C O R R E C T E D V E R S I O N

STANDING COMMITTEE ON ENVIRONMENT AND PLANNING

LEGISLATION COMMITTEE

Subcommittee

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

Melbourne — 17 November 2011

Members

Ms S. Pennicuik	Mr J. Scheffer
Mrs I. Peulich	Mr L. Tarlamis

Chair: Mrs I. Peulich

Staff

Secretary: Mr K. Delaney

Witnesses

Mr J. Merritt, chief executive officer, and

Mr S. Watson, project officer, Environment Protection Authority Victoria.

The CHAIR — I welcome you to yet another public hearing, Mr Merritt.

Mr MERRITT — Thank you very much, Chair.

The CHAIR — This time it is the Legislative Council's Environment and Planning Legislation Committee public hearing relating to the inquiry into the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011. I welcome you as well as Mr Steve Watson. All evidence taken is protected by parliamentary privilege within this room, but that does not extend beyond this room. Such privilege is provided by the Constitution Act 1975 as well as the Legislative Council standing orders. All evidence is being recorded by Hansard. You will receive the transcript in about three days and will have an opportunity to make corrections to typographical errors, but the substance of your evidence needs to remain intact.

You have not made a submission, so we will allow 10 minutes for you to make a presentation particularly focusing on your view of the scheme, the role that has been proposed for the EPA under the bill and the cost to the EPA. If you could cover those points, then we will allow the rest of the time for committee members to ask questions. Could you each state your name, contact address and the position that you occupy in the organisation.

Mr MERRITT — My name is John Merritt. I am the chief executive officer of EPA Victoria, and I am joined by my colleague Steve Watson. Our address is 200 Victoria Street, Carlton.

I begin by thanking the committee for the invitation to present. I will confine my comments around the bill to those that are from a regulatory rather than policy perspective. Many of you would have heard me say before that EPA's primary role is that of environmental regulator, and I try to distinguish between that and the policy arm of the service.

Victoria, along with other jurisdictions, is funding a detailed consultation regulatory impact statement at present. This is investigating national measures to address packaging litter, including a national CDL scheme. One of the options that is being investigated as part of this national process is based on the model promoted by the Boomerang Alliance, which is similar to the model being proposed by this bill before the Legislative Council. I might suggest that, during their deliberations, members of the committee may wish to avail themselves of the findings of this regulatory impact statement to formulate or include consideration of that position in regard to the merits of CDL legislation as a means to address litter and beverage container recycling. I will use my time before the committee to talk about a couple of aspects of this: first of all, EPA's role in administering the proposed scheme, any financial impacts that might affect the organisation and, finally, the legal advice that EPA has from the Victorian Government Solicitor's Office in regard to the bill.

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.

The South Australian EPA has recently undertaken a consultative process in order to implement a cost recovery model for its CDL scheme through the introduction of new fees. The South Australian EPA estimated that the administration and compliance costs of managing CDL, including approving labels and inspections to ensure compliance as well as a portion of EPA overheads, to be around $750 000 per annum. In Victoria we would imagine that the compliance costs would be expected to be somewhat higher because of the greater number of retail outlets but also the close proximity of centres along our border with New South Wales. The administrative costs could be expected to be higher because of the requirement for the EPA to enter into agreements with authorised collection depots and transfer stations. Obviously in South Australia this is organised by the industry itself.

Inquiries with our colleagues in the Northern Territory have put the one-off cost of implementing a CDL there, which excludes funding for infrastructure which we think we would probably not require, at around

$1.2 million to get the scheme running. Aside from the administrative costs of setting up the scheme, there will obviously be a requirement for a public information campaign prior to the scheme's commencement.

In terms of the financial impact on the EPA, the bill does not provide for a cost recovery model for the CDL scheme. It is assumed that the scheme will run at a profit and provide a surplus to be invested into promoting the reuse of recycled material from beverage containers. Of course CDL schemes have a somewhat perverse quality in that the higher the return rate, the less money in unredeemed deposits is available to fund the costs of running the scheme. The particular costs of running a CDL scheme are derived from the transaction costs involved in repaying deposits against which the scheme's operator can offset unredeemed deposits and the financial value of recovered material. If the scheme is successful to the extent of surpassing the break-even return rate, given the 10-cent deposit and the average net handling fees paid by EPA to collection deposits and transfer stations, the financial burden of the scheme will fall to the EPA. The EPA would then need to be supported by the state to the extent of the losses incurred by the scheme in order to continue to fulfil its requirements. If the scheme generates a surplus over and above the EPA's costs for administering the scheme, we assume it would be appropriate for Sustainability Victoria to then take those surpluses and fund the promotion of recycling.

I turn then to the legal advice that the EPA has sought on the bill. The EPA did seek advice from the Victorian Government Solicitor's Office on the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011 at the time the bill was introduced. I will table a copy of that advice for the committee's information at the conclusion of these proceedings. In fact I will table it now.

The CHAIR — Thank you very much. That is good.

Mr MERRITT — Firstly, 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.

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, 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.

I will talk about the Mutual Recognition Act 1992, which creates a requirement 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 requirement that goods satisfy the standards of the second state in relation to packaging or labelling. This means, for instance, that a Victorian beverage manufacturer is not required to label with CDS labelling requirements in order to sell their product in South Australia. However, the South Australian Environment Protection Act 1993 is specifically exempted from the Mutual Recognition Act 1992. The VGSO holds that a similar exemption would be required. This is probably not an insurmountable barrier, given the introduction of the new container scheme.

That is the extent of my formal remarks in terms of both the administration and the legal side of it, and together we would be happy to take any questions and offer any comments we can in relation to the matter.

The CHAIR — Thank you very much, and thank you for the copy of that advice. We will take an opportunity to peruse that at a future time.

Ms PENNICUIK — You mentioned that the more successful the scheme, the less revenue is generated, but I think we have heard from other witnesses that there is not a scheme operating around the world where there is not some unredeemed. There is always possibly no less than 10 per cent that is not redeemed, so the scheme is self-funding in that way. I wonder whether the EPA has done any work on looking at the bill and what impacts it might have on the EPA. Does it seem like there would ever be a situation where it would not be self-funding?

Mr MERRITT — Steve, you will help me as we go. The modelling we have seen estimates a return of 82 per cent?

Mr WATSON — In the low 80s.

Mr MERRITT — In the low 80s. South Australia's performance is in the low 80s. At that rate, some estimates have been made as to what the recovery would be, what the retention would be, versus the amounts that would be paid out to the depots and the providers. There is a fair gap in that regard.

Mr WATSON — Yes, it really is a function of the net handling fees; that is the difference between the average handling fee on a container that is returned through the scheme less the value of the material that is recovered. It is a question of whether or not there are sufficient unredeemed deposits to pay for that gap. The higher the return rate, the less unredeemed deposits there are to fund the scheme. For every set of net handling rates and deposit level, there is the break-even point. Various calculations have been done that suggest that the break-even point is perhaps in the high 70s, the mid 70s or perhaps around 80.

I do not know that we want to say exactly what that break-even point is, because it is impossible to know in advance. Part of the problem is that the break-even point is dependent on the financial value of material, and that is essentially a function of world commodity markets.

The price of aluminium, used glass and whatever will determine the financial outcomes of the scheme, given the handling fee and the return rate on the level of the deposit.

Mr MERRITT — To that we then add: what is the cost per container that we would pay the depots that receive and collect? Is that right?

Mr WATSON — Yes. If the average material value of the containers that were returned was high enough, you could defray all of the costs, and one would wonder why regulation would be required in that case. It would be in the industry's interests to set up their own scheme in that case, because they would be able to run the scheme at a profit. To reiterate, for any given net handling fee there is a break-even return rate. If you get over that, you run at a loss. If you are below that, you run at a profit.

Mr MERRITT — We did calculations based on the recycling or the commodity prices for the plastics and all the rest of it, and calculating that we may need to pay the depots a fee per item to collect them, that fee was in the order of 3 cents an item.

Mr WATSON — That is not out of the ballpark.

Mr MERRITT — And working on a low 80 per cent return at 3 cents a container, it would cost about $30 million a year to run it. That is what we would be paying out to run it. But there are a number of variables in there, such as: what is the commodity price? What is the depot going to bid for us? They will bid to the EPA, if we are the centralised administrator, on what they think they can get in terms of taking the product off and selling it, and then they will tender on a price per unit, which they would ask us to pay to them. We are all punting on what the return rate might be, but I think we can be pretty confident that our experience will reflect South Australia's experience at around that low 80 per cent mark. We have done the numbers on that, and we reckon it is about $30 million a year.

The CHAIR — I have three questions, if I may — and that sounds a bit greedy! The first is: when is the RIS due that is currently taking place in relation to the national proposals, and would there be fewer obstacles and barriers and perhaps even fewer costs to Victoria and, say, to the EPA if we were part of a national scheme? That is the first question. The second is: the demands on the EPA's time and resources in terms of inspections, enforcements and a whole range of activities across a whole range of sectors is always increasing — —

Mr MERRITT — Yes.

The CHAIR — Because I think there is a public expectation. I note all the wonderful work you have done in the area of tips and landfill complaints, and they are ongoing challenges — no doubt Mr Tarlamis will agree. Obviously it would be a policy decision and no doubt it is a question of resourcing, but would this responsibility take away from the range of ever-increasing responsibilities that the EPA is confronted with? And then I have one more after that.

Mr MERRITT — The ministerial council is convening by teleconference in the week after next — I cannot remember exactly what date that is, but it is in the week after next — to receive a draft of the regulatory impact

statement, so it is imminent and it will then be available from there. It is not far. Obviously in everything we do scale contributes to the efficiency, so our preference would be for it to be done nationally if that were viable.

In regard to the priority issue, it does not rank highly, given the other issues that the Environment Protection Authority is dealing with, and that is because as a community we run at fairly high rates of recycling of beverage containers. We operate at about 60 per cent, which is the estimate at the moment, and that is extremely high at a household level and low at an away-from-home level. It is low at work and low at shopping centres and in the streets and all those sorts of things. The schemes, as they run, produce a low 80 per cent return, so it is an awful lot of effort to get that 20 per cent.

From an EPA point of view, it would not rank in terms of the issues that I deal with that the community puts to me and that business puts to me as the things that impact on their standard of living. Litter is an issue, and we would issue 14 000 fines a year from people who report litter — for throwing butts out of car windows and those sorts of things. Obviously from the community's point of view, litter is an issue that resonates. But in terms of the 8600 pollution reports that we take and in terms of those things that people report very strongly and emotionally as having a very adverse impact on their lives and which I prioritise through the documents I have shown you previously, it would not rank in that hierarchy in terms of where I would be allocating my resources.

The CHAIR — I will hold off on my third question and give my colleagues an opportunity to ask theirs.

Mr SCHEFFER — Thanks for that presentation. You asked the solicitor-general's office to provide you with this legal advice, but I want to ask you something about the finances. To be fair to Ms Hartland, in the preparation of the bill she did not have the resources of a government department. Normally they come through government, so there has been a lot of background work done which is not available to a member putting a private members bill — that is clear. We cannot rely on the material she has provided. But clearly you have provided a lot of important information around the finances. Would you be able to provide, in the same way as you provided us with the legal opinion, some document that will enable us to work over this? Because I think you are the only agency we have that has had the capacity to be able to do these sorts of estimates. That would be really useful for the committee.

Mr MERRITT — We would be happy to share those calculations. Is it right that we have that?

Mr WATSON — It will be in ranges.

Mr MERRITT — Of course. I think it is much more useful in the range anyway.

Mr WATSON — As I indicated, the financial outcome — apart from being dependent on the number of containers sold in the state — is affected by the return rate and the average net handling fee.

Mr SCHEFFER — That is exactly what we need to know — what some of those variables are and how they can play out.

Ms PENNICUIK — I would like to follow up on the finances a bit — bearing in mind what Mr Scheffer just asked — because I was not quite following what you said before, John, which was about $30 million. South Australia runs its system with about three people. You mentioned a $750 000 cost to them, and then you said it would be a bit higher. Ms Hartland says around $1 million, and she estimates $56 million from unredeemed deposits would subsume quite a lot of the costs et cetera. Then you mentioned a $30 million figure, and I am not quite sure what that $30 million figure is about.

Mr MERRITT — The modelling we did takes the revenue that we get — the 10 cents per container or whatever it is — and makes an estimate of how many containers do not get returned and therefore how much is retained by the EPA. It makes some estimate of what revenues the collectors would get and what additional charges they would require to set up and run those depots or facilities. Is that right, Steve?

Mr WATSON — That is right. Against that, you have to net off the financial value of the material that they collect.

Mr MERRITT — Yes, what they would make.

Mr WATSON — So the 700-and-whatever — —

Mr MERRITT — That is just our internal cost.

Mr WATSON — That is the internal costs for public servants to run the scheme. The financial outcome, for which the state is liable, is the difference between the income that the scheme would receive from materials and unredeemed deposits against the handling fees that are paid out to operators.

The CHAIR — So in South Australia industry takes the risk, whereas here government would be underwriting?

Mr MERRITT — That is right.

Mr WATSON — That is right.

Ms PENNICUIK — Are you going to go to that in your — —

Mr MERRITT — We will provide the numbers that we used to do it.

Ms PENNICUIK — I think perhaps we will have a look at that when it comes.

I want to follow up another issue, if I could, which is about our rate of recycling beverage containers: you are saying 60 per cent kerbside and less away from home.

Mr MERRITT — No, it is very high kerbside. It is 60 per cent overall, which I understand is high 90s in terms of households at kerbside, which is clearly offset by very poor at workplaces and then everything else.

The CHAIR — A couple of places.

Ms PENNICUIK — So without a container deposit scheme it seems to me from the evidence we have heard and the evidence I have looked at we are not going to do any better than that away from home. Just having the dual bins around the place has not resulted in that away-from-home figure significantly rising, so what are we going to do about it? We cannot accept that that figure is going to stay there, so what is your response to that if we do not go down the CD route?

Mr MERRITT — In terms of the infrastructure that is provided at workplaces for recycling, it seems to have enormous potential to be improved. As a workplace that recycles everything — in my own workplace we track, count and audit all our bits of rubbish, and we have been able to significantly reduce that work — it is a matter of the extent to which that can be made commercially viable for the recycling industry to run, which was that threshold we were able to cross when household recycling really took off. It was that point when we moved from a half-system of tubs, boy scouts and football clubs to a point where the numbers were right and the industry was able to make it financially viable and viable for the councils. There was that increased benefit of councils providing a service to their communities. At that tipping point in the early part of the 2000s it just took off.

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. Certainly in the outdoor area I know there are a number of initiatives; in fact we fund or pass on some funding for councils for different bins and different systems of access in that regard. We do appear, as an observation point, to be behind what you see in other countries. I think there is a lot more that could be done in that regard, based just on the experiments that we do with our own workplace.

The CHAIR — We have heard the arguments, in particular from proponents of the South Australian experience, that the container deposit legislation regime does not undermine kerbside collection. I would imagine that primarily the reason for that is that the container deposit regime preceded the establishment of kerbside collection, so it was sort of scaffolded around a practice, whereas here it would be the reverse. Do you have any view as to what the impact might be on kerbside collection?

Mr MERRITT — It is really difficult to know the extent to which you are paying for something you already get. That is one of the fundamental issues with the scheme, which is the point I was making before. One of the issues is that we are paying for that 20 per cent gap which we need to get, but it is a very major project to

get to that when we are already at a higher level elsewhere. And how much are you going back into the household rate? It is impossible to know what that will be. In fact we have been arguing ourselves about the extent to which household practice changes in South Australia. What do they do? Do they actually put out their bin every second fortnight and retain all the deposit-attracting things for the scouts to come along or in the event that they go along to a depot? It is hard to know. There is also what the impact on us here would be and what the impact in the area that we are really after would be, which is the workplace and away from home.

Mr SCHEFFER — Have you looked around? Is that data not around? Or has that work never been done?

Mr WATSON — We understand that in South Australia the councils make money from deposits that householders leave in their recycling bins, so not everyone wants to or is able to get to a depot. There is an amount of material that stays in the recycling system, and the financial value of that material — because it bears a deposit — is extremely advantageous to councils. There would be diversion away from the kerbside system, so it might be a paradox; the kerbside system might be less economically efficient but more financially viable for the councils that operate it. It would recover less material, which in a pure economic sense is not as desirable a system, because the trucks are going past people's houses every week, but the council might be financially better off because of the one or two deposit-bearing containers that are in the recycling because someone does not want to go to a depot.

Mr MERRITT — Is it fair to say, Steve, that the regulatory impact statement work we have commissioned is expected to be quite extensive in exploring these scenarios? You do not need to be absolute; you just need to model different scenarios on it which will be able to give us a sense of what that issue is, as well as centralised versus beverage manufacturers' processes and all those sorts of numbers. I think that is going to be an important contribution to the national debate which is going on parallel to this bill.

The CHAIR — We will await that with bated breath. You say it is imminent — a couple of weeks. I thank both of you very much and again remind you that you will get the transcript in the next few days and will have an opportunity to correct any typographical errors. That will eventually become part of the public evidence uploaded to our website and then become part of our report. Thank you for the copy of the solicitor's advice.

Witnesses withdrew.