

# Trans-Tasman Mutual Recognition (NSW Container Deposit Scheme) Notice 2017

Explanatory notes for SL 2017 No. 211

made under the

*Trans-Tasman Mutual Recognition (Queensland) Act 2003*

## General Outline

### Short title

The short title of the regulation is the *Trans-Tasman Mutual Recognition (NSW Container Deposit Scheme) Notice 2017*.

### Authorising law

Section 7 of the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*.

### Policy objectives and the reasons for them

The policy objective of the notice is to endorse proposed Commonwealth regulations to be made by the Governor-General under the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth Act), pursuant to section 43(1) of the Commonwealth Act.

The Commonwealth Act provides for the recognition within Australia of regulatory standards adopted in New Zealand regarding certain goods and occupations. The *Trans-Tasman Mutual Recognition (Queensland) Act 2003* (Queensland Act) adopted the Commonwealth Act as a law of Queensland.

The Commonwealth Act provides that goods that may lawfully be sold in New Zealand may lawfully be sold in an Australian jurisdiction without the necessity for compliance with further requirements imposed under Australian legislation.

New South Wales has amended the *Waste Avoidance and Resource Recovery Act 2001 (NSW)* and regulations under that Act (NSW Container Deposit Laws) that impose packaging and labelling requirements on beverage containers sold in NSW to create a container deposit scheme. The NSW Container Deposit Laws are currently exempt from the application of the Commonwealth Act due to a temporary exemption in place under the *Trans-Tasman Mutual Recognition (NSW) Act 1996*. The temporary exemption will expire on 16 November 2017.

The effect of the temporary exemption is that beverage containers imported into or produced in New Zealand must comply with the requirements of the NSW Container Deposit Laws to be lawfully sold in Australia. If the exemption expires, beverage containers imported into or produced in New Zealand may be lawfully sold in New South Wales without needing to comply with the NSW Container Deposit Laws.

To maintain the exemption for the NSW Container Deposit Laws from the operation of the Commonwealth Act, the Commonwealth has requested that Queensland endorse a Commonwealth regulation to be made by the Governor-General continuing the existing temporary exemption for the NSW Container Deposit Laws from the application of the Commonwealth Act for a further 12 months.

### **Temporary Exemption**

Section 47 of the Commonwealth Act creates a mechanism to extend existing temporary exemptions for an additional period. Under section 47(3) of the Commonwealth Act, laws are exempt if the laws are declared by regulations under the Commonwealth Act to be exempt from the operation of the Act. The Governor-General may make regulations for the purposes of section 47.

Under section 47(7) of the Commonwealth Act, the Governor-General may not make the regulation unless at least two-thirds of the then participating jurisdictions have endorsed the regulation. Section 43 of the Commonwealth Act provides that a jurisdiction endorses a regulation if the designated person for the jurisdiction publishes a notice in the official gazette of the jurisdiction setting out and endorsing the terms of the regulation before it is made.

The Governor is the designated person for Queensland under section 4 of the Commonwealth Act and section 7(1) of the Queensland Act. Section 7(2) of the Queensland Act provides that the gazette notice is subordinate legislation and the gazette notice has therefore been prepared by the Office of the Queensland Parliamentary Counsel.

### **Achievement of policy objectives**

The policy objectives are achieved by the notice setting out and endorsing the proposed Commonwealth regulations, as required under section 7 of the Queensland Act and section 43(1) of the Commonwealth Act.

### **Consistency with policy objectives of authorising law**

The notice is consistent with the main objectives of the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*.

### **Inconsistency with policy objectives of other legislation**

The notice is not inconsistent with the policy objectives of other legislation.

### **Benefits and costs of implementation**

The implementation of the notice will have no impact in Queensland.

### **Consistency with fundamental legislative principles**

The notice does not conflict with fundamental legislative principles.

## **Consultation**

As the notice has no impact on persons in Queensland, no consultation has been carried out on the notice.