

# Trans-Tasman Mutual Recognition (NSW Container Deposit Scheme) Notice 2018

Explanatory notes for SL 2018 No. 162

made under the

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

## General Outline

### Short title

*Trans-Tasman Mutual Recognition (NSW Container Deposit Scheme) Notice 2018*

### Authorising law

Sections 43 and 45 of the *Trans-Tasman Mutual Recognition Act 1997 (Cth)*  
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 a proposed Commonwealth regulation 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.

Regulations were made in 2017 under the *Trans-Tasman Mutual Recognition Act 1997 (Cth)* to extend an existing temporary exemption for 12-months for the NSW Container Deposit Laws from the operation of the Act. A permanent exemption was not progressed at that time, as New Zealand was unable to give the necessary approval before the deadline due to the timing of the New Zealand election. This temporary exemption will expire on 16 November 2018.

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 to permanently exempt certain parts of the NSW Container Deposit Laws from the application of the Commonwealth Act.

### **Permanent Exemption**

Section 45 of the Commonwealth Act provides that laws listed in Schedule 2 to the Act are permanently exempt from the mutual recognition principle. Section 45(3) of the Commonwealth Act provides that the Governor-General may amend the Schedule to the Act by way of regulation.

Under section 45(4) of the Commonwealth Act, the Governor-General may not make the regulation unless all of the then participating jurisdictions have endorsed the regulation. Section 43(1) 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 regulation, 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**

The Office of Best Practice Regulation (OBPR) was consulted regarding the regulatory impact analysis requirements of the *Queensland Government Guide to Better Regulation* and advised that no further assessment was required on the basis the proposal was unlikely to have significant adverse impacts on Queensland.

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