

Explanatory Statement

ENVIRONMENT PROTECTION (BEVERAGE CONTAINERS AND PLASTIC BAGS) LEGISLATION AMENDMENT (EXPANSION OF CDS AND OTHER MATTERS) BILL 2025

SERIAL NO. 37 LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR LANDS, PLANNING AND ENVIRONMENT

GENERAL OUTLINE

This Bill amends the *Environment Protection (Beverage Containers and Plastic Bags) Act 2011* (the Act) and the *Environment Protection (Beverage Containers and Plastic Bags) Regulations 2011* (the Regulations).

The purpose of this Bill is to reduce complexity and increase recycling across the Northern Territory by strengthening the Container Deposit Scheme and making administrative reforms. The Bill will achieve this by:

- (a) broadening the scope of containers in the Scheme to beverage containers of three litres or less in volume, with the result that wine and spirit bottles, plain milk containers and larger size juice and flavoured milk containers of one litre or more will be included;
- (b) providing a transitional period for new scheme entrants to include the 10-cent refund marking on container labels;
- (c) enabling members of the public to return containers to approved collection depots with container lids, caps or other closures attached;
- (d) transitioning Northern Territory Environment Protection Authority (NT EPA) powers and functions under the Act to the Minister for Lands, Planning and Environment, Chief Executive Officer of the Department of Lands, Planning and Environment and delegates within the Department, consistent with existing delegations;
- (e) conferring jurisdiction on the Northern Territory Civil and Administrative Tribunal (NTCAT) to review statutory decisions under the Act that are presently within the jurisdiction of the Local Court;
- (f) providing for various minor amendments to clarify matters and bring the Act into line with modern drafting principles.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short title

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Environment Protection (Beverage Containers and Plastic Bags) Legislation Amendment (Expansion of CDS and Other Matters) Act 2025*.

Clause 2. Commencement

This clause sets out how and when the *Environment Protection (Beverage Containers and Plastic Bags) Legislation Amendment (Expansion of CDS and Other Matters) Act 2025* (the Amendment Act) will be commenced.

Clause 2(1) provides that the Amendment Act, other than Part 3 of the Amendment Act, will commence the day after the Administrator's assent to the Amendment Act is declared.

Clause 2(2) provides that Part 3 of the Amendment Act will commence on the day fixed by notice given by the Administrator in the Northern Territory Government Gazette.

However, clause 2(3) ensures that if a provision of Part 3 of the Amendment Act does not commence before 30 August 2027, then the provision will commence on that day.

Part 2 Amendments to environment protection (beverage containers and plastic bags) legislation commencing on assent

Division 1 Environment Protection (Beverage Containers and Plastic Bags) Act 2011

Clause 3. Act amended

This is a formal clause which provides that Part 2, Division 1 of the Amendment Act amends the *Environment Protection (Beverage Containers and Plastic Bags) Act 2011*.

Clause 4. Section 4 amended (Definitions)

This clause amends section 4 of the Act.

Subclause (1) omits the definition of **affected person** and **NT EPA**. This is because clause 6 repeals and inserts new section 46(2) into the Act with respect to an affected person, and Part 2, Division 1 of the Bill replaces references to the NT EPA with either a reference to Agency, Minister or CEO.

References to the NT EPA are being changed because it is more appropriate for powers and functions under the Act that are currently the responsibility of the NT EPA to shift to either the Minister for Lands, Planning and Environment, Chief Executive Officer of the Department of Lands, Planning and Environment or delegates within the Department, consistent with existing delegations.

Subclause (2) inserts a definition for the term **CEO**.

The term **CEO** is defined to mean Chief Executive Officer. The *Interpretation Act 1978* provides that the CEO is the person holding or occupying the office of the Chief Executive Officer of the Agency administering the provision of the Act in which the expression occurs, which in this case is the Chief Executive Officer of the Department of Lands, Planning and Environment.

Subclause (3) clarifies that the existing note after the definition of **regulated container** in the Act applies to the definition of regulated container. The existing note assists in interpreting the meaning of regulated container by providing that containers may be exempted by regulation from the application of the Container Deposit Scheme.

Subclause (4) omits and inserts a new paragraph (c) into the definition of **review notice**, which recognises that clause 6 repeals and inserts new section 46 into the Act to provide for a review of decisions by NTCAT. The term **NTCAT** is defined in the *Interpretation Act 1978* to mean the NTCAT established under section 7 of the *Northern Territory Civil and Administrative Tribunal Act 2014*.

Clause 5. Section 12 amended (Coordinator arrangement)

This clause amends section 12 of the Act by replacing the references to “the Schedule” with “Schedule 1”. This is because clause 16 inserts a new Schedule 2 into the Act to provide for decisions reviewable by NTCAT and, as a consequence, clause 17 and the Schedule to the Amendment Act change the heading of the Schedule to Schedule 1.

Clause 6. Part 2, Division 7 replaced

This clause repeals Part 2, Division 7 and inserts new Division 7 into Part 2 of the Act to provide for the review of decisions by NTCAT. New Division 7, **Review of decisions**, contains new section 46.

New section 46, **Review by NTCAT**, modernises the Act to bring the section into line with standard NTCAT review provisions with details of reviewable decisions, and affected persons who can seek a review, set out in new Schedule 2 to the Act. New section 46 confers jurisdiction on NTCAT to review statutory decisions under the Act that are presently within the jurisdiction of the Local Court.

Clause 7. Section 49 amended (Minister or NT EPA may establish targets for reuse, recycling or other disposal of permitted containers)

This clause removes several references to the NT EPA from section 49 of the Act. Some references to the NT EPA are replaced with either a reference to the Agency, Minister or CEO.

References to the terms **Agency** and **Minister** are provided for in the *Interpretation Act 1978* and in this case mean the Department of Lands, Planning and Environment and the Minister for Lands, Planning and Environment, respectively. Clause 4(2) of the Bill provides for the term **CEO**.

Clause 7(1) omits the reference to NT EPA from the heading to section 49 of the Act.

Clause 7(2) omits the reference to NT EPA from section 49(1) of the Act.

Clause 7(3) requires targets established by the Minister under section 49(1) of the Act in relation to permitted containers to be published on the website of the Department of Lands, Planning and Environment.

Clause 7(4) requires, if mandatory targets are set under section 49(2)(c) of the Act, that the Minister must give a notice stating the details required by section 49(3) of the Act. Currently, no mandatory targets have been set.

Clause 7(5) requires the Chief Executive Officer of the Department of Lands, Planning and Environment, rather than the NT EPA, to monitor compliance with targets established by the Minister.

Clause 8. Section 49A amended (Guidelines)

Consistent with clause 7, this clause removes references to NT EPA.

Clause 8(1) replaces references to the NT EPA in section 49A(1) and (2) of the Act with references to the Minister.

Clause 8(2) requires guidelines issued by the Minister under section 49A(1) of the Act to be published on the Department’s website.

While no guidelines have been issued or published by the NT EPA under section 49A of the Act, this section will provide the Minister with flexibility to authorise methods of disposing of permitted containers regulated under the Container Deposit Scheme.

Clause 9. Section 77 amended (Definitions)

This clause updates the definition of **declared provision** in section 77 of the Act by replacing the reference to section 13(2) of the Act with sections 13(3) and (4). This ensures that sections 78 to 81 of the Act, which concern criminal liability for offences, operate as intended by applying to the offences in sections 13(3) and (4) of the Act.

Clause 10. Section 82 amended (Alternative verdicts)

This clause updates the table in section 82(2) of the Act with respect to a prosecution for an offence against section 13(1) or 13(3) of the Act, with a maximum penalty of 400 penalty units. This ensures that a person found not guilty of an alleged offence against section 13(1) or 13(3) may instead be found guilty of an alternative offence against section 13(4), which is an offence of strict liability with a lower maximum penalty of 100 penalty units.

Clause 11. Section 84 amended (Evidentiary certificate)

Clause 11(1) replaces a reference to the chairperson of the NT EPA with a reference to the CEO. As a result, instead of the chairperson of the NT EPA, the Chief Executive Officer of the Department may sign an evidentiary certificate on various matters in a proceeding for an offence against the Act.

Clause 11(2) updates section 84(b) of the Act by replacing a reference to “glass” container with “permitted” container, which is the correct reference used throughout the Act.

Clause 12. Section 86 inserted

This clause inserts new section 86, **Delegation**, into the Act.

New section 86(1) enables the Minister to delegate any of the Minister’s powers and functions under the Act to the Chief Executive Officer of the Department.

New section 86(2) enables the Chief Executive Officer of the Department to delegate any of the CEO’s powers and functions under the Act to a public sector employee, which the *Interpretation Act 1978* defines to mean “an employee within the meaning of the *Public Sector Employment and Management Act 1993*”.

The effective use of delegation can assist in the timeliness of administrative decision making by expanding the potential number of people who can make a particular decision under the legislation and provide flexibility, especially in relation to low-risk decisions.

Clause 13. Section 88 amended (Identity card)

Clause 13(1) amends section 88(1) of the Act by replacing a reference to the NT EPA with a reference to the CEO. Accordingly, rather than the NT EPA, the Chief Executive Officer of the Department must give an identity card to each authorised officer appointed by the Chief Executive Officer under section 87 of the Act.

Clause 13(2) replaces the term “show” with the term “display” in relation to the photograph of the authorised officer on the identity card. This accords with modern drafting principles.

Similarly, clause 13(3) replaces the term “show” with the term “state” in relation to the date of issue of the identity card to accord with modern drafting principles.

Clause 13(4) removes the requirement for a date of expiry to be shown on the identity card as the card’s date of issue is sufficient.

Clause 14. Section 91 amended (Protection from liability)

This clause extends the existing protection from civil and criminal liability, afforded to authorised officers acting in good faith in exercising a power or performing a function, to the CEO. This is a consequential amendment as a result of several powers and functions under the Act shifting from the NT EPA to the Chief Executive Officer of the Department.

Clause 15. Part 10 inserted

This clause inserts new Part 10, **Transitional matters for Environment Protection (Beverage Containers and Plastic Bags) Legislation Amendment (Expansion of CDS and Other Matters) Act 2025**, into the Act.

New Part 10 contains new sections 112 to 120 and provides for transitional matters relating to the amendments in the Amendment Act.

New section 112, **Definitions**, contains definitions for *amending Act*, *commencement* and *NT EPA*, which are relevant to the operation of new Part 10.

New section 113, **Continuation of ongoing documents and actions**, provides in subsection (1) that on the commencement of Part 2 of the Amendment Act, an ongoing document (being a document issued by or given to the NT EPA) continues with the same force and effect as if it had been issued by or given to the Chief Executive Officer of the Department.

Similarly, as a transitional matter, new section 113(2) provides that on the commencement of Part 2 of the Amendment Act, an ongoing action (being an action done by or in relation to the NT EPA) continues with the same force and effect as if it had been done by or in relation to the Chief Executive Officer of the Department.

New section 113(3) provides for definitions for the terms *ongoing action* and *ongoing document*.

New section 114, **NTCAT review limited to decisions made after commencement**, ensures that a reviewable decision is only reviewable by NTCAT if the decision is made after the commencement of Part 2 of the Amendment Act. Decisions made prior to the commencement of Part 2 of the Amendment Act will remain within the jurisdiction of the Local Court.

New section 115, **Applications for review not made before commencement**, ensures that a person who was entitled to make an application to the Local Court for review of a decision before commencement may still apply to the Local Court for such a review. Furthermore, the Local Court will accord with sections 47 and 48 of the Act as in force before the commencement of the Part 2 of the Amendment Act. Sections 47 and 48 of the Act, repealed by clause 6, provide for the operation and implementation of the decision under review, and the conduct of the Local Court hearing, respectively.

Similarly, new section 116, **Applications for review not determined before commencement**, provides that an application to the Local Court that has not been finally determined by the Local Court before the commencement of the Part 2 of the Amendment Act should continue to be heard and decided by the Court in accordance with then sections 47 and 48 of the Act.

New section 117, **Referral of matters to CEO on reviews determined after commencement**, provides that if the Local Court would have referred a matter to the NT EPA to reconsider, the Court must instead refer the matter to the Chief Executive Officer of the Department to reconsider.

New section 118, **Judicial notice and evidentiary certificates**, ensures that a document signed by the chairperson of the NT EPA is not impacted by the commencement of Part 2 of the Amendment Act.

Clause 16. Schedule 2 inserted

This clause inserts new Schedule 2 into the Act. New Schedule 2 of the Act, **Reviewable decisions**, clearly sets out the decisions under the Act that an affected person can apply to NTCAT for a review. New Schedule 2 is linked to new section 46, inserted by clause 6, which provides that NTCAT has jurisdiction to review a decision specified in Schedule 2 and defines an affected person as a person specified in Schedule 2.

There is no change to the scope of administrative decisions that can be reviewed. The change is to the body that can undertake the review, which will be NTCAT rather than the Local Court.

Clause 17. Act further amended

This is formal clause which provides that the Schedule to the Amendment Act has effect. The Schedule provides for minor amendments to the Act primarily to replace other references to the NT EPA with either a reference to the Minister or CEO.

Division 2 Environment Protection (Beverage Containers and Plastic Bags) Regulations 2011**Clause 18. Regulations amended**

This is a formal clause which provides that Part 2, Division 2 amends the *Environment Protection (Beverage Containers and Plastic Bags) Regulations 2011*.

Clause 19. Regulation 2 amended (Definitions)

This clause inserts definitions for the terms ***infringement notice***, ***infringement notice offence*** and ***prescribed amount***, mirroring the definitions currently in regulation 6, which is being repealed. This is because it is more appropriate to contain and sign-post the definitions for these terms in regulation 2.

Clause 20. Regulation 2FA amended (Payment of refund amount from reverse vending machine)

This clause makes minor amendments to regulation 2FA, which prescribes the way refunds must be paid by an approved reverse vending machine (automated collection depot) that is authorised to dispense refunds by a redeemable voucher or by electronic payment to a recognised account. The clause omits and inserts new provisions to simplify and clarify the operation of the regulation.

Clause 21. Regulation 6 repealed (Definitions)

This clause repeals the regulation which contains definitions for the terms ***infringement notice***, ***infringement notice offence*** and ***prescribed amount***. This is because these terms are moved to regulation 2 instead, which is a more appropriate Part to contain and sign-post the definitions for these terms.

Clause 22. Regulation 8 amended (When infringement notice may be given)

This clause replaces the term “reasonably believes” with the term “believes on reasonable grounds that” to accord with modern drafting principles.

Clause 23. Regulations 9 and 10 replaced

This clause updates regulations 9 and 10, with respect to the contents of an infringement notice and the payment of the prescribed amount payable for an offence, in accordance with the modern drafting style and to provide for payment by electronic means.

New regulation 10A provides for the expiation of an alleged offence on payment of the prescribed amount for the infringement notice offence. As a result, no further action will be taken in relation to the offence.

Clause 24. Regulation 11 amended (Withdrawal of infringement notice)

Consistent with other amendments in the Amendment Act, this clause replaces the term “NT EPA” with the term “CEO”.

Clause 25. Regulation 12 amended (Application of Part)

This clause makes minor amendments to regulation 12 to accord with modern drafting principles.

Clause 25(1) amends the heading to the regulation by replacing “Application of Part” with “Effect of Part”.

Clause 25(2) amends regulation 12(2) by replacing “Also, this” with “This”.

Clause 26. Schedule replaced

This clause replaces the Schedule to the Regulations, as provided for in regulation 7, setting out the infringement notice offences and prescribed amounts in an updated table. The prescribed amounts, expressed in penalty units, have not changed.

Part 3 Amendments to environment protection (beverage containers and plastic bags) legislation commencing on later date

Division 1 Environment Protection (Beverage Containers and Plastic Bags) Act 2011

Clause 27. Act amended

This is a formal clause which provides that Part 3, Division 1 amends the *Environment Protection (Beverage Containers and Plastic Bags) Act 2011*.

Clause 28. Section 18 amended (Acceptance of empty permitted containers by operator of collection depot)

This clause omits section 18(4)(c) of the Act, which enabled a collection depot operator to refuse acceptance of an empty container if the container has a removable lid on it. Accordingly, members of the public can return containers to approved collection depots with container lids, caps or other closures attached.

Clause 29. Section 20 amended (Acceptance of and payment for empty permitted containers by CDS coordinator)

Similarly, this clause omits reference to a container with a removable lid and makes some minor consequential amendments.

Division 2 Environment Protection (Beverage Containers and Plastic Bags) Regulations 2011

Clause 30. Regulations amended

This is a formal clause which provides that Part 3, Division 2 amends the *Environment Protection (Beverage Containers and Plastic Bags) Regulations 2011*.

Clause 31. Regulation 2 amended (Definitions)

This clause omits the definitions of *flavoured milk*, *Food Standards Code*, *glass container*, *milk*, *spiritous liquor*, *wine* and *wine-based beverage*.

These definitions will no longer be required due to the scope of the Container Deposit Scheme being simplified and broadened to most beverage containers.

Clause 32. Regulations 2A and 2B repealed

This clause repeals regulations 2A and 2B as the definitions of spiritous liquor and wine will no longer be required.

Clause 33. Regulation 2F replaced

This clause removes the numerous classes of exempt containers, only retaining the Container Deposit Scheme exemption for containers used for containing more than 3 litres of beverage.

Clause 34. Part 4, Division 1 heading inserted

This clause inserts, before regulation 13, the heading to Part 4, Division 1 **Transitional matter for Environment Protection (Beverage Containers and Plastic Bags) Amendment Regulations 2011**.

Clause 35. Part 4, Division 2 inserted

This clause inserts new Division 2 into Part 4 of the Regulations, which contains new regulation 14, and provides for transitional matters relating to the approved refund marking on containers.

New regulation 14(1) provides a transitional relief period of 2 years for glass containers used for containing wine or spiritous liquor to not bear the approved refund marking.

New regulation 14(2) provides a transitional relief period of 1 year for other containers new to the Container Deposit Scheme to not bear the approved refund marking.

Regulation 2D provides examples of the approved refund marking such as “10c refund at collection depots/points in participating State/Territory of purchase”.

New regulation 14(3) provides for definitions of terms used in new regulations 14(1) and (2).

Part 4 Repeal of Act

Clause 36. Repeal of Act

This is a standard clause that provides that the *Environment Protection (Beverage Containers and Plastic Bags) Legislation Amendment (Expansion of CDS and Other Matters) Act 2025* will be repealed on the day after it commences.

Schedule Act further amended

The Schedule provides for minor amendments to the Act, primarily to replace other references to the NT EPA with either a reference to the Minister or CEO of the Department, and to replace references in the Act to term “reasonably believes” with the term “believes on reasonable grounds”.