29 June 2017

Mr Joseph Kelly MP
Chair, Agriculture and Environment Committee
Queensland Parliament
Parliament House
George Street
Brisbane Qld 4000

By email
aec@parliament.qld.gov.au

Dear Mr Kelly,

Re. Waste Reduction and Recycling Amendment Bill 2017 [*the Bill*]

1. We write in relation to the Queensland Government's, Agriculture and Environment Committee's [*the Committee*] announcement, that it seeks written submissions from interested stakeholders pertaining to the above-mentioned Bill. More broadly of course, we write pertaining to the implementation of a Container Refund Scheme [*CRS*] for Queensland [*Qld*]. We thank you for providing this opportunity.

2. At the very outset and for your convenience, we would like to set out the recommendations which our submission will make, which include:

Recommendation 1.
Key terminology and 'defined terms' in the *Waste Reduction and Recycling Amendment Bill 2017* **(**Qld) be amended to harmonise with the terminology and definitions as, used in the recently passed NSW legislation

Recommendation 2.
Qld amend their Bill, removing clauses 99O and 99P and replace these provisions with Section 38 and the Section 20 definitions of "supplier" and "supply" as contained within the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016*(NSW).

Recommendation 3.
Qld amend Clause 99O of their Bill, inserting a further clause 99O(c) to capture beverage products manufactured outside of but freighted into Qld.

Recommendation 4.
Qld amend Clause 99P of their Bill, adapting the clause to:

- Include product transported into Qld from another State or Territory - 99P(1); and
- Covering the supply of product other than by sale – 99P(2); and
- Deleting the current clause – 99P(3); and
- Inserting a new clause – 99P(3)

Australian Beverages Council Ltd
2/2 Allen Street, Waterloo NSW 2017 • Tel: +61 2 9698 1122
Email: info@ausbev.org • www.australianbeverages.org

3. As you may be aware, the Australian Beverages Council [*the Council*], is the peak body and industry association representing the collective interests of the non-alcoholic refreshment beverages industry in Australia. This includes carbonated regular and diet soft drinks, energy drinks, sports and isotonic drinks, bottled and packaged waters, fruit juice and fruit drinks, cordials, iced teas, and ready-to-drink coffees, with our Members responsible for over 95% of the industry's production by volume.

4. Our Members range from very large corporations multi-national organisations through to smaller family owned and boutique organisations. Arguably, we represent the industry group or collective, which will be most affected by the obligations, financial and otherwise, of Qld implementing a CRS.

5. Having said that, we should clearly state, that the Council supports the Qld Government's goals of:

    - *significantly reducing litter; and*
    - *improving resource recovery, especially in regional areas, with benefits for jobs and the economy.*

6. In addition, we recognise that important co-benefits include:

    - *giving communities without kerbside recycling, an opportunity to recycle;*
    - *reducing litter clean-up costs for local councils, private land managers and community groups;*
    - *reducing the threat posed by plastic litter to waterways and coastal marine environments;*
    - *boosting funds for community organisations and individuals collecting eligible containers;*
    - *improving the look of shared places; and*
    - *encouraging and normalising environmentally responsible behaviour.*

7. Perhaps we can open our submission by addressing the current landscape nationally. At present both South Australia [*SA*] and the Northern Territory [*NT*] have existing container deposit schemes [*CDS*], which were introduced over 40 years and 5 years ago respectively. As you are no doubt aware, New South Wales is due to commence the operation of its CDS on 1 December 2017

8. Additionally, the Western Australia, Australian Capital Territory, and Tasmania Governments have now all indicated their intention to pass legislation and implement container deposit schemes in their States in the short term.

9. What this means is that perhaps as early as 1 January 2019, Australia will have container deposit or container refund schemes in operation across all Australian States excepting Victoria, which at this stage is indicating it has no intent to introduce a scheme.

10. Putting SA and NT aside, the introduction of new schemes in five additional Australian States provides an opportunity to harmonise and align legislation and operational procedures for the benefits of consumers, industry and government. It is a matter of record, that chronologically, NSW has led the way on developing legislation and operational protocols to implement a CDS, followed by Qld, leaving the other aforementioned States to follow.

11. Already, we have seen NSW call their scheme a *Container Deposit Scheme* or *CDS*. Qld though have named their Scheme a *Container Refund Scheme*, or *CRS*.

12. Continuing to focus on these two States for a moment, an essential element of both schemes, is a contractual commercial relationship between the Scheme's governing body, which in NSW will be the *Scheme Coordinator (SCO)*, and in Qld will be a *Producer Responsibility Organisation (PRO)*.

13. This contractual relationship, or the "contract" between the 'scheme administrator' and individual beverage manufacturers captured by the scheme to facilitate levy collections and other matters, in NSW is termed a "*supply arrangement*", whereas in Qld, materially the same document is proposed to be termed a "*container recovery agreement*".

14. We could cite numerous other examples, where the same issue or protocol has a different name or terminology, in NSW and Qld, but we hope we have illustrated the point that at present whilst the schemes in Qld and NSW are in most aspects materially the same, there is a lack of harmonisation or alignment across a number of key terms and legislative provisions.

15. Our concern is that as the other three states (WA, ACT and Tas) come on-line with their schemes, the people of Australia could end up with a multitude of schemes across the country, all with different names, different terminologies and perhaps slightly different protocols.

16. We believe, especially when implementing a new regime, and a new way of doing business, that as far as possible, the schemes should be harmonised and aligned across all jurisdictions with common terminology and harmonised approaches to core matters, accepting there might be subtle differences in the legislation drafted by each State, allowing for the nuances of each jurisdiction.

17. In recent years, we have seen some tremendous work undertaken by the Commonwealth and State Governments through COAG, where matters such as national heavy vehicle laws and regulations, the building code of Australia and work health and safety laws have been harmonised nationally. We believe the creation of container deposit or refund schemes provides an ideal opportunity to continue this sensible and pragmatic approach.

18. To this end, we would suggest that wherever possible, key terminology and 'defined terms' contained in the Qld Bill be amended to harmonise with the terminology and definitions used in the recently passed NSW legislation.

19. We propose this in the solid belief that changing the names or terms for many matters within the Bill, will have no material impact on the operation of the Qld scheme and it would essentially only be a cosmetic change.

20. Much changes to align and harmonise names and term, provides the opportunity to minimise confusion and facilitate greater and more rapid understanding of new schemes as they come into operation across a range of States for the benefit of all stakeholders including consumers, industry and government.

21. Recommendation 1

Key terminology and 'defined terms' in the *Waste Reduction and Recycling Amendment Bill 2017* **(**Qld) be amended to harmonise with the terminology and definitions as, used in the recently passed NSW legislation

22. By and large, we are of the view that the Qld Government has done a good job in drafting the Bill, and we thank the Department of Environment and Heritage Protection for their considerable consultation during the development and drafting process.

23. As the Committee would appreciate, the development of legislation and regulations for a new 'green fields' scheme, is a fluid and evolving process. As a consequence, some of the comments we will now make arise perhaps due to recent shifts in the NSW approach, or due to some other adaptation in thinking, and should not be taken as any inference from us as to any defect in the Qld process of developing your legislation or your consultation process, which we have welcomed, and have been pleased to participate in.

24. Our main concern in relation to the Bill, arises in relation to the involved area of interstate trade and commerce. Specifically, our concerns relate to who will be liable to make contributions to the cost of the scheme, including for example, the cost of the refund amounts paid for empty containers under the scheme, as referred to in clause 99Q of the Bill.

25. In particular, our concerns relate to clauses 99O and 99P.

26. Perhaps before addressing specifics, we might provide some context for the benefit of the Committee.

27. There are essentially three instances where a liability will arise under a State based container refund scheme, where a liability will be created for an organisation to make financial contributions, or to pay a levy to fund the cost of the scheme, and pay refund amounts to consumers. These include:

    i. Where an entity in Qld <u>manufactures</u> a beverage product in an eligible container (as captured by the Scheme), and that entity supplies the beverage product for sale or otherwise in Qld; or

    ii. Where an entity <u>imports</u> into Qld (from another country), a beverage product in an eligible container (as captured by the Scheme), and that entity supplies the beverage product for sale or otherwise in Qld; or

    iii. Where an entity <u>freights, ships or transports</u> into Qld (from another State or Territory) a beverage product, manufactured outside of Qld, in an eligible container (as captured by the Scheme), and that entity supplies the beverage product for sale or otherwise in Qld.

    n.b. It should be noted that this would only apply to commercial transactions. There of course is no intent that this would apply to a person bringing an

eligible container/s into Qld from an overseas country or from another State or Territory, for normal domestic use or personal consumption.

28. We believe that the NSW legislation deals with the above three contingencies very well, by adopting a 'first supply' methodology to determine the entity liable to pay the levy, and make contributions under their Scheme. Specifically, the NSW *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016*(NSW) states in Section 38 that:

> ***Requirement for supply arrangement with Scheme Coordinator and container approval***
>
> *(1) A supplier must not supply or offer to supply a beverage in a container to any person unless:*
>
> *(b) a supply arrangement is in force between the supplier and a Scheme Coordinator in respect of a class of containers to which the container belongs, and*
>
> *(b) a container approval is in force in respect of that class of containers.*
>
> *Maximum penalty:*
> *(a) in the case of a corporation—4,000 penalty units, or*
> *(b) in the case of an individual—1,000 penalty units.*
>
> ***(2) <u>This section applies only to the first supply in the State of the beverage in the container.</u>*** [emphasis added]
>
> *(3) In proceedings for an offence against this section, if it is established that the beverage in the container has been supplied in the State, the onus of establishing that the supply is not a first supply in the State lies on the defendant.*

29. Section 20 of the NSW Act which provides **Definitions**, defines key terms, as follows:

> ***supplier** means a person who carries on a business that is or includes the supply of beverages in containers, but does not include a person of a class excluded from the operation of this Part by the regulations.*
>
> and
>
> ***supply** means supply, by way of sale or otherwise, in the course of carrying on a business.*

30. Applying these NSW definitions and Section 38(2) of the NSW Act to the above cases (as illustrated at paragraph 16), would facilitate the following outcomes:

> *i. Where an entity in Qld <u>manufactures</u> a beverage product in an eligible container (as captured by the Scheme) and that entity supplies the beverage product for sale or otherwise in Qld; or*

31. The Qld manufacturer would:

    1. fall within the definition of “supplier”;

    2. by delivering or supplying the eligible container for sale or otherwise, this transaction would constitute a “supply”; and

    3. Section 38 would capture this transaction, and the entity would be obliged to have a ‘supply arrangement’ in place, and the entity would be liable to pay a financial contribution to the Scheme.

32. Looking at the next scenario:

    ii. Where an entity imports into Qld (from another country) a beverage product in an eligible container (as captured by the Scheme), and that entity supplies the beverage product for sale or otherwise in Qld; or

33. Here the entity importing the product into Qld would:

    1. fall within the definition of “supplier”;

    2. by delivering or supplying the eligible container for sale or otherwise, this transaction would constitute a “supply”; and

    3. Section 38 would capture this transaction and the entity would be obliged to have a ‘supply arrangement’ in place, and the entity would be liable to pay a financial contribution to the Scheme.

34. And lastly, looking at the final scenario:

    iii. Where an entity freights, ships or transports into Qld (from another State or Territory) a beverage product, manufactured outside of Qld, in an eligible container (as captured by the Scheme), and that entity supplies the beverage product for sale or otherwise in Qld.

35. Here the entity freighting, shipping or transporting the product into Qld, where that entity was either:

    - the original manufacturer, who manufactured the product outside of Qld, and then transported it into Qld; or

    - an interstate retail business, transporting product from one of its interstate distribution centres outside of Qld, to one of its retail stores in Qld; or

    - a distributor of product, whose business includes distributing beverage products to retail outlets in Qld, (like for example to convenience stores, cafes or service stations), where the distributor acquired the product outside of Qld, and then subsequently transported the beverage products into Qld for distribution.

36. In summary, the NSW legislation covers:

- ✓ the supply of a beverage product within a State, whether the product is sold or given away (either by discount arrangement, donation, or under a sampling program); and
- ✓ it captures local manufacturing and sale;
- ✓ importing the product from overseas for sale; and
- ✓ product manufactured in another State or Territory, and freighted (commercially) into the State for sale or otherwise.

37. The Qld Bill seeks to address these matters in Clauses 99O and 99P which state:

99O Meaning of manufacturer

The manufacturer of a beverage product is a person who—

(a) makes the beverage product, including, for example—

(i) by filling containers with a beverage; or

(ii) engaging another person under a contract to make the beverage product or fill containers with a beverage for the person; or

(b) *imports the beverage product from a foreign country.*

and

99P Restriction on manufacturer selling beverage product

(1) This section applies to the manufacturer of a beverage product that is made or imported for sale in Queensland.

(2) The manufacturer 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, unless—

(a) a container recovery agreement is in force for the type of container used for the beverage product; and

(b) the container is registered; and

(c) the container displays—

(i) the refund marking; and

(ii) a barcode for the beverage product.

(3) For this section, it does not matter—

(a) whether the beverage product is made in, or imported into, Queensland or somewhere else; and

(b) whether the beverage manufacturer sells the beverage product in Queensland or somewhere else.

38. Our preference and our proposal for the sake of uniformity, alignment and harmonisation, would be that Qld effectively remove clauses 99O and 99P, and adopt the NSW approach, which is simple, clear and neatly aligns with current industry practice and the existing commercial environment for beverage products.

39. We make this statement as we believe it would be in the best interests of the Qld CRS, Qld consumers, and the beverage industry, with no detriment or disadvantage to any stakeholder.

40. Recommendation 2

Qld amend their Bill, removing clauses 99O and 99P and replace these provisions with Section 38 and the Section 20 definitions of "supplier" and "supply" as contained within the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016*(NSW).

41. If this approach was not deemed a suitable course, then we believe that the Bill will require the following amendments:

99O Meaning of manufacturer

The manufacturer of a beverage product is a person who—

(a) makes the beverage product, including, for example—

(i) by filling containers with a beverage; or

(ii) engaging another person under a contract to make the beverage product or fill containers with a beverage for the person; or

(b) imports the beverage product from a foreign country; or

(c) freights the beverage product from another State or Territory.

42. Explanatory notes:

43. The word "*freights*" as referenced above at (c), could be defined within the Bill to include for example "*ships or transports by road, sea or air*", if felt necessary and appropriate. This is a matter for further consideration by the drafters.

44. The addition of clause 99O(c) will capture beverage containers brought into Qld from another State or Territory by an entity other than a beverage manufacturer.

45. We believe this is essential, as once a beverage manufacturer sells product to another person or entity, and title in the goods passes, then the beverage manufacturer has no further right or entitlement to information concerning any activity involving that product and nor does the beverage manufacturer have any responsibility for where the product may or may not end up, including as to whether that might be within Qld.

46. Moreover, the beverage manufacturer has no right at law or commercially, to require his customer, to provide information pertaining to the customer's intended future path or passage of the goods.

47. In our estimation, there might be 200 manufacturers of beverage products (alcoholic and non-alcoholic) in Australia who could be captured by the Qld CRS.

48. Looking at just one of our current members, this entity has some 90,000+ wholesale customers or contract suppliers across Australia.

49. For this beverage manufacturer to attempt to collect and collate accurate data from its 90,000+ customers pertaining to:

    - product it sold, which might or might not be transported into Qld;
    - by product type and quantity;
    - on a monthly and recurring basis;

    so the Qld CRS liability could be calculated, would be an enormous, if not impossible task. And for that matter, a task which would no doubt prove both costly and would be largely inaccurate, as the care factor for the customer providing the data would be arguably quite low.

50. The cost of securing these data returns of course would flow to Qld consumers, and cause a significant administrate burden across the beverage and related industries.

51. When this situation is extrapolated across the other 199+ beverage manufacturers (who share common customers), this would result in a requirement for data returns being required to be generated each month, of potentially in the millions.

52. The approach we are recommending would simply be to make the small number of retailers and distributors who bring product into Qld from interstate 'deemed beverage manufacturers'. This would ensure these entities accept and are responsible for their liability under the CRS and they would be responsible for declaring their own product and CRS liability, something known to them.

53. Naturally, in the case of 'big' retailers, we would expect that there would some commercial negotiation between the beverage manufacturer and the retailer, as a part of their purchase agreement.

54. Infact, we believe that over time, large entities will amortise the costs of container deposit/refund schemes nationally for convenience and ease of administration, reducing the cost burden for all stakeholders.

55. This would also ensure all industry participants, be they manufacturers, importers, retailers or distributors pay their fair share of contributions to the scheme, and it would capture existing 'loopholes', which presently would operate as 'free-riders' on the scheme, exploiting these 'loopholes', committing acts of cross border arbitrage, deliberately seeking to avoid exposure to the CRS liability, adding an additional cost burden upon the Scheme and to Qld consumers.

56. Recommendation 3

Qld amend Clause 99O of their Bill, inserting a further clause 99O(c) to capture beverage products manufactured outside of but freighted into Qld.

57. Moving our attention to clause ***99P, Restriction on manufacturer selling beverage product,*** this clause would require the following amendment in our view:

(1) This section applies to the manufacturer of a beverage product that is:

(a) made in, or

(b) imported for sale, ~~in Queensland~~ or

(c) is freighted into Queensland.

(2) The manufacturer must not sell or otherwise supply the beverage product to another person to use or consume in Queensland, or to sell for use, consumption or further sale in Queensland, unless—

(a) a *container* recovery agreement is in force for the type of container used for the beverage product; and

(b) the container is registered; and

(c) the container displays—

(i) the refund marking; and

(ii) a barcode for the beverage product.

~~*(3) For this* section*, it does not matter*~~

~~*(a) whether the beverage product is made in, or imported into, Queensland or somewhere else; and*~~

~~*(b) whether the beverage manufacturer sells the beverage product in Queensland or somewhere else.*~~

(3) This section does not apply to a beverage product either

(a) manufactured in, or

(b) imported into Queensland;

where the beverage product will be:

(i.) exported; or

(ii.) freighted to another State or Territory;

for sale or consumption, not within Queensland.

58. Explanatory notes:

59. Our proposed amendment to clause 99P(1) simply encompasses the situation where a product is manufactured in another State or Territory and is then freighted into Qld by someone other than a beverage manufacturer, as previously discussed.

60. The amendment to clause 99P(2) expands the clause to include supplying a product for the payment of money or otherwise, which would include:

    (i.) giving a beverage product away for free, perhaps under a commercial discounting arrangement, e.g. '*we will give you a free pack for every 3 packs you buy'); or*
    (ii.) donating product; or
    (iii.) product sampling and promotional activities.

61. The deletion of the current clause 99P(3) is proposed on the basis that if our other proposals are adopted, then this clause, in its current form, is redundant.

62. The addition of the new proposed clause 99P(3) is required to cover the situation where a local Qld manufacturer, manufactures a beverage in Qld, which the manufacturer will (in its entirety) export or freight out of Qld for sale or consumption in another State or Territory.

63. This exception will prevent 'double taxation'.

64. Without this exemption, the beverage product manufactured in Qld would have a levy imposed upon it in Qld, under the Qld CRS. If the product was then say, shipped to NSW for sale, the beverage product would also incur a levy in NSW, as under the NSW Scheme it would be regarded in that State as a "first supply". This would mean that this product in NSW would be subject to imposition of two levies, the QLD CRS levy, and the NSW CDS levy.

65. This would be commercially damaging to Qld manufacturers trading nationally, and as a consequence, these Qld manufacturers would be commercially disadvantaged in the national market.

66. This amendment is essential to ensure Qld manufacturers who sell product in other jurisdictions are not commercially disadvantaged nationally, inhibiting their growth and fiscal longevity.

67. Recommendation 4

Qld amend Clause 99P of their Bill, adapting the clause to:

- Include product transported into Qld from another State or Territory - 99P(1); and
- Covering the supply of product other than by sale – 99P(2); and
- Deleting the current clause – 99P(3); and
- Inserting a new clause – 99P(3)

68. In conclusion, the Council makes the above recommendations and proposals with good spirit and intent. We provide our comments and suggestions for the benefit of the Scheme, the Beverage industry and most importantly Qld consumers.

69. Qld households should not be forced to bear unnecessary additional costs due to a cumbersome or clumsy scheme, which provides opportunities for inaccurate data capture, which results in the inappropriate collection of contributions and levies.

70. The Scheme and its operation, should be as 'tight' and as comprehensive as possible, to prevent and capture cross-border arbitrage opportunities.

71. We anticipate the opportunity cost of freighting product into Qld from other jurisdictions, by organisations other than beverage manufacturers, will be significant, commercially viable and lucrative.

72. For these reasons, we believe it to be in the best interests of the Qld economy and environment, to ensure that as much as possible, the Qld CRS is aligned and harmonious with other State and Territories, and in particular, NSW arguably its major trading partner and neighbour.

73. We thank the Committee for considering our submission, and we would be pleased to provide further comment or opinion if that was believed to be valuable or desirable. In this regard, please contact our General Manager, Alby Taylor on 0407 406 400.

Geoff Parker
Chief Executive