



New South Wales

Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment Regulation 2017

under the

Waste Avoidance and Resource Recovery Act 2001

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Waste Avoidance and Resource Recovery Act 2001*.

GABRIELLE UPTON, MP
Minister for the Environment

Explanatory note

The object of this Regulation is to make provision with respect to the following matters in connection with the container deposit scheme established by the *Waste Avoidance and Resource Recovery Act 2001* (the *Act*):

- (a) the performance targets to be included in a network operator agreement,
- (b) container approvals (including fees for applications and approvals, classes of approvals, grounds for refusal, suspension or revocation of approvals and transitional arrangements relating to conditions of approvals),
- (c) the manner in which container approvals and other documents may be served,
- (d) transitional arrangements relating to claims made by material recovery facility operators for the payment of processing refunds.

This Regulation is made under the *Waste Avoidance and Resource Recovery Act 2001*, including sections 25 (5), 28, 40 (9), 56 (the general regulation-making power) and clause 1 of Schedule 4.

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1 Name of Regulation

This Regulation is the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment Regulation 2017*.

2 Commencement

This Regulation commences on 1 August 2017 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017

[1] Clause 9A

Insert after clause 9:

9A Performance targets

- (1) A network operator agreement is to include performance targets for:
 - (a) the number of collection points to be operating in the area to which the agreement applies, and
 - (b) the hours of operation of those collection points.
- (2) In determining the performance targets to be included in a network operator agreement, the Minister is to have regard to the community access principles set out in Schedule 1.
- (3) A network operator agreement is to:
 - (a) specify the period to which the performance target applies, and
 - (b) provide for a protocol to be applied in determining whether the performance targets have been met during that period.

[2] Part 3

Insert after clause 21:

Part 3 Supply and collection of containers

22 Application fee for container approval

For the purposes of section 40 (2) (c) of the Act, the fee required to accompany an application for a container approval is to be determined by adding together the following amounts:

- (a) the amount of the application fee for the container approval determined by the EPA by order published in the Gazette,
- (b) the amount of the approval fee for the container approval determined by the EPA under clause 26.

23 Classes of container approvals: section 40 (9) of Act

- (1) The EPA may determine classes of container approvals.
- (2) The EPA may determine the classes on the basis of the physical characteristics of containers, the use of containers and any other bases it thinks fit.

24 Grounds for refusal of container approval

For the purposes of section 40 (4) (c) of the Act, the EPA may refuse to grant a container approval on any of the following grounds:

- (a) that the applicant for the approval has contravened a condition of a container approval held by the applicant, or that a container approval held by the applicant has been revoked,
- (b) if the applicant for the approval is a body corporate—that a director of the body corporate is or has been the director of another body corporate that is a supplier and:

- (i) that the supplier has contravened a condition of a container approval or a container approval held by the supplier has been revoked, or
- (ii) that the supplier has contravened a supply arrangement,
- (c) that the EPA considers that the material of which the container is composed (including any labelling) is not suitable for recycling, reuse or, having regard to the objects of the Act, any other appropriate means of disposal.

25 Grounds for suspension or revocation of container approval

For the purposes of section 40 (5) of the Act, the EPA may suspend or revoke a container approval on any of the following grounds:

- (a) that the holder of the approval has contravened a provision of Part 5 of the Act,
- (b) that the holder of the approval has failed to pay the approval fee on or before the due date for its payment,
- (c) that a supply arrangement to which the holder of the approval is a party has expired or been terminated and the EPA is satisfied that there is no unresolved dispute between the parties to the arrangement in relation to the expiry or termination,
- (d) that the EPA considers that the suspension or revocation is necessary for the proper operation of the Scheme,
- (e) that the holder of the approval has requested the suspension or revocation.

26 Approval fees

- (1) The holder of a container approval must, on or before each anniversary of the date on which the approval was granted, pay to the EPA the approval fee.
- (2) The approval fee for a container approval is the amount determined by the EPA by order published in the Gazette.
- (3) The approval fee is payable even if the container approval is suspended.
- (4) The approval fee is not refundable on the revocation of the approval.

27 Container approval not transferable

A container approval is not transferable.

Part 4 Miscellaneous

28 Service of documents

- (1) A document that is authorised or required by section 40 of the Act or this Regulation to be served on any person may be served by any of the following methods:
 - (a) in the case of an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of that kind,
 - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,

- (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
 - (e) by email to an email address specified by the person for the service of documents of that kind.
- (2) Nothing in this clause affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this clause, *serve* includes give or send.

[3] Schedule 1

Insert at the end of the Regulation:

Schedule 1 Community access principles

(Clause 9A)

1 Definitions

In this Schedule:

major urban area means that part of the State categorised as Major Cities of Australia under the Remoteness Structure.

regional area means that part of the State categorised as Inner Regional Australia and Outer Regional Australia under the Remoteness Structure.

remote area means that part of the State categorised as Remote Australia and Very Remote Australia under the Remoteness Structure.

Remoteness Structure means the *Australian Statistical Geography Standard: Volume 5 - Remoteness Structure*, published by the Australian Bureau of Statistics, Cat No 1270.0.55.005, July 2011.

Urban Area Structure means the *Australian Statistical Geography Standard: Volume 4 - Significant Urban Areas, Urban Centres and Localities, Section of State*, published by the Australian Bureau of Statistics, Cat No 1270.0.55.004, July 2011.

2 Community access principles

The principles set out in this Schedule are **community access principles** for the purposes of clause 9A.

3 Number of collection points

- (1) The number of collection points operating under the Scheme in the major urban area should be no less than the number calculated by dividing the population of the major urban area by 20,000.
- (2) The number of collection points operating under the Scheme in each target area in the regional area or remote area should be no less than the number calculated by dividing the population of that target area by 20,000 and then adding 1.
- (3) Each collection point operating in a target area in the regional area or remote area should be located within a 10 km radius of any target town within that target area.
- (4) If the result obtained in accordance with subclause (1) or (2) is not a whole number, it is to be rounded down to the nearest whole number.

- (5) In this clause:

population means:

- (a) in relation to the major urban area—the total of the estimated resident population for the area as at 30 June 2015, specified in *Regional Population Growth, Australia, 2014-15*, Cat no 3218.0, published by the Australian Bureau of Statistics in March 2016, or
- (b) in relation to a target area—the total of the usual resident population for target towns in the target area, specified in *2011 Census of Population and Housing* data, published by the Australian Bureau of Statistics on its website in 2012.

target area means:

- (a) in relation to the regional area—an area within a 30 km radius of any target town in the regional area, or
- (b) in relation to the remote area—an area within a 50 km radius of any target town in the remote area.

target town means an area in the regional area or remote area that:

- (a) is categorised under the Urban Area Structure as an Urban Centre and Locality (Major Urban, Other Urban or Bounded Locality), and
- (b) has a population of not less than:
- (i) in the case of an area in the regional area—1,000, or
- (ii) in the case of an area in the remote area—500.

4 Hours of operation

- (1) A collection point located in the area specified in Column 1 of the Table to this subclause should be kept open to the public for at least the minimum number of hours specified for that area in Column 2.

Table

Column 1	Column 2
Area	Minimum number of hours
Major urban area	35 ordinary hours each week, including at least 8 weekend hours
Regional area	24 ordinary hours each week, including at least 8 weekend hours
Remote area	16 ordinary hours each 2-week period, including at least 8 weekend hours

- (2) The minimum number of hours specified for any period in the Table to subclause (1) is subject to such reduction as the Minister considers appropriate to reflect the occurrence of any public holiday during that period.

- (3) In this clause:

ordinary hour means one hour occurring during the period commencing at 7 am and ending at 8 pm on any day.

week means a period of 7 days commencing on a Monday and ending on a Sunday.

weekend hour means one hour occurring during the period commencing at 7 am on a Saturday and ending at 8 pm on the immediately following Sunday.

[4] Schedule 2

Insert after Schedule 1:

Schedule 2 Savings and transitional provisions

Part 1 Provisions consequent on enactment of Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016

1 Container approval conditions

The holder of a container approval does not commit an offence under section 40 (8) for any contravention of a condition that occurs before the day on which section 38 of the Act (as inserted by the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016*) commences.

2 Claims for refund amounts

For the purposes of the application of clause 19 of this Regulation to a claim made under that clause in respect of any period before 31 March 2018, a reference in that clause to a quarter is to be read as a reference to the period commencing on the Scheme commencement day and ending on 31 March 2018.