

# Waste Reduction and Recycling Amendment Bill 2017

## Explanatory Notes

### FOR

## Amendments to be moved during consideration in detail by the Honourable Steven Miles MP, Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef

### Short title

The short title of the Bill is the *Waste Reduction and Recycling Amendment Bill 2017*.

### Objectives of the amendments

#### ***Waste Reduction and Recycling Act 2011***

The objectives of the amendments to the *Waste Reduction and Recycling Act 2011* are to:

- clarify the meaning of beverage manufacturer for the purposes of the Container Refund Scheme to avoid potential free-riding and loopholes that may result in additional cost to the scheme; and
- allow for a small beverage manufacturer representative to be a person other than an employee of a small beverage manufacturer, such as an employee of a peak body that represents small beverage manufacturers.

#### ***Planning Act 2016***

The objective of the amendments to the *Planning Act 2016* is to clarify the intent in relation to the Minister's decision on certain change applications; owner's consent in relation to particular development applications; and certain appeal rights.

#### ***Planning and Environment Court Act 2016***

The objective of the amendments to the *Planning and Environment Court Act 2016* is to address a cross-referencing error; and extend the period for the current Planning and Environment Court Rules.

### Achievement of objectives

#### ***Waste Reduction and Recycling Act 2011***

The objectives are achieved by amending:

- sections 99O (Meaning of **manufacturer**) and 99P (Restriction on manufacturer selling beverage product), and
- section 102B (Meaning of **eligible company**)

### ***Planning Act 2016***

The objectives are achieved by amendments to the *Planning Act 2016* to:

- clarify that the Minister who called in the application is the responsible entity for any future change applications relating to approvals resulting from an application that was called in under the repealed *Integrated Planning Act 1997* or *Sustainable Planning 2009*.
- make the owner's consent requirements for particular development applications (for operational work or for building work) consistent with the owner's consent requirements for similar change applications and extension applications, and ensure that any approvals already given for these applications are not invalid.
- clarify the intent that no appeals may be made about decisions given by the Minister for change applications made in relation to a development approval resulting from a call in. If any appeals have been made before commencement, the appeal is of no effect.

### ***Planning and Environment Court Act 2016***

The objectives are achieved by amendments to the *Planning and Environment Court Act 2016* to correct an incorrect cross-reference to the *Planning Act 2016* and provide for extension of the Planning and Environment Court Rules 2010 for an additional 6 month period.

## **Alternative ways of achieving the objectives**

### ***Waste Reduction and Recycling Act 2011***

There are no other viable alternatives that would achieve the policy objectives other than by amending these sections of the Bill.

Currently ss99O and 99P restrict the meaning of a beverage manufacturer to a person who fills or engages another person to fill containers; or who imports from another country. The definition excludes a person who may transport a beverage product from another state.

Amendments to ss99O and 99P are necessary in order to provide clarity to ensure that all industry participants contribute their share to the scheme and to close the loophole that currently exists that may allow the deliberate avoidance of scheme obligations (free-riding) by freighting beverage products into Queensland for sale in Queensland, which will add additional costs to the Queensland scheme.

Currently s102B(2)(b) only provides for an employee, executive officer or business associate of a small beverage manufacturer to be a board director who represents a small beverage manufacturer.

In order to provide better and more equitable opportunity for the interests of small beverage manufacturers to be represented the amendment expands the representation to include a suitable person who may be an executive officer, employee or business associate of an association or peak body that represents small beverage manufacturers or has as a significant part of its member base comprised of small beverage manufacturers.

The policy objectives in relation to the *Planning Act 2016* and the *Planning and Environment Court Act 2016* can only be achieved through legislative amendment.

## **Estimated Cost of Government Implementation**

The amendments will not increase the administrative cost to government.

## **Consistency with Fundamental Legislative Principles (FLPs)**

### ***Waste Reduction and Recycling Act 2011***

The amendments to the *Waste Reduction and Recycling Act 2011* are consistent with fundamental legislative principles.

### ***Planning Act 2016***

The amendments have a retrospective effect in relation to amendments requiring owner's consent for particular applications, and in relation to appeals about the Minister's decision on a change application, as follows—

- A validation provision ensures that for particular change applications and extension applications made before commencement, and for which owner's consent is no longer required after commencement, are not invalid if owner's consent was not given with the application. While this provision has a retrospective effect, it is a beneficial provision as it protects any approvals given in relation to the affected applications. The validation provision is limited only to those circumstances where owner's consent has not been sought, despite the requirement for owner's consent to be provided, if it is no longer required after commencement of the amendments.
- The intent under the *Planning Act 2016* is that the Minister's decision on development applications and change applications called in by the Minister, and applications to change development approvals resulting from called in applications may not be appealed and proposed amendments clarify provisions accordingly. Consistent with this intent, a provision provides that if an appeal is made before commencement in relation to the Minister's decision as the responsible entity for a change application, the appeal is of no effect and is taken to have not been made.

## **Consultation**

The potential need for the proposed amendments to the *Waste Reduction and Recycling Act 2011* was raised with the Department of Environment and Heritage Protection (department) by beverage industry stakeholders. The department has consulted with beverage and retailer stakeholders in relation to the amendments to ss99O and 99P and with beverage industry representatives in relation to s102B during finalisation of these amendments.

The amendments to ss99O and 99P also address concerns raised during the Parliamentary Committee process and will provide consistency between the New South Wales and Queensland approaches around who is deemed to be a beverage manufacturer.

Consultation was not carried out in relation to the proposed amendments to the *Planning Act 2016* and the *Planning and Environment Court Act 2016*.

## **Consistency with legislation of other jurisdictions**

### ***Waste Reduction and Recycling Act 2011***

The amendments to ss99O and 99P are consistent with the New South Wales approach to identifying who the beverage manufacturer is for the purposes of funding the scheme. This is important as it provides a common approach for companies operating across the two jurisdictions and streamlines administrative and reporting obligations in relation to the two schemes.

## Notes on provisions

### 1 Before clause 1

This clause inserts a new part—**Part 1 Preliminary**—after line 1 for page 10.

### 2 After clause 2

This clause inserts a new part—**Part 2 Amendment of Waste Reduction and Recycling Act 2011**—after line 16 for page 10.

### 3 Clause 3 (Act amended)

This clause replaces the words ‘This Act’ with ‘This part’ in relation to amending the *Waste Reduction and Recycling Act 2011*.

### 4 Clause 4 (Insertion of new ch 4, pts 3A and 3B)

This clause amends section 99O lines 11 to 22 on page 20 in relation to the meaning of a manufacturer.

The amended subsection (1) states that a person is a manufacturer of a beverage product if the person makes the beverage product by filling containers with a beverage; or engages another person under a contract to make the beverage product or fill containers with a beverage for that person; or imports the beverage product from another country; or arranges for the distribution of the beverage product in Queensland.

New subsection (2) states that for subsection (1)(a) and (b) that it does not matter whether the beverage product is made in or imported into Queensland or another state.

This amendment clarifies the intent for who a beverage manufacturer may be and allows for a potential free-rider loophole in relation to cross-border distribution to be addressed. It also allows for administration of the scheme to be streamlined and for the reporting of more accurate data to ensure the payment of the Queensland container refund scheme obligation can be more appropriately calculated.

### 5 Clause 4 (Insertion of new ch 4, pts 3A and 3B)

This clause amends section 99P, lines 27 to 30 on page 20 in relation to restriction on manufacturer selling beverage products.

This amendment replaces subsection (1) and inserts a new subsection (1) to state that a manufacturer of a beverage product must not sell the beverage product to another person to use or consume in Queensland, or to sell for use, consumption or further sale in Queensland.

### 6 Clause 4 (Insertion of new ch 4, pts 3A and 3B)

This clause amends omits subsection (3) of section 99P and inserts a new subsection (2) that states for this section it does not matter whether the beverage manufacturer sells the beverage product in Queensland, in another State or somewhere else.

For example, if the beverage product is manufactured in Victoria and the first sale is into New South Wales this section provides that if the beverage product is then transported to Queensland to another person to use or consume in Queensland, or to sell for use, consumption or further sale in Queensland then a liability in relation to the Queensland scheme still exists even though the first sale did not occur in Queensland.

The section does not; however, cover a person who manufactures a beverage product in another state and the sale, consumption and use take place wholly in

another state without the beverage product entering Queensland for use, consumption or further sale.

**7 Clause 4 (Insertion of new ch 4, pts 3A and 3B)**

This clause amends section 99P, lines 21 and 22 on page 21 by omitting 'the manufacturer' and inserting 'a manufacturer'.

The same amendment is made for the following sections:

- 99R (Limits on amounts paid by small beverage manufacturers under container recovery agreements (Clause 8))
- 99ZN (Application) for approval of a container for a beverage product (Clause 10)
- 99ZR (Container approval continues in force) (Clause 11)

**9 Clause 4 (Insertion of new ch 4, pts 3A and 3B)**

This clause amends section 99ZM, line 13 on page 42 to insert the words 'who holds an approval' after beverage product.

This clarifies that there will be one approval holder in relation to the register of approved containers.

**12 Amendment of clause 5 (Insertion of new ch 4, pt 5)**

This clause amends section 102B in relation to the meaning of an eligible company. The amendment relates to subsection (2)(b) representation for a small beverage manufacturer and inserts after 'manufacturer' the words 'or an association that represents small beverage manufacturers.'

This recognises that an employee of a small beverage manufacturer may not have the time or capacity to represent small beverage manufacturers as a whole and reflects that an employee, executive officer or business associate of a peak body representing small beverage manufacturers is a suitable person to fulfil the board director position providing this representation.

**13 Amendment of clause 5 (Insertion of new ch 4, pt 5)**

This clause amends section 102B, lines 6, 7, 8 and 9 on page 52 in relation to the definitions for 'independent of the beverage industry' and 'large beverage manufacturer' by omitting 'the manufacturer' and inserting 'a manufacturer'.

**14 Clause 34 (Insertion of new ch 16, pt 2)**

This clause amends section 308, line 27 on page 104 in relation to the transitional period for displaying the refund marking on beverage containers by omitting 'the manufacturer' and inserting 'a manufacturer'.

**15 After clause 35**

Clauses 36-47 are inserted.

*Clause 36* states that Part 3 amends the *Planning Act 2016*.

*Clause 37* amends s78 of the *Planning Act 2016* (Making change application) to clarify that the Minister is the responsible entity for change applications relating to approvals called in under the *Integrated Planning Act 1997* and the *Sustainable Planning Act 2009*.

*Clause 38* amends s79 of the *Planning Act 2016* (Requirements for change applications) to clarify that written owner's consent is not required for change

applications for certain operational works or building works, consistent with s51 (Making development applications).

*Clause 39* amends s83 of the *Planning Act 2016* (Notice of decision) to clarify the reference to approvals that were called in, can be called in under a call in provision.

*Clause 40* amends s86 of the *Planning Act 2016* (Extension applications) to clarify that written owner's consent is not required for extension applications for certain operational works or building works, consistent with s51 (Making development applications).

*Clause 41* inserts a new chapter 8, part 1A into the *Planning Act 2016* which clarifies the transitional arrangements for the proposed amendments. *Clause 41* inserts a new s324 into the *Planning Act 2016* which provides definitions for terms used in this part.

*Clause 41* inserts a new s 324A into the *Planning Act 2016* to ensure that for change applications relating to approvals called in under the *Integrated Planning Act 1997* and the *Sustainable Planning Act 2009*, the Minister is the responsible entity.

*Clause 41* inserts a new s 324B into the *Planning Act 2016* to ensure that existing change applications in relation to the requirement for owner's consent in certain circumstances are not invalid.

*Clause 41* inserts a new s 324C into the *Planning Act 2016* which to ensure that existing extension applications in relation to the requirement for owner's consent in certain circumstances are not invalid.

*Clause 41* inserts a new s 324D into the *Planning Act 2016* which states that the section applies if a person appealed to the Planning and Environment Court or a tribunal before the commencement of these amendments, and the appeal is in relation to an excluded application and is about a matter mentioned in certain items in schedule 1 and the appeal had not been decided before the commencement. On and from the commencement, the appeal is of no further effect.

*Clause 42* amends the *Planning Act 2016* schedule 1 (Appeals) to clarify the intent that no appeals may be made against a Ministerial decision on a change application.

*Clause 43* amends the *Planning Act 2016* schedule 2 (Dictionary) to include a new definition for 'call in provision' to clarify this means a provision under the *Planning Act 2016*, the *Sustainable Planning Act 2009* or the *Integrated Planning Act 1997*. A new definition for 'excluded application' is also proposed to clarify what applications an appeal cannot be made against.

#### **Part 4 – Amendment of Planning and Environment Court Act 2016**

*Clause 45* amends the *Planning and Environment Court Act 2016* s39 (Planning Minister) to correct an incorrect reference to the *Planning Act 2016*, which should read chapter 6, part 1. The amendment clarifies that the Planning Minister may join proceedings.

*Clause 46* amends the *Planning and Environment Court Act 2016* s79 (Existing rules migrate to this Act) to extend the timeframe for the expiry of the 2010 Planning and Environmental Court Rules to 3 July 2018 (12 months from commencement) to allow time for the new Planning and Environment Court Rules to be made.

*Clause 47* amends the *Planning and Environment Court Act 2016* s80 (Mitigation of particular repealed SPA provisions about the P&E Court to the rules) to extend the timeframe for the expiry of the 2010 Planning and Environmental Court Rules to 3

July 2018 (12 months from commencement) to allow time for the new Planning and Environment Court Rules to be made.

**16 Long title**

This clause states that the long title is an Act to amend the *Planning Act 2016*, the *Planning and Environment Court Act 2016* and the *Waste Reduction and Recycling Act 2011* for particular purposes.