

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry and Science

Trans-Tasman Mutual Recognition Act 1997

Trans-Tasman Mutual Recognition Legislation Amendment (Northern Territory Container Deposit Scheme) Regulations 2023

Purpose and Operation

The *Trans-Tasman Mutual Recognition Act 1997* (the Act) gives effect to the mutual recognition principles adopted by the Commonwealth, State and Territory Governments of Australia and New Zealand relating to the sale of goods and the registration of occupations. By way of example, with respect to goods, the mutual recognition principles apply such that a good that can be sold legally in New Zealand may be imported and sold legally in the Northern Territory (NT) despite the regulatory standards that would otherwise apply to the good in the NT.

The Act enshrines the principle that goods legally sold in one jurisdiction can be legally sold in the others, without having to meet further requirements imposed by individual jurisdictions (where they differ in regulatory requirements). The Act also provides for exceptions to the mutual recognition principle, as well as provisions for permanent and temporary exemptions from the Act so that goods can be exempt from the Act. Schedule 2 of the Act lists laws relating to goods that are permanently exempt from the operation of the Act.

The *Trans-Tasman Mutual Recognition Legislation Amendment (Northern Territory Container Deposit Scheme) Regulations 2023* (the Regulations) amend Schedule 2 of the Act to permanently exempt the *Environment Protection (Beverage Containers and Plastic Bags) Act 2011* (NT) (Environment Protection Act), which establishes the Northern Territory Container Deposit Scheme (the Scheme) and any regulations or other instruments made under it, to the extent that they relate to the Scheme established by Part 2, from the operation of the Act.

The Environment Protection Act commenced on 3 January 2012 and plays an important role in reducing waste, making recycling more efficient and minimising environmental pollution in the NT.

Under the Scheme, an approval to supply beverage containers is subject to the requirements that the container bear the required refund marking and an effective waste management arrangement is in place for the container. A waste management arrangement for approved containers is an arrangement made by participants in the Scheme for the collection, sorting and aggregation of the containers and their reuse, recycling or other appropriate disposal. Under the Scheme, empty containers bearing the approved refund marking can be delivered to an approved collection depot for the consumer to receive a 10-cent refund per container.

The Scheme is an industry operated scheme, with scheme coordinators responsible for the implementation and operation of the Scheme, including accepting, handling, collecting and

treatment of the containers. The NT Government has responsibility for any regulations made under the Environment Protection Act and the Scheme's administration. The geographical reach of collection depots reflects the need to accommodate reasonable access to communities across the NT.

Amendment to the Act means that beverage containers imported into the NT from New Zealand will have to comply with the Scheme.

Further details of the Regulations are outlined in Attachment A.

Authority

Subsection 45(3) of the Act provides that the Governor-General may make regulations amending Schedule 2. In accordance with subsection 45(4), a regulation may not be made for the purposes of section 45 unless each of the participating jurisdictions have endorsed the regulation. Subsection 43(1) 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. This condition has been met in respect to these Regulations as at 24 November 2023, with all participating jurisdictions endorsing the Regulations and publishing an official notice to that effect in their gazettes.

Consultation

The Regulations implement the decision of all jurisdictions to permanently exempt the Scheme from the operation of the Act.

The Department of Industry, Science and Resources consulted closely with the NT Government, the Commonwealth Department of the Prime Minister and Cabinet and with all jurisdictions on the gazettal of the Regulations.

Regulatory Impact

As part of this process, the NT Government developed a Regulatory Impact Statement (2013) which has been approved by the Office of Impact Analysis. The Regulatory Impact Statement (Office of Best Practice Regulation ID 16185) is included at the end of this Explanatory Statement.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is set out in Attachment B.

Details of the *Trans-Tasman Mutual Recognition Legislation Amendment (Northern Territory Container Deposit Scheme) Regulations 2023*

Section 1 – Name of Instrument

This section provides that the title of the Regulations is the *Trans-Tasman Mutual Recognition Legislation Amendment (Northern Territory Container Deposit Scheme) Regulations 2023*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under section 45 of the Act.

Section 4 – Repeal of this Instrument

This section provides that the Instrument is repealed on the day after Schedule 1 commences.

Section 5 – Schedules

This section provides a machinery clause that enables Schedule 1 to amend the Act and to operate according to its terms.

Schedule 1 – Amendments

Item 1 – Clause 11 of Schedule 2

Item 1 of Schedule 1 amends clause 11 of Schedule 2 of the Act to permanently exempt the Scheme from the Act by inserting the following:

Container deposit scheme

The following laws:

- (a) Part 2 of the *Environment Protection (Beverage Containers and Plastic Bags) Act 2011*;
- (b) all other provisions of that Act, to the extent that they relate to the container deposit scheme established by that Part;
- (c) regulations or other instruments made under that Act, to the extent that they relate to that scheme

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Trans-Tasman Mutual Recognition Legislation Amendment (Northern Territory Container Deposit Scheme) Regulations 2023

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Trans-Tasman Mutual Recognition Legislation Amendment (Northern Territory Container Deposit Scheme) Regulations 2023* (the Regulations) is to permanently exempt the *Environment Protection (Beverage Containers and Plastic Bags) Act 2011* (NT), which establishes the Northern Territory Container Deposit Scheme (the Scheme) and any regulations or other instruments made under it, to the extent that they relate to the Scheme established by Part 2 of that Act, from the operation of the *Trans-Tasman Mutual Recognition Act 1997*.

The purpose of the Scheme is to minimise environmental pollution by improving beverage containers recovery, reuse and recycling. The Scheme requires beverage manufacturers to implement the Scheme by developing a waste management arrangement for the collection and reprocessing of the empty beverage containers. The Scheme also specifies labelling requirements for beverage containers and requires approval before beverages are sold into the Northern Territory. Consumers will obtain a 10-cent refund when returning a container bearing the approved label to approved collection depots. Many beverage manufacturers have transitioned to the new label since the introduction of the Scheme on 3 January 2012.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Ed Husic MP

Minister for Industry and Science