

CORRECTED VERSION

STANDING COMMITTEE ON ENVIRONMENT AND PLANNING

LEGISLATION COMMITTEE

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

Melbourne — 12 October 2011

Members

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Witnesses

Ms C. Hartland, member for Western Metropolitan Region,

Ms E. Ingham, electorate officer.

The CHAIR — Welcome to the very first public hearing for the Legislation Committee of the Environment and Planning Legislation Committee. I have got a very long statement to read. I am still waiting for the abridged version, but welcome all and welcome to Ms Hartland. You are making history as our very first witness.

I declare the hearing open and welcome everyone to the first public hearing of the Environment and Planning Legislation Committee, which is also the first hearing of a legislation committee in the 57th Parliament. Whilst there was a Legislation Committee in the 56th Parliament, following a report of the Standing Orders Committee in May 2010 these functions are now carried out by the three Legislative Council standing committees.

Tonight we are considering the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011. We have a member for Western Metropolitan Region, who is the sponsor of the bill, Ms Colleen Hartland, appearing before us, assisted by Ms Liz Ingham.

The reference we have received from the Council is unusual in that it calls for a broader approach than that taken in the past. The reference instructs us to consider the bill but also several other associated matters, including proposed national container deposit schemes, Victoria's engagement in national recycling initiatives, environmental benefits, financial costs and benefits and any cost of living impacts.

I am proposing therefore that the committee will initially seek to work through those matters by allowing these public hearings to consist of general discussion of the bill and any associated policy issues. I then propose that we conduct a final meeting at which we will work through the bill, clause by clause, and put each clause to the test of the committee. As I flagged previously with the committee, I see us presenting a fairly concise report to the house. Nevertheless I believe we can cover the ins and outs of the bill and its associated issues in an efficient way.

All evidence taken at this hearing is protected by parliamentary privilege — I am sure Ms Hartland knows that — as provided by the Constitution Act 1975 and is further subject to the provisions of the Legislative Council standing orders. All evidence is being recorded by Hansard, and I thank Hansard for being in attendance. You will be provided with a proof version of the transcript in the next couple of days, following which you can make corrections of a typographical nature but you cannot make changes to the substance of your presentation.

We have allowed about 10 minutes for you to make a presentation, if you like, with the rest of the time being for questions from members of the committee. Before proceeding to Ms Hartland's opening comments, I ask that she introduce her adviser and ask her adviser to state her business address and the capacity in which she is appearing today. That sounds like a bit of a tautology, but we will follow the instructions. Ms Hartland, welcome.

Ms HARTLAND — Thank you. My associate is Ms Liz Ingham, who is an electorate officer in my office.

Ms INGHAM — My name is Liz Ingham. My business address is 75 Victoria Street, Seddon, in the office of Colleen Hartland.

Ms HARTLAND — Thank you very much for allowing me to speak to you tonight. We have put together quite a detailed package of information for the committee, so I will take some of that as having been read and go through other matters. Of course I am leaving lots of time for questions. There is the Explanatory Memorandum, the second-reading speech and the report headed *Turning Rubbish into Community Money*, which was written by my office and co-authored by Ms Ingham. Our data and analysis in this report were sourced from Dave West. If it is possible, Dave West should present to the committee because he is someone with very good technical knowledge of these issues.

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 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. In saying that, we need one of the big states to start this off. We have the scheme in South Australia and there will be a scheme in the Northern Territory, but we need one of the big states to push it along. We believe that this inquiry will demonstrate the benefit to Victoria of a container deposit scheme, whether state based or national. The minister will be well armed to advocate for a national system. 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.

The national packaging recovery RIS process, which is the regulatory impact statement, is examining a range of options including ineffective voluntary measures that are favoured by those who create litter. Environment ministers are about to be lobbied intensely to drop the container deposit element of this RIS. The draft RIS will be released at the end of this year, and we expect a decision some time in 2012. However, interestingly with this regulatory impact statement, it is for all packaging and not just container deposit legislation, so it makes it somewhat difficult to contain the container deposit legislation and see how that will fit in properly.

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. Again I would suggest that Jeff Angel from the Total Environment Centre or Dave West from the Boomerang Alliance would be very good people to speak to about this, because we believe there are a lot of new jobs in container deposit legislation. Because it bundles all the packaging together, this RIS will actually dilute the value of a drink container scheme. Despite overwhelming goodwill towards a national tyre recycling scheme, as an example, the same regulatory impact statement process actually killed off the proposal.

Of course set-up costs are an issue. There is an offset of an unredeemed deposit, which we calculate will be higher for the first 18 months, so there will be a buffer of \$117 000 in unredeemed deposits at the end of the first year. We have legal advice that we can supply from Baker and McKenzie and from the Western Australian Environmental Defenders Office, and there is also obviously the speech I gave on the constitutional issues when the bill was not debated in the lower house.

There are obvious border issues. South Australia is bordered by four states and the Northern Territory, but it has minimal problems. Most of the problems have actually been from baled material. When we talk about baled material, it is material that has been crushed and then put into bales. This is around the issue of fraud. People often talk about how things go over the border, but that is not a major problem. Reverse vending machines will prevent fraud, and I will talk a bit about reverse vending machines later. I think they are one of the pivotal parts of this scheme and will actually make it quite effective.

We believe that the best element of the proposed Victorian scheme is that the fund is administrated by the state; it is accountable. The state is the appropriate provider of funding for more recycling initiatives to achieve good recycling, rather than having the beverage industry covering it. It also means that the money stays in the state and can be spent in the state. In other countries and in South Australia mandatory schemes have developed out of existing unofficial beverage company arrangements and they are difficult to modernise. The New York scheme is an example, and we can talk about that later. Accountability is more difficult and there is less incentive if the beverage industry is running it for a high rate of return. We have examples of lessons that have been learnt from other countries such as Croatia and California.

On the reverse vending machines, we think they are one of the pivotal parts of it. In the package I have provided to the committee I have included my holiday snaps of reverse vending machines. I strongly suggest that Markus Fraval from Revive Recycling be asked to present. He is someone who knows this industry inside out as a player within the industry.

I will leave it at that. We have a lot of material prepared, so jump in with questions. The way we would like to work this is that I will be answering the questions and Liz will be answering some questions as well, if that is acceptable to the committee.

The CHAIR — Ms Hartland, it is up to you to defer whatever questions you feel appropriate to Ms Ingham. As is customary, the first question goes to the Deputy Chair.

Ms TIERNEY — Colleen, in your view is the container deposit scheme the cheapest way to achieve the bill's objective of creating a cleaner environment?

Ms HARTLAND — I believe it is, but it is part of a whole range of issues. It can be done easily by the community, and one of the things we have to achieve with this is that it has to be easy. You buy your bottles at the supermarket, and you have to be able to take them back to the supermarket. If it is 5 kilometres away, that

will be difficult. It is a way to improve environmental issues and litter. It is a major way for litter clean-up of football ovals, parks and creeks. It has community support, and that is one of the important things. And it is self-funding. One of the great things about it is that it will self-fund.

Mr ONDARCHIE — Colleen, could you please talk me through the economics of the 10-cent deposit versus the large amount of capital expenditure and the infrastructure that is going to be required to manage this whole process? I guess what I am looking for is your very quick cost-benefit analysis.

The CHAIR — And perhaps if one has been done, you might make it available to the committee.

Ms HARTLAND — Absolutely. That is contained in the report because I think this is a really important part of this scheme, because you cannot create these schemes unless they self-fund and for local councils especially they have real benefits. I suggest committee members refer to page 21 of the report.

The CHAIR — Could you clarify whether the cost-benefit analysis is an independently prepared cost-benefit analysis, or is it one just prepared as part of your report?

Ms HARTLAND — We did this as part of our report but we also sourced the information from other sources. We also used a number of government reports to confirm that we were on the right track, and we are more than happy to supply all of that information in writing as well.

Mr ONDARCHIE — I am very interested in what the front-end costs are going to be, because there is a fair bit of capital expenditure required here. I am looking to see those numbers, together with what the potential financing charges of those numbers are going to be over time.

Ms HARTLAND — Do you mean cost to industry or cost to government?

Mr ONDARCHIE — Cost to industry.

Ms HARTLAND — Industry is really keen on it. Obviously people who are already wanting to produce the reverse vending machines are very keen on this; they see money in it.

Mr ONDARCHIE — No doubt.

Ms HARTLAND — They see money in it. They believe it is a scheme that will create jobs and make money for them. I will get the right figures for you. If you go to page 21, and again I would really recommend that Dave West, who is the person that we sourced our material from — —

Mr ONDARCHIE — Who is he?

Ms HARTLAND — Dave West works for an organisation called the Boomerang Alliance, which is an alliance of a number of environmental groups which have worked on these issues for a number of years.

Mr ONDARCHIE — Is he an accountant?

Ms HARTLAND — No, his background is as an environmental consultant, but he has done the economic work in this. We can either talk about it here, or would you like it in paper form? I know that you would be very keen on the facts and figures and dollars. Would you be happier if we supplied you with that in written form?

Mr ONDARCHIE — With the Chair's permission.

The CHAIR — It is going to be critical to fulfilling the brief of the reference. If you could forward that information to our executive officer, we will circulate it amongst committee members.

Ms HARTLAND — We will do that tomorrow.

Mr SCHEFFER — Could you circulate the photographs you have? Is that what you intended to do?

Ms HARTLAND — Yes.

Mr SCHEFFER — My question is that I have difficulty in understanding how this particular scheme sits with what is already going on in Victoria. Nothing starts without a prior reality to it. As I understand the scheme, and I obviously do not know all of its intricacies, there would be a design aspect, there would be a manufacturing aspect, there would be a use aspect, retailing, the reuse, then disposal — there is a whole chain of events in a product which at each stage manages to some extent the waste and the end product. In Victoria we have quite a high level of kerbside collection. We have the transfer stations. We have all these things, which include inside them the container that you are talking about. At the outset my broad question is how does that subset issue fit into the whole? Why is the whole not taking care of it now, or in its forward planning why would it not be taking account of the particular issues around drink containers?

Ms HARTLAND — I think what you are asking me is why is kerbside collecting not enough.

Mr SCHEFFER — No, I am asking a much broader question.

The CHAIR — No, how it sits with it.

Mr SCHEFFER — Where it sits. Maybe if you could start talking about how you understand what is going on at the moment in Victoria, how waste is handled and processed, what the weaknesses of that are and why a container deposit scheme is not just a bolt-on mechanism that would cost more in its duplication and double handling. That is where I am coming from.

Ms HARTLAND — Could I ask Ms Ingham to start this one off?

The CHAIR — Please do.

Ms INGHAM — The existing system, as Mr Scheffer said, works well, particularly in terms of kerbside collection. That is Victoria's strength. The weakness of the existing Victorian system is public place recycling. It is expensive and inefficient, and the costs are borne by council. The costs of both kerbside and public place recycling are largely borne by council, so you could say that the benefit of the current system is that people who produce single-use disposable containers can let the product leave their hands and the cost is borne by the Victorian people. The thing that container deposit legislation will have the biggest impact on is public place recycling, and that is where 50 per cent of disposable containers are used outside of the home. The ones that are used in the home are going into our kerbside collection very efficiently.

Mr SCHEFFER — What are the figures on it? Because I understood it was 95 per cent access to kerbside collection.

Ms INGHAM — Absolutely, when you are at home.

Mr SCHEFFER — How does that compare percentage wise to public place recycling?

Ms INGHAM — I do not know what the percentages are of access to public place recycling. I would need to refer that through to Dave West of the Boomerang Alliance or take it on notice. But the figures in our report are showing that we could lift recycling from 49.5 per cent, where it currently is, to 83 per cent, and almost all of that increase would come from public place recycling. That figure includes businesses and so on.

You mentioned transfer stations. The existing transfer stations could apply to be hubs under Ms Hartland's scheme. In the legislation the hubs are called 'authorised transfer stations'; in the report they are called 'hubs'. These are the large collection centres — the equivalent of the super-collectors in South Australia. With the drink container deposit scheme, the additional income they would receive from that would allow them to expand their businesses, and then the same hubs would be able to take on any future extended producer responsibility schemes like e-waste, gas bottles, mattresses, refrigerators and so on.

Mr SCHEFFER — Then my question is: why would that not be happening anyway in the normal course of events? Why does it take this scheme to give it that boost?

Ms INGHAM — To provide the financial incentive? This scheme makes funding available. For one thing there would be a vastly greater number of containers coming in to the transfer stations, but also for each of these containers there would be a fee per container for the processing of those containers. It provides that financial

incentive. It does not completely insulate them against commodities costs, but it provides some certainty of income.

Mr SCHEFFER — And is it fair to say that we do not know what that differential is, given that you have to give information regarding Mr Ondarchie's question and also that we do not know the percentage of the public place issue yet, so once we know those two bits we will know whether you are right?

The CHAIR — If you are able to source that and pass that on to Keir as a follow-up question, that would be useful.

Ms HARTLAND — Yes. Definitely.

Mr ONDARCHIE — Colleen, just talk me through the practicalities of this. Successive governments have done a pretty good job in training households to recycle. In fact I remember my primary school children educating me about what goes in the green bin and what goes in the yellow bin et cetera. Is this scheme going to unlock that regime we have now? We have families really well entrenched in kerbside recycling. Is this going to disaggregate that, because we will start putting some things in one container or storing some other things at home for getting some cash? Is this going to just upset that whole applecart for us?

Ms HARTLAND — I do not believe so. I think it will make people more conscious. The very thing you just spoke about is knowing what can be recycled successfully. I actually think it will improve it. People will obviously collect bottles. If they are going to the supermarket to do their shopping, and there is a reverse vending machine, of course they will take them along and put them through the machine and get a voucher that can be spent in the supermarket. But I actually think it improves it. Ms Ingham is exactly right: where the huge improvement is going to be, we believe, is in the public place, because at the moment they are either just thrown in a bin, on the ground or in the creek, but if they have a value, then they are no longer rubbish. They are actually a commodity that can be reused.

The CHAIR — Why does the bill only apply to beverage containers and not to food containers more generally, which are also subject to kerbside collection, such as jam and pickle jars, which will still need to obviously go into kerbside collection? And what is the impact on the total cost?

Ms HARTLAND — 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.

The CHAIR — I understand that. So is the intention that the two would coexist side by side — kerbside collection as well as — —

Ms HARTLAND — Yes.

Ms PENNICUIK — I am just wondering, Ms Hartland, whether you could explain the pictures you have here. You are talking about the public place issue, and these all look like they are in a public place. I think perhaps reverse vending is not necessarily that well understood. I am presuming that is what this picture is.

Ms HARTLAND — Yes.

Ms PENNICUIK — The back one looks like it is at a railway station. Could you take us through those?

Ms HARTLAND — Yes. I have just come back from holidays. The first picture is of myself at an Aldi supermarket in Nuremburg. I went in there — I do interesting things on my holidays! — but I was obviously looking for examples so I could take some photos. I stood in there for about 15 minutes, and I was just watching people coming in. People would bring quite large bags of bottles, put them through the machine and then they got a voucher at the end of it, and then they spent that voucher in the Aldi supermarket. This is what is quite common with the reverse vending machines — they are located in places where people do their normal shopping. So it is that convenience element of it which is important.

The CHAIR — So does that mean that specific containers would need to be returned to their point of sale?

Ms HARTLAND — No. The next photo I found really interesting. Obviously one of the things people get quite concerned about is people going through bins et cetera to get containers. This 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 is of the rubbish bins — yes, I do have a good time on my holidays! 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. I think people sometimes have a bit of a yuk factor about people going through bins, but in Germany they seem to have thought through these kinds of issues, and they make it quite easy for one group of people to leave their bottles and the next group of people to collect them and take them to the reverse vending machines.

Mr SCHEFFER — Just a question on the picture of the rack or whatever it is called. So that is a venue behind, is it?

Ms HARTLAND — Yes.

Mr SCHEFFER — So why would that venue, if they can get money from the bottles, not pick them up and put them in their crates so they get the 10 per cent?

Ms HARTLAND — I am sure they were probably doing that as well, but what I was seeing was people who were picnicking in the park just putting them in the rack and then other people coming along with their trolley or bag and taking them off.

The other thing was that there was very little rubbish in that park, because it was all confined to those. That was the other thing I noticed a lot in this trip: I saw very little public litter because the containers have a value.

The CHAIR — This is in — —

Ms HARTLAND — In Germany.

The CHAIR — In Germany. The Germans are pretty conscious about litter anyway.

Ms HARTLAND — And it is also about 40 cents an item there. They have also been doing it for a considerable amount of time.

Mr ELSBURY — So we would have these reverse vending machines at supermarkets, preferably, so we can put them in, go off and do our shopping and recoup what we have gained through the voucher, but we are still going to have the kerbside collection as well. So we are going to have two parallel pieces of infrastructure trying to do the same job. If we are going to do this, why are we not going the whole hog?

Ms HARTLAND — In terms of — —

Mr ELSBURY — Container deposits. If you are going to have container deposits on just drink or beverage containers, why not go the whole hog?

Ms HARTLAND — There are a couple of things around kerbside collection that are really interesting with this. 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. That is one of the benefits. Because all of that material is then sorted through the reverse vending machines and the barcodes are collected, we will also get a sense of how much is being collected. We cannot really ascertain that from kerbside collection. We actually think this has benefits for kerbside collection, especially around the glass contamination and paper.

Mr TARLAMIS — What have you based the estimated recovery rates on?

Ms INGHAM — There have been a number of studies on recovery rates. We sourced the data in Ms Hartland's report from Dave West of the Boomerang Alliance, and he sourced it from a number of places.

We were able to confirm some of the data independently by going to commonwealth reports like the BDA report that was created for this national packaging recovery process that confirmed the estimate of recovery rates nationally at a 10-cent deposit. It confirmed that our figures are consistent with that at least, but we will probably need to either take that on notice or refer questions on that through to Dave West of the Boomerang Alliance. Some of the data questions and analysis are footnoted, of course.

Mr ONDARCHIE — Most households are in a regime of recycling now, as are most business premises. Even this building here is now in a regime of separating recyclables from other things. That being the case, what percentage of drink containers out of the total amount that is consumed is actually litter compared to what is going through recycling processes of businesses and households and things like that? I guess what I am asking, Liz, is: how big are we talking about here? For the total amount of recyclable drink containers that go through, what percentage is actually litter? Are we talking about a massive percentage or a small percentage?

Ms INGHAM — What percentage of all drink containers are littered or what percentage — —

Mr ONDARCHIE — What percentage of all recyclable drink containers are actually litter and are not going through some other recycle scheme in a house or business?

Ms INGHAM — In order to answer that question we would need to know how many drink containers are sold in Victoria. While Mr West has provided us with an analysis, there is not reliable data available on all drink containers in Victoria. That belongs to the drinks industry. Interestingly, if this bill were passed, we would have that data. The scheme would create the data on how many drink containers are produced onto the market, how many are recovered and of what types, what types of drink containers are recycled the most and what are littered the most.

Mr ONDARCHIE — I am just trying to understand the quantum in terms of the financial analysis here. What percentage of stuff is actually littered in parks and things like that?

Ms INGHAM — Like I said, we would need to know what the numbers were to start off with. We do know from figures provided to the Victorian government and by the Victorian government to the federal government that presently there is a recovery of 49.5 per cent. That is up from 49 per cent, but it is not up very much considering the large amount of public place recycling that has been provided by our hardworking local councils at ratepayers' expense. This scheme would lift it from 49.5 per cent 83 per cent, with a commensurate reduction in litter.

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. But also you will see from the three asterisked categories, the first, second and fourth ones, that in categories where there is an exemption to the container deposit legislation in South Australia, where they exempt wine and milk, the differential between Victoria and South Australia is lower. So South Australia does not perform quite so well on littering in those categories.

The CHAIR — I have a related question that is relevant, given the global nature of industry and trade. Does the bill satisfy the requirements of the Mutual Recognition Act, which requires that goods produced in a state or territory may be sold in another state or territory without the necessity for compliance with further requirements, including the requirements that could satisfy the standards of the second state in relation to packaging or labelling. It is my understanding that the Victorian Government Solicitor's Office holds that an exemption from this act would be required for the scheme proposed, but that would not be a consideration obviously if it were introduced nationally.

Ms HARTLAND — We presumed that this question would come up.

The CHAIR — It is an important question, so we need to ask it.

Ms HARTLAND — I have quite a detailed response, so if it is acceptable I would like to read that.

The CHAIR — In actual fact I asked the executive officer to forward those questions, because it is imperative that we get those answers.

Ms HARTLAND — So if it is acceptable I would like to read directly from the notes, because it is quite a technical issue.

Under the Mutual Recognition Act 1992, goods which may be lawfully sold in the first state may equally be sold in the second state without the need for compliance. So that is what we are talking about. On its face, having additional requirements to comply with the sale of drinks and containers in Victoria looks like a Mutual Recognition Act problem, but it is not. Legal advice prepared by the Boomerang Alliance about container deposits both from the Western Australian Environmental Defender's Office and Baker and McKenzie agree. We have these legal opinions here.

As the Baker and McKenzie advice puts it, a deposit refund scheme that does not have as its objectives a change in the composition of packaging of goods or to restrict the sale of goods but rather is aimed at the return of packaging of goods does not offend mutual recognition. The main thing to remember is that the composition of the drink itself is not affected. The same drink is satisfactory for sale in Victoria and in other states. The composition of the container is not affected. The same glass, aluminium, plastic or liquid paperboard is satisfactory for sale in Victoria and in other states. The law applies equally to goods produced in or imported into Victoria. The deposit must be high enough to achieve the environmental objective but not so great as to become disproportionate in achieving those objectives.

There are exemptions and exceptions in the legislation that can be applied to the scheme, in sections 11, 14 and 15 of the Mutual Recognition Act 1992. The section 11 exceptions have a general principle that the laws must apply equally to goods purchased, produced or imported into the state. This is the case with this bill. The manner of sale exception under section 11(2) may apply because the scheme does not ban any particular containers or determine whether the goods are of a high enough quality to be sold. Containers that are excluded from the scheme may still be sold, such as 4-litre containers because they do not fit in the current vending machines.

More useful, however, is the handling exception under section 11(3) of the Mutual Recognition Act 1992. This relates to the transport, storage and handling of goods aimed at, amongst other things, minimising or regulating environmental pollution. It is usually associated with dangerous chemicals. In this bill labelling requirements relate to the handling of empty containers after sale and consumption. It is aimed at preventing litter as well as the greenhouse and pollution benefits of increasing recycling levels. There are also temporary or permanent exemptions that may be granted under sections 14 and 15 of the Mutual Recognition Act 1992. The South Australian container deposit scheme has a permanent exemption under section 15. The Northern Territory has a temporary 12-month exemption. A temporary exemption under section 15 may be made by law or regulation and it would be possible to gain a temporary exemption of 12 months as a precautionary measure. This would give the scheme time to provide data substantiating the environmental and economic advantages generated by the system.

I know that is really very technical, so I am not sure whether people want to ask more questions on this tonight or not. I would be happy to come back if you wanted to give me some more written questions.

Ms INGHAM — I am happy to answer questions as well.

Ms HARTLAND — Liz has some more information because it is quite technical.

The CHAIR — I have a follow-up question. The temporary exemption is issued with a view to forcing the other states to comply with the Victorian standard. Is that what you are suggesting, or has that been misinterpreted?

Ms HARTLAND — No. We gave the example of the temporary exemption for the Northern Territory, so they have one for 12 months and that provides an opportunity for them to comply — —

The CHAIR — That is what I mean.

Ms HARTLAND — Currently South Australia has a permanent one, but because the Northern Territory scheme is very new — —

The CHAIR — Are you suggesting that if this bill were adopted and received royal assent, it would have a permanent or temporary exemption to the legislation?

Ms HARTLAND — I would say it would have a temporary exemption. I think Ms Ingham would like to add something.

Ms INGHAM — We would commence with a temporary exemption, although it is interesting you brought up the national scheme. Although that would not be the purpose of getting a temporary exemption, it could be a collateral advantage because during those 12 months, as you said when you commenced, a national scheme would not need any exemption to mutual recognition legislation. So that could be a collateral purpose. It would give the minister 12 months grace to organise a national scheme, as he has said he wants to do. But the purpose is that the scheme could run for 12 months — —

The CHAIR — Do you mean the Victorian minister could organise a national scheme?

Ms INGHAM — The Victorian minister has said publicly that he is advocating — —

Ms HARTLAND — He is very keen.

The CHAIR — I think a lot of people are very keen on a national scheme — —

Ms INGHAM — Yes.

Ms HARTLAND — Yes. And we are very keen on a national scheme.

The CHAIR — But I think the concern is that the tail might be trying to wag the dog, especially where we have two levels of government that might be of a different hue. There may not be a preparedness to enter into a mutually collaborative relationship. So is it your intention that it would be a temporary exemption — —

Ms INGHAM — Initially.

The CHAIR — with a view to forcing the other jurisdictions in Australia to be able to meet the standards of this particular legislation?

Ms HARTLAND — I think 'encouraging' is probably the word.

Ms INGHAM — I think that would only be a collateral purpose. It is almost an accidental advantage that it would give 12 months for people to start thinking about a national scheme. But the purpose of the temporary exemption is to give Victoria time to run the scheme for 12 months, collect the data and prove that a permanent exemption is warranted, that the scheme is — —

The CHAIR — A permanent exemption to what?

Ms INGHAM — To the mutual recognition legislation in the way that South Australia has a permanent exemption.

The CHAIR — And the intent being that other states are exempt from complying with Victoria's rules. Is that right?

Ms INGHAM — No, the exemption is granted to Victoria to be allowed to sell a product with a greater requirement — —

The CHAIR — I see. So it is the other way around?

Ms INGHAM — That a product for sale in Victoria has additional requirements to a product that is sold in other states.

Ms HARTLAND — I would think the advantage of having that 12-month period would go very much to some of the questions Mr Ondarchie has been asking. That would be the period in which you could collect the data that would tell you that, as we believe, this would be a very successful scheme and something that we would want followed up with a national scheme. I think a national scheme is everybody's aim.

The CHAIR — Did you have a follow-up question to that, Mr Ondarchie?

Mr ONDARCHIE — I am really looking forward to this financial analysis. Part of my thinking is around the fact that municipalities have done a great job on kerbside recycling; we can certainly agree to that. Some of the councils' revenue comes from the sale of the recyclables back to someone. Once you complete your financial analysis I will be interested in what impact a separate scheme will have — for example, households collecting and selling back — on council revenues and ultimately rate increases.

Ms HARTLAND — Pages 16 and 17 have a number of figures relating to councils. Interestingly, quite a few councils are quite keen on this scheme. They see that it has real benefits for them as local governments on a number of levels around public place litter and that they could actually earn money from this. Also, because landfill fees are becoming quite expensive it means that less material is going to landfill because it is being recycled. So there are actual and real benefits to council, and you can see those on pages 16 and 17.

Mr TARLAMIS — This question is kind of related and is with regard to the deposits. Under the proposal who would retain the deposits — the council, the recycler providing the service or the contractor kerbside? At the moment if you have a 10 cent deposit, the council contracts a contractor to collect the goods. Would the contractor keep the 10 cent deposit or would the council or the recycler?

Ms INGHAM — During the set-up period for the scheme councils would be able to renegotiate contracts with their collection providers. The likely value of the residual containers that are left in the bin, because a lot of people will simply put their empty containers in their kerbside bin — a lot of people will not bother to take them to reverse vending machines; they will donate them to council — will be able to be calculated and factored into the renegotiation of contracts.

Some of those contracts are fixed. I am sure you will receive submissions from councils that have fixed contracts, but I imagine that during the start-up period for the scheme, while they are continuing with their fixed contracts, they will be keeping a really close eye and taking very careful data on what the residual containers in the bins are and the value of the materials and all those other factors we have on pages 16 and 17 of the report in order to renegotiate those contracts. Those containers that are in the bins belong to council.

Ms HARTLAND — If you look at those figures on pages 16 and 17, you will see that we actually have figures there for a number of shires and councils under 'New income from 10c refunds' and 'Additional income from paper sales'. This is what I was talking about before, because the paper will be more valuable because there will be less glass contamination of it. Savings in landfill fees are quite significant, as are savings in gate fees. We believe that there are real savings for local shires and councils. In speaking to councils, that is an area where we are definitely getting a lot of support for these issues.

Mr SCHEFFER — I want to go back. These figures might be a bit wrong but my understanding of the situation at the moment is that something like two-thirds of waste in Victoria is either reprocessed or diverted from landfill — 50 per cent of our waste is organic waste or wet rubbish, 15 per cent is plastics, paper, glass and metals and of that the glass drink containers are a very small fraction of the 15 per cent. So in the whole conversation we are talking about a very small component of the waste problem that Victoria has. That is one thing.

The second thing is that you use the term 'recycling', but the problem in the system, as I understand it, is that last third. How will you get that out of the landfill and really going back into the system, so that a piece of plastic has an economic value for somebody to reuse it and turn it into something that can be sold? That is the sticky end of the problem. If we cannot move that — because business does not have the know-how and we do not have the technology — there are a lot of big issues. The issue is not about collection. We have 95 per cent collected already and now, as I hear you, what you are really talking about is the collection system because you have not said anything about that really big problem of recycling, how you really get it back into the system after you have compressed it, after you have packaged it, after you have done all those things.

That is the conceptual problem I have, not even coming back to Mr Ondarchie's problem about the costs, because that is a very big question that you have not come to about the public place, what you call recycling and what I call collection.

Ms HARTLAND — It is actually an issue that we have given a lot of thought to, because you are exactly right: how do we fix that problem?

Mr SCHEFFER — It is a tiny fraction you are talking about.

Ms HARTLAND — I am not so sure that it is that tiny. Obviously reducing organic waste is going to save millions of tonnes of methane. I think we have identified the problem. You are really looking for the solution, how we will fix it.

Mr SCHEFFER — Yes, and how this fits into solving that, because it seems it is a lower level issue, that is all.

Ms INGHAM — You mentioned organic waste being 50 per cent. I would like to start with that because that is one of the great challenges for greenhouse gas emission reduction. There are tremendous advantages of a container deposit system, believe it or not, in reduction of organic waste. It is also something that we know that the current environment minister is keenly interested in. He has made very strong statements about a focus on it or actually eliminating it. His personal view is that he wants to eliminate organic waste, and obviously we strongly support that.

Reducing organic waste could save millions of tonnes of methane going into the atmosphere. At the moment drink container waste is a financial drain on organic waste recovery. A container deposit scheme helps organic waste recovery by avoiding contamination, reducing costs — because these are very expensive plants and it has been difficult to get them going in Victoria, despite the former government investing large amounts of money — and improving the saleable product produced by the plants. We are talking about advanced waste technology plants also known as wet MRFs that are taking the mixed garbage and pulling out the organic waste and turning it into something they can sell, a soil product.

At the moment one of the big financial drains is broken bottles and cans. Incidentally, for those concerned about kerbside, 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 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.

The Australian standards for composts, mulches and soil conditioners allow only 0.5 per cent of glass. It is difficult for a plant receiving material with a 3 per cent to 5 per cent contamination to achieve this standard. Also, little bits of plastic, glass and paperboard pieces look like industrial waste in the final product. They stay on the surface after the organic matter is absorbed into the soil. They actually glitter. There would be fewer drink containers to remove from the mix and those containers that were removed would be worth 10 cents each. The end saleable product would cost less to produce and would be of a higher quality.

We got that information from an organic waste recycler in another state. I do not know whether any organic waste recyclers have made submissions to this inquiry, but it would be just fabulous to hear from one.

The second part of your question related to? I got overly excited about organic waste.

Mr SCHEFFER — It is a tail-wagging-dog thing.

Ms INGHAM — Yes, you talked about the difference between recovery and collection. You are quite right. One of the great benefits of a drink container deposit scheme is that collects the material together. That is what it does. You are right. It does not recycle it; it collects it together. That is the best way to bring about an efficient recycling system — to efficiently collect the material and have it sorted. We are talking about technology.

These machines read the bar code and they pre-sort the material. So clean, pre-sorted material is delivered to our recycling centres crushed, and in an efficient way.

Ms HARTLAND — The other thing in terms of the technology side of it — I am just thinking of the reverse vending machine — is that we do have some video of some German machines. I am really happy to send it on to the committee. Markus Fraval also has video, and once you have seen it it really helps you understand how it goes into the machine, the barcode is read, it is sorted into different bins, some of it is crushed and obviously the glass can be reused. So we get very excited — —

The CHAIR — Are we able to get a DVD or CD copy of that perhaps?

Ms HARTLAND — I do not think that would be a problem at all. We are really happy to do that, because it is only about 3 minutes but it is 3 minutes in which you suddenly really get how the technology works.

Ms INGHAM — And how it can be used to donate to charity.

Ms HARTLAND — And how it can be used to donate to charity is a really important factor. But I think, further to Mr Scheffer's question as well, if it were possible to have someone from the industry speak to you or for you to go and visit one of these sites, you would get a sense of how they work.

Mr SCHEFFER — I think the Chair suggested we were going to Germany.

The CHAIR — I thought it was Dingley Village actually.

Ms TIERNEY — In your discussion paper you say that your proposal will create something in the order of about 300 to 400 jobs, and of course we have also received a submission from the food advisory council. I am sure you are familiar with their position and their paper. They actually turn your proposal on its head in that they claim there has been a recent report — this is on page 5 of their submission — where they say the national scheme, at 14 cents per container, would reduce employment levels in the industry nationally by 4202 direct jobs and 5164 indirect jobs. If you extrapolate that down to Victoria, they say, that means a loss of 1105 direct jobs and 1358 indirect jobs. I just wanted your thoughts on that.

Ms HARTLAND — We would like to take that as a question on notice and actually look at how they have summarised that. I would also direct the committee to Environment Victoria's green jobs report that came out in 2009, which talks about container deposit legislation and completely contradicts that. But we are really happy to pass that on.

Ms INGHAM — We have not had the advantage of seeing that submission, because it is not public yet, but you mentioned 14 cents. That is a different amount. Also if it is a study that is produced for the national packaging recovery process it will have the same flaws of economic analysis that all of those reports have. The Boomerang Alliance is best placed to talk to you about those flaws, but in particular when they talk about 'the industry', that will not be taking into account the jobs that are created in the recycling industry and other industries.

Ms HARTLAND — We also believe that jobs will be created in regional areas, because the very large depots will probably be created in regional areas, where we all know there is a real need for new jobs.

Ms INGHAM — And manufacturing jobs.

Ms HARTLAND — And obviously manufacturing jobs will be created if we then are producing the reverse vending machines in Australia.

The CHAIR — I am mindful of the time, and obviously Ms Hartland will be back to take us through the bill clause by clause after we have heard from other witnesses. Are there any other policy merit or environmental questions or questions pertaining to cost and the economics of the scheme before we close off on the various legislative process machinery questions?

Mr ELSBURY — I can see the advantages of this scheme in that it is eliminating in part cross-contamination issues. Silly things like people leaving a straw inside a container are enough to cause cross-contamination, which means that the thing is useless; you cannot recycle it. But again I go back to the fact

that even though we are going to be having this container deposit scheme and the kerbside collections, the back-end infrastructure, the infrastructure at places like Visy, where they are going to be doing the sorting and everything like that of the kerbside stuff, that will still be going, and then we are going to expect them to have the other back-end equipment to be able to bring in this other material that has already been sorted and then put it through a different set of crushers — because you do not want it to go through the same set of crushers as the contaminated material, you do not want it to go down the same conveyor belts as the contaminated material and you do not want it to go down any of the same bins or hoppers as the contaminated material. So we are expecting the recycling companies themselves to expend almost double the capital to have two separate collection schemes.

Ms HARTLAND — Interestingly, when we have spoken to the recycling industry they are the ones who are really keen on this, because they actually see that there is money in it. They believe that it can be done and can be done efficiently, especially when you are looking at the kinds of large recyclers that then can be expanding into more and more products — and container deposit legislation will assist that — and secondly, because that material will have been crushed and baled. But also they will be looking at expanding into e-waste, so there are a lot of prongs to this.

Mr ELSBURY — From the discussions that I have actually had with recycling companies part of the issue is that different bottle companies and different glass manufacturers use slightly different tints of glass, which then creates another contamination issue. They break it up into I think it is green, grown and shale.

Ms INGHAM — Yes.

Mr ELSBURY — And there are so many different colours of shale it is not funny, there are so many different colours of green that some of them end up as brown, and they have even got brown or something like that that they use. It is really technical, but the container deposit scheme or the collection via these means will allow that to be diversified in that this is a bottle made by Jack's bottle company which has a slightly bluish tinge, this is a bottle by Coca-Cola and it is a clear bottle, but by the same token — I am still wondering the whole hog.

Ms HARTLAND — Mr Elsbury, you have actually highlighted a very major problem of industry, and I know that Ms Ingham is very keen to talk more about it.

The CHAIR — Jumping out of her skin!

Ms INGHAM — Yes.

Mr ELSBURY — Please, indulge! That is what we are here for.

Ms HARTLAND — In our office we are so into rubbish, it is all right. Go ahead, Ms Ingham.

Mr ELSBURY — Please do not leave it open like that.

Ms HARTLAND — No, but it is one of those critical questions, it truly is, that is causing this.

Ms INGHAM — You are quite right. First of all, there will be more containers recycled overall, so you are quite right, it will have to expand substantially. But the advantages of the reverse vending machines in the scheme compared to a manually operated scheme like in South Australia is that the material not only comes pre-crushed, but also pre-sorted, and these machines can sort in a number of ways. I do not know how many hoppers they can have, but once the machine has read the barcode it will sort the product, it knows exactly what the product is and it sorts it into the appropriate hopper. I do not know how many hoppers it can have for how many shades of brown — —

Mr ELSBURY — Or grown.

Ms INGHAM — Or grown, but I would be as fascinated to hear the answer to that question if you asked one of the proposed Victorian manufacturers of reverse vending machines the question about how many hoppers and how many shades of glass can be sorted.

In terms of the infrastructure, in the set-up of the scheme, because it will take about 18 months to get to the full 83 per cent recycling, we have a separate cost sheet here which you are welcome to see that estimates a one-off bonus in Victoria for the first year because there would be fewer containers returned in the first year; there may be about 70 per cent. There would be more unredeemed deposits, and we would propose that the EPA target some of this additional bonus money towards recycling companies to cope with those set-up costs and providing grants. That is basically it: you would end up with better sorted and pre-crushed materials that take up less space.

The CHAIR — Could I just ask the other side of the coin on the same question of the cost to industry, not so much the recycling industry because obviously there is going to be a benefit, in particular to those who produce the vending machines, but what is the cost to the rest of industry, in particular the producers of beverages? Does Victoria indeed have an exemption from the Mutual Recognition Act 1992? Obviously drinks from other states are going to continue to come into Victoria. What evidence is there that product consumption will not be compromised by the 10 cent levy and that people will just simply buy beverages from other states? What is the cost to industry, not just those who will be beneficiaries?

Ms HARTLAND — We think the cost to industry is going to be fairly minimal. It will be less than in South Australia and the Northern Territory and will be limited because they will need to change the labelling. If the current levy labelling says 10 cents recycled in South Australia — and soon in the Northern Territory — Victoria will have to be added onto that. We do not see that there is a huge cost to the manufacturer.

The CHAIR — And is product consumption affected by the 10 cent levy?

Ms HARTLAND — We do not see that that will change. When we get to this stage, again there is this issue about baseline figures and that is when you have got reverse vending machines, it is coded, it is sorted and you could get that data.

The CHAIR — But if you go into a milk bar, you have got a cold-drink fridge lined up, a commercial fridge, and, a bit like eggs, you have a look at it, you might put in your parameters, what you are prepared to accept and whatnot, and at the end of the day you are governed largely by price.

Ms HARTLAND — Interestingly we pay the same price in Victoria for drinks as you do in South Australia, so we truly do not think that it is.

The CHAIR — For the same types of drinks?

Ms HARTLAND — Yes.

The CHAIR — And that is substantiated by a document?

Ms HARTLAND — No.

Ms INGHAM — No. Do you want to talk about the measures to ease the financial burden?

Ms HARTLAND — We have actually looked, because we think it is always proper to ease the financial burden for industry because you want to make this work and that was the reason we rejected the idea of distinct barcodes for Victoria so that we could just fit in with what is already there. We initially thought that we would need a separate barcode in Victoria because of fraud issues and people taking large numbers of containers across the border et cetera, but we really do not think the problem warrants a whole different barcode. It will be the same levy as in South Australia and the Northern Territory, and as we said, the labelling will just add Victoria to it. The due dates for levy payments are designed to allow the drink companies to be paid by retailers before they have to pay the levy to the EPA, so they get the money before they have to pay it.

We do not require manufacturers, wholesalers or retailers to take back the containers now. For those of us who are old enough to remember taking them back to the milk bar, we know that for small business it was a huge burden to have to do this, so that is why we are not going anywhere near those kinds of small businesses and we do not require retailers to do paperwork or other administration regarding the levy, and we do not require the bottle and packaging industry to participate in running the recycling scheme, which is the way it happens in South Australia and the Northern Territory. We have thought about those things, but obviously when you do these kinds of hearings, we think of other questions and you are going to think of other questions.

The CHAIR — We will have an opportunity to stay in communication.

Ms HARTLAND — Yes, we are really happy to source the information that is required.

The CHAIR — The cost to the EPA for administration?

Ms HARTLAND — It is a self-funded scheme. There will be minimal costs which will be covered, and you will find that on page 21, so it is staffing costs to administer the scheme, but it all gets balanced out by the other savings.

Ms INGHAM — In South Australia the scheme is administered by something like three people at the EPA. It is a different system, but we have given a generous provision of a million dollars a year for the EPA to administer the scheme.

Ms TIERNEY — I have a basic question about Aldi. Have you had a conversation with them about whether they would be interested in supplying this sort of machinery in their supermarkets here; what is the up-front cost; and what are the ongoing costs in terms of malfunctions?

Ms HARTLAND — We have not had the conversation, but I think on the rest of your questions Ms Ingham might start off. But we have not had a conversation yet with companies like Aldi.

Ms INGHAM — The start-up cost to provide the machines is zero.

The CHAIR — I would imagine that mandating and locating it in the one commercial outlet would be against some sort of trade practices provisions.

Ms INGHAM — That is why we are not doing it. The start-up cost is zero because the machines are provided by reverse vending machine companies which operate them at a profit and pay rent.

Ms TIERNEY — And maintenance and breakdown costs?

Ms HARTLAND — The company that would supply the machine would be dealing with those.

Ms PENNICUIK — The only question I had was about what would be the key elements that we would need in a national scheme. But you were saying really early in your submission that a national scheme could not override state schemes. What does that mean, and what would the key elements of that national scheme have to be?

Ms INGHAM — May I start with the second half of your question, Ms Pennicuik?

Ms PENNICUIK — Certainly.

Ms INGHAM — On the same day that Ms Hartland second-read and tabled this bill, in the commonwealth Parliament they were debating and passing the Product Stewardship Bill. If you read the *Hansard* of each Parliament, you will find that each speech refers to the other. The Product Stewardship Bill, the commonwealth bill, sets up a mechanism to provide for product stewardship — container deposits, sorry, which is an example of product stewardship — through extended producer responsibility schemes. That Product Stewardship Bill went through a large process, and in particular a very detailed Senate inquiry that recommended a number of amendments that were adopted. Relevantly for Ms Pennicuik's question regarding the issue of a national scheme overriding the states, during the Senate inquiry there were submissions from people like Jeff Angel from the Total Environment Centre saying they feared a national drink container deposit scheme would override the scheme that is in operating in South Australia. Even though the South Australian EPA, for example, took a contrary view — they were not concerned about it — nevertheless the Senate committee came to its conclusion and recommended that some amendments be made to the legislation to ensure that there would be no issue of new commonwealth extended producer responsibility overriding the states. I have some notes on the government amendments to the government legislation that we can hand up. I will start with the government's notes on its amendments. They say:

Amendments (1) and (2) respond to the recommendation in the committee report that the bill preserve or protect existing state and territory product stewardship schemes so as not to reduce their targets or effectiveness.

The amendments removed two subclauses of the relevant clause. The notes continue:

This means that regulations dealing with co-regulatory and mandatory product stewardship will not be able to exclude state or territory laws. The effect of the amendments is that state and territory laws would continue to apply to the extent they are capable of operating concurrently with the bill.

I also have a number of other handouts that I will not speak too much on, but I might just hand them up. They include excerpts from the Senate committee, the *Hansard*, the explanatory memorandum and the Act itself that demonstrate that the intention and the effect of the Product Stewardship Bill is that it would preserve a scheme like the one we are proposing in Victoria, only if the scheme we are proposing in Victoria is of equal or greater value than the national scheme.

What this means is that if we set up a really good scheme, it will hold. If we set up a container deposit scheme in Victoria where the fund is administered by the Environment Protection Authority, we will never be in a situation where our money has to be sent to Canberra instead. If we set up a scheme early, getting in on the ground floor, so that the manufacturers come to Victoria, we have the advantage of that without ever losing any of the benefits that we have set up in Victoria; and certainly we have nothing to fear in terms of set-up costs. If we are going to get a national system, any set-up costs would be the same. The difference is that we have the opportunity to create a scheme in Victoria that is of benefit to Victoria and never lose it. The only thing we have to fear is if we create a scheme in Victoria that is compromised or amended in ways that reduce the effectiveness of the scheme — effectiveness in terms of its aims and objectives, which are litter reduction, environment, recycling and so on, and the sorts of things that would be referred to in the Product Stewardship Act. If we set up a scheme that is of lesser benefit, then it can be overridden. But even then the minister's answers to Senator Ludlam's questions indicate that even then there would be a process in COAG of negotiating with Victoria. But we would certainly recommend that you go with a high-quality scheme like Ms Hartland's.

The CHAIR — I would like to thank you. I have two important questions in relation to the machinery of introducing this in the upper house in particular, and you alluded to it in your opening comments. You received notice of the questions that we would like to ask, and they are related. You mentioned earlier that you were confident that standing order 93 would not stand in the way of this bill, which establishes a levy, being introduced in the upper house. Sorry, I am referring to standing order 93 in the Assembly, which says a bill which establishes a levy should have to originate in the Legislative Assembly. Section 62(1) of the Victorian constitution provides that a bill imposing any duty, rate, tax, rent, return or impost must originate in the Legislative Assembly, not the Legislative Council. You suggest standing order 93 of the Assembly allows for the consideration of the Assembly bills set out in section 62 of the Victorian constitution. Are you able to talk us through your view?

Secondly — obviously you have received notice of the questions so you will be able to answer this — is this bill likely to be considered a bill that imposes a duty of excise on goods contrary to section 90 of the commonwealth constitution, which reserves the exclusive power of imposing duties or customs or excise to the commonwealth? So, no. 1, can it be introduced in the upper house; and no. 2, is this within the jurisdiction of the commonwealth?

Ms HARTLAND — We might take this in halves. I might get Ms Ingham to start off with standing orders, and then I will address the issues of excise and duties, if that is all right with her.

Ms INGHAM — Sure. Standing orders is the easy one. I will commence with order 93 and refer to 93(2)(b). Ms Hartland will deal with why this legislation does not create an excise or a tax — it is a levy — but there are money issues; there are fees that would be payable into the Environment Protection Authority. But order 93 says when any pecuniary penalty, forfeiture or fee is authorised and so on, the house does not insist on its privileges when, relevantly, the fees are not made payable into the Treasury. So this is not a money bill, as Ms Hartland will point out and as she pointed out in her speech on 29 July 2009, which I have handed up.

The CHAIR — So you claim that indeed it would not be subject to this order, because the money does not come to the state. Is that what you are saying?

Ms INGHAM — It does not come into Treasury; it is paid to the EPA. It is paid into the same fund where landfill levies — —

The CHAIR — A statutory authority?

Ms INGHAM — Yes, it is.

Mr SCHEFFER — So the issue is in fact whether it is paid into Treasury, not whether it is affected by a statute. Is that what you are saying?

Ms PENNICUIK — Yes. That is right.

Ms HARTLAND — There are other examples of this, such as the landfill levy and the ports levy that was created for the dredging. So we — —

The CHAIR — But that was introduced in the Assembly.

Ms INGHAM — They are all introduced in the Assembly. Our understanding is that there has been no similar levy introduced in the upper house. There has not been — —

The CHAIR — That is the issue of the second part of it — that obviously standing order 93 of the Legislative Assembly states that —

Ms HARTLAND — I am leaping ahead of myself. I am thinking of excising duties, so — —

The CHAIR — anything that imposes a levy can only be introduced in the Assembly and not in the Legislative Council.

Ms INGHAM — Yes. I guess they are separate issues. When the former government chose not to debate the bill — Ms Hartland's 2009 bill — in the lower house, it did not refer to standing order 93; it was Ms Hartland who brought that up in response. It referred to the other element of your question, which was that it believed it imposed a duty, a rate, a tax and so on.

The CHAIR — But the two are related —

Ms INGHAM — The two are related.

The CHAIR — because 93 says that anything that imposes a levy must be introduced in the Assembly rather than the Legislative Council.

Ms INGHAM — It does not say 'levy'.

The CHAIR — Yes. Establishes levy — it should have to originate in the Legislative Assembly.

Ms INGHAM — In order 93? Does it say 'levy'?

The CHAIR — That is the inference.

Ms INGHAM — The inference is a levy?

Ms PENNICUIK — Does it say 'levy'?

Ms INGHAM — It does not say 'levy'.

The CHAIR — We will obviously need to take advice on whether indeed the Legislative Council can consider it.

Ms INGHAM — Yes.

Ms HARTLAND — I think it is a really important question that needs to be resolved.

The CHAIR — Yes, because we are now talking about machinery. We will come back and talk through the implementation clause by clause after we have educated ourselves on the issues.

Ms HARTLAND — Certainly when we brought forward the original bill we would not have done the amount of work we did if we felt we could not actually present it in the upper house to be able to then — —

The CHAIR — I think there is probably value in presenting it irrespective of whether you can or not just in terms of getting ideas on the agenda and into public debate.

Ms HARTLAND — But we would not have done it if we seriously felt we were going to do that amount of work and then not be able to — —

The CHAIR — Have you sought the advice of the presiding officers of the clerks?

Ms HARTLAND — We will do that again, but we did it.

The CHAIR — You did it last time?

Ms HARTLAND — It was a verbal — —

Ms INGHAM — It is not possible for us to ask the clerks to provide us with written advice, for Ms Hartland as a private member to do that, but if the President of the Legislative Council were to ask the Clerk for advice, I am sure the committee would be advantaged.

The CHAIR — Advantaged to know the outcome. Perhaps Ms Hartland may care to approach the presiding officer —

Ms HARTLAND — Absolutely.

The CHAIR — and we can certainly encourage those discussions.

The second question — related — is about the exclusive power of the commonwealth to impose duties of custom or excise. Has this issue been addressed?

Ms HARTLAND — 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. Ms Ingham, would you like to add any other comments to that?

Ms INGHAM — Does anybody need any further information?

Ms HARTLAND — Again, that is quite a technical piece, so we would be really happy to receive emailed questions.

The CHAIR — Just coming back to the answer to the first one in relation to Legislative Assembly standing order 93, 93(2)(b) states that the house — meaning the Assembly, obviously — does not insist on its privileges, one of which is to deal with legislation before the Council. Indeed it says:

The fees are imposed in respect of benefits 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 —

which is the issue Ms Ingham mentioned —

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 ...

and it goes on. I think it is sufficiently vague that it does require some expert opinion.

Ms HARTLAND — We will absolutely follow that up for the committee, yes.

The CHAIR — Any further questions before we wrap it up?

Mr ONDARCHIE — First of all, you are to be commended for your endeavour on this, and you always know you will get a financial question from me. I am worried about pages 16 and 17. Albeit the table has a qualification on it, I think some of the assumptions are predicated on the fact that people will put their containers into their recycle bin and council will pick up some revenue out of that.

Ms HARTLAND — Yes.

Mr ONDARCHIE — I am not sure that this is the case — and I am going to show my age here — because I seem to remember we used to collect them for the scouts, the Apex Club et cetera.

Ms HARTLAND — Yes.

Mr ONDARCHIE — And we had cash-a-can as well. I am just worried that the underlying assumption that councils' revenue is going to go up might not necessarily be the case. My comments are really that; they are comments on questions in terms of a financial analysis where you think of a potential drying up of the revenue stream for municipalities on that and of what the adverse impact of that is going to be on them having the capacity to do the things they need to do.

Ms INGHAM — So the underlying assumptions?

Ms HARTLAND — I think the question you are asking is the question that we have asked all along as well, because certainly we feel really confident about our figures, but always figures have to be questioned.

Ms INGHAM — If I may, when we talk about the underlying assumptions we can receive some comfort from the fact that at the commonwealth level the assumptions in the BDA report that was presented to the Environment Protection and Heritage Council beverage container working group by coincidence — well, not really by coincidence, but because our figures are right and our assumptions are correct, they are consistent with the ones that are produced independently at the commonwealth level, even in a report that recommends against drink container deposits — for example, that container deposits are the most effective for litter reduction. You will find that on page 17, that container deposits give by far the best return for containers, better than any other option that was considered.

It backed up the assumptions on how we calculated the percentage of reported packaging waste that is in drink containers. That is on page 31. So the percentage of reported packaging waste that is drink containers — it backs up our assumptions there. Residual bins are our rubbish bins as opposed to our recycling bins. We are saying that 20 to 40 per cent of that is recyclable material. That is backed up in the report, and that recyclable material in our rubbish bins is going into landfill. That is backed up in the BDA report — the environmental impacts generally; the national recovery of drink containers; drink container litter assumptions, or not assumptions, but what we are reporting; the beverage container contribution to all litter.

They note that South Australia is the lowest and keeps going down — that is on page 185. One where they vary is where they say that in Victoria drink container litter with container deposits would reduce by 20 per cent. That is greater than the assumption we make. We are saying 12 to 15 per cent reduction in litter. They are saying there would be a reduction of 20 per cent in Victoria. Mind you, those might be older figures.

The assumptions to calculate the beverage containers per tonne, obviously that is a very important assumption that was made. It is precisely the same as ours. You will find that on page 69. The container deposits have the highest level of certainty for the recovery outcomes. That is on page 75. It does not adversely affect kerbside, which is one of the things that you have brought up. You will find that on page 90. The costs to state government vary. You asked a question about the cost to state government running the EPA. They say the cost to Victoria would be higher, but they still bring the cost in at below \$1 million a year, so it is higher than her estimation but still useful.

You mentioned local councils. At the time they brought in a benefit to local councils of \$75 million per year Australia wide. That backs up the figures in our report on the net benefit to local councils. There are broadly similar environmental impact calculations, similar in method and scope, and greenhouse.

Ms HARTLAND — What should also be noted with local councils is that we have had quite a lot of support from local councils and shires. Interestingly, it has been described to me by some councillors who have attended MAV meetings, or VLGA, especially the councils on the South Australian border, because they see what happens across the road and the money those councils are getting et cetera. That has been the really interesting thing, that we have presented this to local councils on a number of occasions, and we keep getting the support from those councils because they see that there are real benefits, and they have obviously looked at our figures and they have calculated their own. We have had very little from councils saying we have got this wrong. They might say, ‘We think it is going to be a bit lower, but we still think the scheme has real value’, and I would certainly hope that you would be having representations from local government.

The CHAIR — Ms Hartland, you have been very generous with your time, as has Ms Ingham. I have just a quick question before we wrap up. The two documents that you have provided to the committee — one from the Environmental Defender’s office, providing advice re legal impediments to container deposit legislation, and the second one provided by Baker and McKenzie in relation to advice on the mutual recognition constraints on extended producer responsibility or container deposit legislation — do we have permission to and make available the documents on which your legislation is significantly reliant and to upload them to the website for scrutiny and to absolutely inform the debate?

Ms HARTLAND — We understand that these are publicly available documents, so I do not think it would be a problem.

The CHAIR — We will assume that the answer is that we have permission to do so unless within a very short period of time we receive advice to the contrary.

Ms HARTLAND — We will tomorrow alert both those organisations to the fact that we have used their material in this presentation, but they are public documents.

The CHAIR — Okay. Shall we perhaps ask you to call Keir by close of business tomorrow or something like that?

Ms HARTLAND — Yes, will do.

The CHAIR — There being no further questions, I would like to thank you very much for your time, all of the answers and your presentation and advise that shortly you will receive a transcript of the evidence that you have given, as advised previously. You will have a specified time in which to make any corrections to typographical errors and return it, after which, and with the agreement of this committee, the evidence will be uploaded, again to inform the debate.

Ms HARTLAND — I would also like to thank the committee for inviting us, because I think these kinds of committees ask the difficult questions, and they are the ones that need to be answered in terms of legislation. I think this is a very exciting process, and I hope to see us using this a lot more for other legislation as well.

The CHAIR — Thank you very much, and I declare this public hearing closed.

Committee adjourned.

