



New South Wales

# Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment (Supply and Collection) 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 for or with respect to the following matters in connection with the container deposit scheme established by the *Waste Avoidance and Resource Recovery Act 2001*:

- (a) requirements for the marking and labelling of containers that are subject to the scheme,
- (b) container approvals (including conditions of approvals and further grounds for refusal of approvals),
- (c) the circumstances in which refund amounts must not, or are not required to be, paid under the scheme,
- (d) the manner in which refund amounts are to be paid under the scheme (including by way of payment under a rewards scheme),
- (e) the time within which refund amounts are to be paid under the scheme,
- (f) the information required to be contained in refund declarations provided in connection with a claim for a refund amount under the scheme,
- (g) the records required to be kept by collection point operators,
- (h) prescribing a further class of persons as material recovery facility operators (to enable those operators to claim refund amounts for containers that they have processed),
- (i) requiring reports by the Scheme Coordinator to specify the number of containers supplied (rather than sold) by suppliers who are subject to a supply arrangement,
- (j) other matters of a minor or consequential nature.

This Regulation is made under the *Waste Avoidance and Resource Recovery Act 2001*, including sections 20 (definitions of **refund amount** and **refund marking**), 35 (1) (c), 40 (3) and (4) (c), 41, 42 (2) (d) and (3) (a) and (b) and 43 (3) (a) and (b) and (5) and 56 (the general regulation-making power) and clause 1 of Schedule 4.

## **Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment (Supply and Collection) Regulation 2017**

under the

Waste Avoidance and Resource Recovery Act 2001

### **1 Name of Regulation**

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

### **2 Commencement**

This Regulation commences on 1 December 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 3 Definitions**

Insert in alphabetical order in clause 3 (1):

*rewards scheme* means a program established by any supplier of goods or services under which rewards (whether expressed as points, a monetary amount or otherwise) are credited to an account registered in the name of a customer and redeemable by the customer for goods or services.

### **[2]    Clause 3 (1), definition of “Scheme commencement day”**

Omit “the day on which section 42 of the Act commences” from the definition.

Insert instead “1 December 2017”.

### **[3]    Clause 6 Refund amount**

Omit the clause. Insert instead:

#### **6    Refund amount**

- (1) For the purposes of Part 5 of the Act, the amount prescribed as the refund amount is:
  - (a) 10 cents, or
  - (b) in the case of an amount paid under a rewards scheme or by way of a coupon redeemable for goods or services—an amount with a redeemable value equivalent to 10 cents.
- (2) The *redeemable value* of an amount paid under a rewards scheme, or by way of a coupon redeemable for goods or services, is the monetary value of the goods or services for which the amount can be redeemed under the rewards scheme or by using the coupon.

### **[4]    Clause 7 Material recovery facility operators**

Insert after clause 7 (1) (b):

- (c) Lord Howe Island waste facility operators.

### **[5]    Clause 7 (2)**

Insert at the end of the subclause:

*Lord Howe Island waste facility operator* means a person who holds an environment protection licence under the *Protection of the Environment Operations Act 1997* authorising the disposal (by application to land), and storage, of waste at specified premises on land in Lord Howe Island.

### **[6]    Clause 21 Reports by Scheme Coordinator**

Omit “sold” from clause 21 (1) (e). Insert instead “supplied”.

**[7] Part 3 Supply and collection of containers**

Insert before clause 22:

**Division 1 Supply of beverages in containers**

**22A Barcode requirement**

- (1) For the purposes of this Part, a container that belongs to a class of containers complies with the **barcode requirement** if the container is marked or labelled with either of the following:
- (a) a GTIN barcode unique to that class of containers,
  - (b) a product barcode unique to that class of containers that:
    - (i) complies with the EAN/UPC symbology specifications for EAN-13, EAN-8, UPC-A or UPC-E barcodes, set out in the GS1 Standard, and
    - (ii) complies with the dimensional specifications and symbol placement guidelines that apply to the class of data carriers to which the barcode belongs, set out in the GS1 Standard, and
    - (iii) does not duplicate any GTIN barcode or other product barcode, and
    - (iv) is not less than 8, and not more than 13, digits.

- (2) In this clause:

**GS1 Standard** means the *GS1 General Specifications* standard published by GS1 AISBL.

**GTIN barcode** is a product barcode that contains a Global Trade Item Number (GTIN) encoding and complies with the GS1 Standard.

**22B Refund marking requirements**

For the purposes of the definition of **refund marking** in section 20 of the Act, a marking or labelling for a container must contain the words “10c refund at collection depots/points in participating State/Territory of purchase” in clear and legible characters.

**[8] Clause 23A**

Insert after clause 23:

**23A Conditions of approval**

For the purposes of section 40 (3) of the Act, a container approval is subject to the following conditions:

- (a) that the containers belonging to the class of containers to which the approval applies must comply with the barcode requirement,
- (b) the opening mechanism of any containers belonging to that class that are made primarily of metal must not be a ring-pull mechanism or any other mechanism that is designed to result in, or that is reasonably capable of resulting in, separation from the container of any part of the container.

**[9] Clause 24 Grounds for refusal of container approval**

Insert at the end of the clause:

- (d) that the containers belonging to the class of containers to which the application applies do not comply with the barcode requirement.

**[10] Part 3, Division 2**

Insert after clause 27:

**Division 2 Collection of containers**

**28 Refund declarations**

For the purposes of section 41 of the Act, a refund declaration required to be provided in connection with a claim for a refund amount for a container is to contain the following information:

- (a) the name and address of the person making the claim,
- (b) the name of any person on whose behalf the claim is made,
- (c) a statement that the container was acquired in the State,
- (d) a statement that the person making the claim (or on whose behalf the claim is made) has not previously made a claim for a refund amount for the container.

**29 Circumstances in which refund amounts not payable**

- (1) For the purposes of section 42 (2) (d) of the Act, the circumstances in which a collection point operator is not required to accept delivery of a container or to pay to a person a refund amount for the container are set out in this clause.

(2) **Condition of container**

A collection point operator is not required to accept delivery of a container or to pay to a person a refund amount for the container if:

- (a) the container is contaminated with any substance such that, in the reasonable opinion of the collection point operator, the container:
  - (i) is unsuitable for reuse or recycling, or
  - (ii) poses a serious risk to health or safety or to the proper operation of the collection point, or
- (b) the container (including any labelling) is so damaged, or is in such a condition, that:
  - (i) the refund marking cannot be read or the barcode cannot be scanned, or
  - (ii) the collection point operator (or, if the container is collected by means of a reverse vending machine—the reverse vending machine) is not reasonably able to confirm that it is a container.

(3) **Container material**

A collection point operator for a collection point located on land in a designated area is not required to accept delivery of a container or to pay to a person a refund amount for the container if:

- (a) in the case of a collection point on land in a designated area (other than Taronga Zoo)—the container is primarily made of any material other than polyethylene terephthalate (PET), high-density polyethylene (HDPE), steel or aluminium, or
- (b) in the case of a collection point in Taronga Zoo—the container is primarily made of glass.

(4) **Donations to charitable or community organisations**

A collection point operator who accepts delivery of a container is not required to pay a refund amount to the person who presented the container if the

collection point operator pays the refund amount instead, by way of a donation, to a charitable or community organisation nominated by the operator.

- (5) A refund amount may only be paid to a charitable or community organisation as provided by subclause (4) if:
- (a) the person who has presented the container has elected to have the refund amount paid to the organisation instead of to the person, or
  - (b) the collection point is a reverse vending machine and is located in a designated area.

- (6) In this clause:

***charitable or community organisation*** means a body established solely for charitable, community or educational purposes and not for pecuniary profit (including, without limitation, a government school or non-government school within the meaning of the *Education Act 1990*).

***designated area*** means:

- (a) the area known as Central Railway Station, or
- (b) the area known as Martin Place Railway station, or
- (c) the area known as Sydney (Kingsford Smith) Airport, or
- (d) Taronga Zoo.

***Taronga Zoo*** means the Park lands within the meaning of the *Zoological Parks Board Act 1973*.

### **30 Manner and timing of payment of refund amounts**

- (1) For the purposes of section 42 (3) (a) of the Act, a refund amount may be paid to a person:
- (a) by electronic funds transfer to an account nominated by the person, or
  - (b) by coupons redeemable for cash, goods or services, or
  - (c) under a rewards scheme, or
  - (d) in any other manner determined by the EPA by order published in the Gazette.
- (2) A refund amount that is paid to a person by electronic funds transfer may be paid to the person at any time within 3 days after the collection point operator accepts delivery of the container.

### **31 Bulk deliveries**

- (1) For the purposes of section 43 (3) (a) of the Act, a refund amount must not be paid to a person who has not provided a refund declaration and proof of identity if the number of containers for which a refund amount is claimed exceeds:
- (a) in the case of a claim for a refund amount made within the transition period—500 containers, or
  - (b) in any other case—1,500 containers.
- (2) For the purposes of section 43 (3) (b) of the Act, the refund amount must not be paid to a person who has not provided a refund declaration and proof of identity if, within any period of 48 hours, the total number of containers presented by or on behalf of the person for the purpose of claiming a refund amount exceeds 3,000.

## 32 Records

For the purposes of section 43 (5) of the Act, a collection point operator must keep the following records in relation to each collection point operated by the operator:

- (a) a record of the number of containers for which refund amounts for containers collected at the collection point have been claimed from a network operator,
- (b) a record of the number of claims for refund amounts that have been made at the collection point,
- (c) a record of the number of refund declarations requested by and provided to the collection point operator at the collection point,
- (d) in relation to each claim made at the collection point to which section 43 (3) (a) or (b) of the Act applies:
  - (i) a record of the date on which the claim was made and the number of containers for which a refund amount was claimed, and
  - (ii) a copy of any proof of identity documentation provided by the claimant.

### [11] Part 4 Miscellaneous

Renumber clause 28 as clause 33.

### [12] Schedule 2 Savings and transitional provisions

Insert after clause 1 of Schedule 2:

#### 1A Prescribed container approval conditions

- (1) The holder of a container approval does not commit an offence under section 40 (8) of the Act for any contravention of a prescribed approval condition that occurs during the container approval transition period.

- (2) In this clause:

*container approval transition period* means the period commencing on 1 December 2017 and ending on the commencement of section 39 of the Act (as inserted by the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016*).

*prescribed approval condition* means a condition prescribed by this Regulation as a condition to which a container approval is subject.

### [13] Schedule 2, clauses 3 and 4

Insert after clause 2:

#### 3 Bulk deliveries

Clause 31 (2) of this Regulation does not apply in respect of any claim for a refund amount made before 1 June 2018.

#### 4 Refund markings

Section 42 (2) (a) of the Act does not apply in respect of any claim for a refund amount made before 1 December 2021.