

Deliberative Meeting, Wednesday 15 February 2012

Finding 6

The scheme proposed by the Bill targets only one element of the overall litter problem. It would reduce beverage container litter and the amount spent by government to clean up this litter in public places, but measures to address other forms of litter would need to remain in place.

Question – That Finding 6 stand part of the Report – put.

The Committee divided.

Ayes 6

Mr Elsbury
Mr Ondarchie
Mrs Peulich
Mr Scheffer
Mr Tarlamis
Ms Tierney

Noes 1

Ms Pennicuik

Question agreed to.

Deliberative Meeting, Wednesday 22 February 2012

Chapter 4

Ms Pennicuik moved, That the following be inserted into Chapter 4: The Committee further recommends that the Victorian Government continues to advocate for a national container deposit scheme through the COAG process and that should that process not adopt a national container deposit scheme, the Victorian government consider introducing a container deposit scheme in Victoria that is complementary to existing state schemes and to existing kerbside recycling schemes in Victoria.

Question – That the motion be agreed to – put.

The Committee divided.

Ayes 1

Ms Pennicuik

Noes 7

Mr Elsbury
Mrs Kronberg
Mr Ondarchie
Mrs Peulich
Mr Scheffer
Mr Tarlamis
Ms Tierney

Question negatived.

Ms Pennicuik moved, That the following be added to the end of the Chair's motion: Finally, if ultimately a container deposit scheme is to be established in Victoria the scheme should be seen to build on Victoria's strengths, be compatible with existing kerbside recycling schemes in Victoria and recycling schemes in other states and territories.

Question – That the amendment be agreed to – put.

The Committee divided.

Ayes 1

Ms Pennicuik

Noes 7

Mr Elsbury
Mrs Kronberg
Mr Ondarchie
Mrs Peulich
Mr Scheffer
Mr Tarlamis
Ms Tierney

Amendment negatived.

Minority Report

Inquiry into the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011, Minority report

Introduction

This minority report does not take major issue with the Final Report of the Inquiry, which is a fair representation of evidence presented and the view of the majority of members of the Committee. It is more a matter of a difference in emphasis and nuancing of some of the findings of the report.

Of the 44 published submissions, on my reading of them, 33 supported either a national or Victorian CD scheme in principle while raising some queries or concerns, some supported both a CD scheme and the bill but also with some concerns or qualifications and others were very supportive of both CD schemes and the bill. Eight submissions did not support the bill or CD schemes or both. Two submissions were non-committal. The evidence taken at the hearings from 14 witnesses was more or less 50/50.

The findings

Finding 1 states that a national CD scheme would be preferable and this is widely accepted, however the Committee also heard evidence that a national scheme is not essential and in the absence of one, a state based scheme can work well, can be designed to be reciprocal and not be overridden should a national scheme be established.

Finding 2 states that the Bill is predicated on the use of reverse vending machines, but Ms Hartland stated in the hearing on 8 February that reverse vending machines make the system more convenient but the bill [and a scheme] could operate without them.

Finding 3 states that Victoria could improve 'away from home recycling' through education and improvement in bin infrastructure. While this is true, it implies that this could result in the scale of improvements that a CD scheme will and there was no evidence presented to support this. On the contrary, these initiatives have been in place in many locations for some time and the amount of beverage container litter has not reduced in any state except South Australia, which has CDL.

Finding 4 states that there are concerns about the financial impact of CD schemes on existing kerbside recycling businesses. This is true, however the Committee also heard evidence that a CD scheme can exist alongside kerbside schemes and that CD schemes result in less contamination of kerb side recyclates, particularly with broken glass.

Finding 6 states that a CD scheme would reduce beverage container litter however, the statistical evidence is clear that CD schemes significantly reduce beverage container litter. The rate of beverage container litter in SA is much lower than other states.

Beverage containers compose the largest component by volume of the litter stream and the second largest component by number of items of the litter stream. In my view, the findings of the report do not emphasise enough the scale of the problem of beverage

container litter or the environmental and social benefits of a reduction in and recovery and recycling of that litter across Victoria.

Conclusion

Given the above, and while I supported the Final Report, I do consider that it is more negative towards CD schemes and a Victoria scheme in particular, than I believe the evidence suggests. I acknowledge that there was some strong opposition to both the bill and CD schemes, but it mainly came from business and industry bodies. The majority of local government submissions were supportive even if with various qualifications. Submissions from environmental organisations were all supportive and we heard that the EPHC process found that 84% of the population supports CDL.

I support the recommendation that the Committee encourages the state government to engage with the COAG process, however I would have preferred that it be expressed more strongly – that the state government continue to advocate for a national container deposit scheme.

The Final report fell short of also recommending that if a national scheme is not established, the state government should consider introducing a CD scheme in Victoria that is compatible with existing state CD schemes and existing kerb side recycling schemes in Victoria. This is supported by evidence presented to the Committee and if not pursued in the continuing absence of a national scheme, would leave Victoria with an ongoing and growing beverage container litter problem and less than half of the beverage containers purchased being recovered and recycled.

I would like to thank the Chair and members of the committee for listening to my concerns even if we weren't able to come to a consensus position on every finding. I would also like to thank the Committee Secretariat for their tireless efforts in supporting the Inquiry and in preparing the Final Report.

Sue Pennicuik, MLC
22 February 2012