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The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

# **Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2021**

**No.     , 2021**

*(Senator later slater1407)  
(Written by Senator Ludlum)*

**A Bill for an Act to provide for environmentally sustainable use of  
resources and best practice in waste management by establishing a  
national beverage container deposit and recovery scheme, and for  
related purposes**

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**A Bill for an Act to provide for environmentally sustainable use of resources and best practice in waste management by establishing a national beverage container deposit and recovery scheme, and for related purposes**

The Parliament of Australia enacts:

**Part 1—Preliminary**

**1 Short title**

This Act may be cited as the *Environment Protection (Beverage Container Deposit and Recovery Scheme) Act 2021*.

**2 Commencement**

This Act commences on the day on which it receives the Presidential Assent.

### **3 Objects**

The objects of this Act are to:

- (a) promote the principles of environment protection by regulating the use, sale and recovery of beverage containers; and
- (b) ensure the environmentally sustainable management and reuse of used beverage containers; and
- (c) support economic recycling options for used beverage containers.

### **4 Constitutional basis for Act**

This Act relies on:

- (a) the Commonwealth's legislative powers under paragraphs 51(xx), (xxix) and (xxxix) of the Constitution; and
- (b) any implied legislative powers of the Commonwealth.

### **5 Application to external Territories**

This Act extends to all the external Territories.

### **6 States and Territories are bound**

This Act binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

### **7 State and Territory laws may operate concurrently**

This Act is not intended to exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

### **8 Interpretation**

In this Act:

***authorised collection depot*** means a premises authorised by the department under section 16 for the collection of empty beverage containers.

***authorised transfer station*** means a premises authorised by the department under section 17 to be an authorised transfer station.

***beverage*** means:

- (a) any carbonated or non-carbonated soft drink, fruit juice or water;
- or

(b) any alcoholic drink, including brandy, gin, rum, whisky, cordials containing spirits, wine, cider, perry, mead, ale, porter, beer or any other spirituous, malt, vinous or fermented liquor; or

(c) milk, including animal milk, soy milk or processed milk; or

(d) any other liquid intended for human consumption by drinking that is prescribed to be a beverage for the purposes of this Act;

but does not include a beverage of a class that is prescribed not to be a beverage.

**beverage container** means a container containing a beverage that is produced for the sale of the beverage in a sealed form to the consumer, being a container which has a capacity not exceeding 4 litres and is of any of the following types:

(a) a plastic or glass bottle;

(b) an aluminium or steel can;

(c) a liquid paperboard or composite carton;

(d) a composite container;

but does not include a beverage container of a class that is prescribed not to be a beverage container.

**beverage container environmental deposit** means the environmental deposit set out in paragraph 12(a) or prescribed under paragraph 12(b), as the case may be.

**department** means the department administered by the Minister who administers this Act.

**import** means import or bring into Australia from another country.

**labelled** includes embossed, painted or stamped.

**penalty unit** has the meaning given by section 4AA of the *Crimes Act 1914*.

**refund amount** means 10 cents, or any higher amount prescribed for the purposes of this definition or following a review conducted in accordance with section 20.

**reverse vending machine** means an automated mechanical device which accepts one or more types of empty beverage containers by scanning the label, and issues coins or a redeemable credit slip with a value not less than the container's refund amount. A reverse vending machine may sort and process containers mechanically provided that the entire process is enclosed within the machine.

**Scheme** means the Beverage Container Deposit and Recovery Scheme established by section 9.

## **Part 2—Beverage Container Deposit and Recovery Scheme**

### **9 Beverage Container Deposit and Recovery Scheme**

This section establishes the Beverage Container Deposit and Recovery Scheme which is to be administered by the department.

## **10 Functions of the department in administering Scheme**

- (1) The functions of the department in administering the Scheme are to:
- (a) manage the operation of the Scheme having regard to the objects specified in section 3;
  - (b) collect the beverage container environmental deposit under section 13;
  - (c) grant exemptions under section 21;
  - (d) authorise premises to be authorised collection depots;
  - (e) authorise premises to be authorised transfer stations;
  - (f) enter into agreements with the operators of authorised collection depots and authorised transfer stations;
  - (g) facilitate and promote the Scheme;
  - (h) provide grants or other financial incentives to encourage the use of recyclable and reusable containers and the increased use of recycled material from beverage containers;
  - (i) provide information and advice to the Minister in relation to the operation of the Scheme.

(2) Without limiting the generality of paragraphs (1)(g) and (h), the department may fund any of the following:

- (a) market creation and support for collected beverage containers and materials;
- (b) financial support for kerbside recycling services (that is, services involving the collection by or on behalf of local government councils and other entities of containers that have been separated for recycling by occupants of residences or businesses);
- (c) further offsetting the collection industry costs for the operation of the Scheme;
- (d) product development to improve the recyclability and reusability of beverage containers;
- (e) other activities and programs connected with recycling which the department considers will facilitate environmentally sustainable uses of resources and promote best practices in waste management.

(3) Payments for the purposes of paragraphs (1)(g) and (h) and subsection (2) are to be met from funds appropriated by the Parliament for those purposes.

## **11 Beverage container environmental deposit payable by importer or producer of beverage container**

Unless an exemption granted under section 21 applies, a person who imports a beverage container into Australia or produces a beverage container in Australia must pay a beverage container environmental deposit for each beverage container in accordance with section 13.

Civil penalty:

- (a) for an individual—2,000 penalty units or such amount as is prescribed by the regulations;
- (b) for a body corporate—10,000 penalty units or such amount as is prescribed by the regulations.

Note: Under section 24 the person may be liable for an additional civil penalty for each day after the day mentioned in section 13 for which the person fails to comply with this section.

## **12 Amount of beverage container environmental deposit**

The amount of the beverage container environmental deposit for each beverage container is:

- (a) 10 cents; or
- (b) if the regulations prescribe a higher amount for the purposes of this section, that amount.

## **13 When beverage container environmental amount must be paid**

A person who is required to pay the beverage container environmental deposit must pay the deposit to the department within 14 days after the end of the month in which the beverage container was sold by the person in Australia to a wholesaler, retailer or individual, or to a producer or distributor of beverages in beverage containers.

Civil penalty:

- (a) for an individual—100 penalty units or such amount as is prescribed by the regulations;
- (b) for a body corporate—500 penalty units or such amount as is prescribed by the regulations.

## **14 Beverage containers must be labelled as refundable**

A person must not sell a beverage container unless the container is labelled “X refund at an authorised collection depot or transfer station when sold in Australia”, where “X” is the refund amount.

Civil penalty:

- (a) for an individual—100 penalty units or such amount as is prescribed by the regulations;
- (b) for a body corporate—500 penalty units or such amount as is prescribed by the regulations.

## **15 Prescribed labelling requirements**

If any additional labelling requirements are prescribed in relation to beverage containers, a person must not sell a beverage container unless the container is labelled in accordance with the relevant prescribed labelling requirements.

Civil penalty:

- (a) for an individual—100 penalty units or such amount as is prescribed by the regulations;
- (b) for a body corporate—500 penalty units or such amount as is prescribed by the regulations.

## **16 Authorised collection depots**

(1) The department may approve a premises to be an authorised collection depot.

(2) The department may enter into an agreement with the operator of an authorised collection depot in respect of the location, operation and functions of the authorised collection depot.

(3) Without limiting the generality of subsection (2), an agreement may include provisions relating to:

- (a) the delivery of sorted empty beverage containers to an authorised transfer station;
- (b) the payment to the operator of the authorised collection depot of the refund amount paid by the authorised collection depot;
- (c) the payment of any penalty by the operator of the authorised collection depot for a failure to comply with the agreement.

(4) Without limiting the types of collection depots that may be authorised under this section:

- (a) collection depots may involve manual or mechanised handling facilities, including reverse vending machines; and
- (b) any of the following may be authorised as collection depots:
  - (i) council sites;
  - (ii) community centres and community-based facilities;
  - (iii) shopping centres and centre car parks;
  - (iv) service stations or other retailers;
  - (v) schools;
  - (vi) drive-through recycling centres;
  - (vii) authorised transfer stations.

## **17 Authorised transfer stations**

(1) The department may approve a premises to be an authorised transfer station.



(2) The department may enter into an agreement with the operator of an authorised transfer station in respect of the location, operation and functions of the authorised transfer station.

(3) Without limiting the generality of subsection (2), an agreement may include provisions relating to:

- (a) the receipt and processing of empty beverage containers;
- (b) the payment to the operator of the authorised transfer station of the refund amount paid by the authorised transfer station;
- (c) the sale of processed materials;
- (d) the payment of any penalty by the operator of the authorised transfer station for a failure to comply with the agreement;
- (e) the submission of a monthly report to the department on the number and types of empty beverage containers received and processed.

(4) At the end of 12 months after the commencement of this Act, an agreement entered into under subsection (2) may include, or may be amended to include, provisions relating to accepting and paying a refund amount on crushed and broken empty beverage containers using an estimate of the refund amount payable.

## **18 Offence to claim refund on beverage container purchased outside Australia**

(1) A person must not present to an authorised collection depot or authorised transfer station for the purpose of claiming the refund amount a beverage container which the person knows or has reason to believe was not purchased in Australia.

Civil penalty: 100 penalty units.

(2) Subject to subsection (3), the operator of an authorised collection depot or authorised transfer station may request any person presenting a beverage container for the purpose of claiming the refund amount to complete a declaration in the prescribed form stating that the person has no reason to believe that the beverage container was not purchased in Australia.

(3) If within any period of 48 hours a person presents 3,000 or more beverage containers to an authorised collection depot or authorised transfer station for the purpose of claiming the refund amount, the operator of the authorised collection depot or authorised transfer station must request the person to complete the declaration referred to in subsection (2).

Civil penalty:

- (a) for an individual—100 penalty units or such amount as is prescribed by the regulations;
- (b) for a body corporate—500 penalty units or such amount as is prescribed by the regulations.

(4) The operator of an authorised collection depot or authorised transfer station must not pay the refund amount to a person who has not complied with a request made under subsection (2) or (3).

Civil penalty:

- (a) for an individual—100 penalty units or such amount as is prescribed by the regulations;
- (b) for a body corporate—500 penalty units or such amount as is prescribed by the regulations.

(5) The operator of an authorised collection depot or authorised transfer station must:

- (a) keep any declaration made under this section for a period of 3 years after it is made; and
- (b) have the declaration readily available for inspection at any reasonable time by an authorised officer.

Civil penalty:

- (a) for an individual—300 penalty units or such amount as is prescribed by the regulations;
- (b) for a body corporate—1,500 penalty units or such amount as is prescribed by the regulations.

## **19 Authorised collection depot or authorised transfer station to pay refund**

(1) A person who accepts the return of an unbroken empty beverage container at an authorised collection depot or authorised transfer station must pay the person who returns it the refund amount.

(2) Subject to subsections (3) and (4), the operator of an authorised collection depot must not unreasonably refuse to accept any unbroken empty beverage container labelled in accordance with section 14 that is returned to the authorised collection depot.

Civil penalty:

- (a) for an individual—300 penalty units or such amount as is prescribed by the regulations;
- (b) for a body corporate—1,500 penalty units or such amount as is prescribed by the regulations.

(3) The operator of an authorised collection depot may refuse to accept the return of a beverage container if:

- (a) the beverage container is in an unsafe condition; or
- (b) the operator has reason to believe that the beverage container was not sold to a wholesaler, retailer or individual, or to a producer or distributor of beverages in beverage containers, in Australia; or

(c) a request to complete a declaration under section 18 in respect of the beverage container has not been complied with.

(4) A reverse vending machine may be operated so as to not accept the return of a beverage container labelled in accordance with section 14 which is returned in a condition which prevents the reverse vending machine from scanning the label.

## **20 Review of refund amount**

(1) The Minister must cause a review of the refund amount to be carried out at least once in each period of 5 years after the commencement of this Act.

(2) The person or persons carrying out that review must have regard to the minimum refund amount necessary to maintain the appropriate level of incentive:

- (a) for producers, distributors and consumers of beverages in beverage containers to reuse or recycle beverage containers;
- (b) to ensure high rates of recovery of beverage containers;
- (c) to reduce litter and litter-related costs;
- (d) to reduce waste, disposal and recycling costs;
- (e) to conserve resources.

## **21 Exemption from beverage container environmental deposit**

(1) A person may apply to the department in the prescribed form for an exemption wholly or partly from the requirement to pay the beverage container environmental deposit under section 11.

(2) The department must within the prescribed period grant an exemption under this section if the secretary of the department is satisfied that the criteria and considerations prescribed for the purposes of this section apply.

(3) The department must within the prescribed period advise the applicant in writing of:

- (a) the decision of the department;
- (b) if the department grants the exemption—the terms and conditions applying to the exemption;
- (c) if the department refuses to grant the exemption—the reasons for refusing to grant the exemption.

(4) If any of the criteria and considerations prescribed for the purposes of this section cease to apply, the department:

- (a) may by notice in writing to the holder of the exemption revoke the exemption granted under this section;
- (b) must specify in the notice:
  - (i) the reason for revoking the exemption; and

(ii) a reasonable period of time within which the person must comply with this Act.

(5) If an exemption is revoked under subsection (4), the person who held the exemption must begin to comply with this Act within the period specified in the notice under subsection (4).

Civil penalty:

(a) for an individual—2,000 penalty units or such amount as is prescribed by the regulations;

(b) for a body corporate—10,000 penalty units or such amount as is prescribed by the regulations.

Note: Under section 24 the person may be liable for an additional civil penalty for each day after the day specified in the notice for which the person fails to comply with this Act in accordance with this section.

## **22 Act does not extend to existing beverage containers**

This Act does not apply to beverage containers imported into Australia or produced in Australia before the commencement of this Act.

# **Part 3—Enforcement**

## **Division 1—Civil penalty orders**

### **23 Civil penalty provisions**

The following are civil penalty provisions for the purposes of this Act:

(a) a subsection of this Act (or a section of this Act that is not divided into subsections) if the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subsection (or section);

(b) a subsection of this Act if another provision of this Act specifies that the subsection is a civil penalty provision.

### **24 Continuing contraventions**

(1) If an act or thing is required, under a civil penalty provision of this Act, to be done within a particular period, or before a particular time, then the obligation to do that act or thing continues (even if the period has expired or the time has passed) until the act or thing is done.

(2) If, under sections 11 and 13 or under subsection 21(5), an act or thing is required to be done within a particular period, or before a particular time, and a person fails to comply with that requirement, the person is liable for a civil penalty for each day that the person fails to comply.

Civil penalty:

- (a) for an individual—1,000 penalty units per day or such amount as is prescribed by the regulations;
- (b) for a body corporate—5,000 penalty units per day or such amount as is prescribed by the regulations.

(3) To avoid doubt, a person's failure to comply with such a requirement on a particular day is taken, for the purposes of this Act, not to be the same conduct as the person's failure to comply with that requirement on a different day.

## **25 Court may order person to pay pecuniary penalty for contravening civil penalty provision**

*Application for order*

(1) Within 6 years of a person contravening a civil penalty provision, the department may apply, on behalf of the Commonwealth, to a Court for an order that the person pay the Commonwealth a pecuniary penalty.

*Court may order person to pay pecuniary penalty*

(2) If the Court is satisfied that the person has contravened a civil penalty provision, the Court may order the person to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate.

*Maximum pecuniary penalty*

- (3) The pecuniary penalty must not exceed the sum of:
- (a) the relevant amount specified for the civil penalty provision; and
  - (b) the amount (if any) for which the person is liable under section 24 at the time the Court makes the order.

*Determining amount of pecuniary penalty*

- (4) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
- (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

*Conduct contravening more than one civil penalty provision*

(5) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

## **26 Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

## **27 Persons involved in contravening civil penalty provision**

(1) A person must not:

- (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
- (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
- (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
- (d) conspire to contravene a civil penalty provision.

(2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

## **28 Recovery of a pecuniary penalty**

If a Court orders a person to pay a pecuniary penalty:

- (a) the penalty is payable to the Commonwealth; and
- (b) the Commonwealth may enforce the order as if it were a judgment of the Court.

## **Division 2—Infringement notices**

### **29 When an infringement notice can be given**

(1) If the secretary of the department has reasonable grounds to believe that a person has contravened a civil penalty provision, the department may give to the person an infringement notice relating to the alleged contravention.

(2) An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) A single infringement notice may be given to a person in respect of:

- (a) 2 or more alleged contraventions of a civil penalty provision; and
- (b) alleged contraventions of 2 or more civil penalty provisions.

However, the notice must not require the person to pay more than one penalty in respect of the same conduct.

### **30 Matters to be included in an infringement notice**

- (1) An infringement notice must:
  - (a) identify the person to whom the notice is given; and
  - (b) set out brief details of:
    - (i) the alleged contravention of the civil penalty provision; or
    - (ii) if the infringement notice relates to 2 or more alleged contraventions of a civil penalty provision or alleged contraventions of 2 or more civil penalty provisions—each alleged contravention; and
  - (c) contain a statement to the effect that proceedings will not be brought under this Part in relation to the alleged contravention or contraventions if the penalty specified in the notice is paid to the department, on behalf of the Commonwealth, within:
    - (i) 28 days after the notice is given; or
    - (ii) if the secretary of the department allows a longer period—that longer period; and
  - (d) contain a statement to the effect that the person to whom the notice is given may choose not to pay the penalty and, if the person does so, proceedings may be brought under this Part in relation to the alleged contravention or contraventions; and
  - (e) give an explanation of how payment of the penalty is to be made; and
  - (f) set out such other matters (if any) as are specified by the regulations.

Note: For the amount of penalty, see section 31.

(2) For the purposes of paragraph (1)(b), the brief details must include the following information in relation to each alleged contravention:

- (a) the date of the contravention;
- (b) the civil penalty provision that was allegedly contravened.

### **31 Amount of penalty**

The penalty to be specified in an infringement notice relating to a person's alleged contravention of a civil penalty provision must be a pecuniary penalty equal to one-fifth of the maximum penalty that a Court could impose on the person for that contravention.

Note: To work out this maximum penalty, see subsection 25(3).

### **32 Withdrawal of an infringement notice**

(1) This section applies if an infringement notice is given to a person.

(2) The department may, by written notice given to the person, withdraw the infringement notice.

#### *Refund of penalty if infringement notice withdrawn*

(3) If:

(a) the penalty specified in the infringement notice is paid; and

(b) the infringement notice is withdrawn after the penalty is paid;

the Commonwealth is liable to refund the penalty.

### **33 Paying the penalty in accordance with the notice**

(1) This section applies if:

(a) an infringement notice relating to an alleged contravention of a civil penalty provision is given to a person; and

(b) the penalty is paid in accordance with the infringement notice; and

(c) the infringement notice is not withdrawn.

(2) Any liability of the person for the alleged contravention is discharged.

(3) The payment of the penalty is not to be taken as an admission by the person of liability for the alleged contravention.

(4) Proceedings under this Part may not be brought against the person for the alleged contravention.

### **34 Effect of this Division on civil proceedings**

This Division does not:

(a) require an infringement notice to be given in relation to an alleged contravention of a civil penalty provision; or

(b) affect the liability of a person to have proceedings under this Part brought against the person for an alleged contravention of a civil penalty provision if:

(i) the person does not comply with an infringement notice relating to the contravention; or

(ii) an infringement notice relating to the contravention is not given to the person; or

(iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or



(c) limit a Court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under this Part to have contravened a civil penalty provision.

### **Division 3—Enforceable undertakings**

#### **35 Acceptance of undertakings relating to contraventions**

(1) The secretary of the department may accept any of the following undertakings given by a person:

(a) a written undertaking that the person will take specified action, in order to comply with the provisions of this Act or the regulations;

(b) a written undertaking that the person will refrain from taking specified action in order to comply with the provisions of this Act or the regulations;

(c) a written undertaking that the person will take specified action directed towards ensuring that the person:

(i) does not commit a contravention of this Act or the regulations; or

(ii) is unlikely to commit a contravention of this Act or the regulations;

in the future;

(d) a written undertaking of a kind specified in regulations made for the purposes of this paragraph.

(2) The undertaking must be expressed to be an undertaking under this section.

(3) The person may withdraw or vary the undertaking at any time, but only with the consent of the secretary of the department.

(4) The secretary of the department may, by written notice given to the person, cancel the undertaking.

(5) The undertaking may be published on an appropriate website.

#### **36 Enforcement of undertakings**

(1) If:

(a) a person has given an undertaking under section 35; and

(b) the undertaking has not been withdrawn or cancelled; and

(c) the secretary of the department considers that the person has breached the undertaking;

the secretary of the department may apply to a Court for an order under subsection (2).

(2) If the Court is satisfied that the person has breached the undertaking, the Court may make any or all of the following orders:

- (a) an order directing the person to comply with the undertaking;
- (b) an order directing the person to pay to the department, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the Court considers appropriate.

## **Division 4—Liability of chief executive officers of corporations**

### **37 Civil penalties for chief executive officers of corporations**

(1) If:

- (a) a corporation contravenes a civil penalty provision; and
- (b) a chief executive officer of the corporation knew that, or was reckless or negligent as to whether, the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (d) the officer failed to take all reasonable steps to prevent the contravention;

the officer contravenes this subsection.

(2) Subsection (1) is a civil penalty provision.

(3) Under section 25, a Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order a corporation to pay for contravening the civil penalty provision mentioned in paragraph (1)(a).

### **38 Did a chief executive officer take reasonable steps to prevent contravention?**

(1) For the purposes of section 37, in determining whether a chief executive officer of a corporation failed to take all reasonable steps to prevent a contravention, a Court is to have regard to:

- (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
  - (i) that the corporation regularly assesses its compliance with this Act or the regulations;

- (ii) that the corporation implements any appropriate recommendations arising from such an assessment;
  - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations in so far as those requirements affect the employees, agents or contractors concerned; and
- (b) what action (if any) the officer took when he or she became aware that the corporation was contravening this Act or the regulations.

(2) This section does not, by implication, limit the generality of section 37.

## **Part 4—Miscellaneous**

### **39 Annual report by Minister**

(1) As soon as practicable after each 30 June, the Minister must cause to be prepared a report on the operation of this Act for the 12 months ending on that 30 June.

(2) The Minister must cause a copy of a report prepared under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

### **40 Regulations**

The President may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.