



New South Wales

# Waste Avoidance and Resource Recovery (Container Deposit Scheme) 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 beverages and containers that are excluded from the operation of the scheme,
- (b) the refund amount payable for containers,
- (c) the classes of persons prescribed as material recovery facility operators,
- (d) fees for applications and approvals under the Act,
- (e) the matters that the Minister may consider in determining whether an applicant for a Scheme administration agreement is a fit and proper person,
- (f) the approval of collection point arrangements (including applications for approval, variation, suspension and revocation of approvals and the administrative review of decisions relating to applications and approvals),
- (g) claims for refund amounts for containers processed by material recovery facility operators (including the methodology for determining the amounts payable, the circumstances in which refund amounts are not payable and the manner of making claims for refund amounts),
- (h) matters required to be included in reports prepared by the Scheme Coordinator.

This Regulation is made under the *Waste Avoidance and Resource Recovery Act 2001*, including sections 20 (definition of *material recovery facility operator*), 21, 22 (2), 23, 24 (4) and (6), 26 (3), 28 (7), 35 (1) (c) and 56 (the general regulation-making power).

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

under the

Waste Avoidance and Resource Recovery Act 2001

### Part 1 Preliminary

#### 1 Name of Regulation

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

#### 2 Commencement

- (1) This Regulation commences on the day on which it is published on the NSW legislation website, except as provided by subclause (2).
- (2) Division 2 of Part 2 commences on 7 April 2017.

#### 3 Definitions

- (1) In this Regulation:

***alternative waste treatment plant operator*** means a person who:

- (a) carries on a business that is or includes the processing for reuse or recycling of domestic waste that:
  - (i) is general solid waste (putrescible) within the meaning of Schedule 1 to the *Protection of the Environment Operations Act 1997*, and
  - (ii) is collected by that or any other person during the course of domestic waste management services, and
- (b) holds a resource recovery licence.

***director***, in relation to a body corporate, includes a person concerned in the management of the affairs of the body corporate.

***flavoured milk*** means milk to which flavouring has been added.

***flavouring*** means any natural or artificial flavouring, but does not include sweetener.

***glass container*** means a container made wholly or partly of glass.

***milk*** includes:

- (a) any liquid milk product (including any substance in the nature of milk produced from milk concentrate or milk powder), and
- (b) any plant-based milk substitute.

***resource recovery licence*** means an environment protection licence under the *Protection of the Environment Operations Act 1997* that authorises the recovery of general waste (within the meaning of clause 34 of Schedule 1 to that Act) at specified premises.

***Scheme commencement day*** means the day on which section 42 of the Act commences.

*the Act* means the *Waste Avoidance and Resource Recovery Act 2001*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation do not form part of this Regulation.

#### 4 Excluded beverages

- (1) For the purposes of section 21 of the Act, the following kinds of liquid are excluded from the operation of Part 5 of the Act:
- (a) milk (other than flavoured milk),
  - (b) cordial,
  - (c) concentrated fruit or vegetable juice (or a mixture of concentrated fruit and vegetable juices) intended to be diluted before consumption,
  - (d) registered health tonics.

- (2) In this clause:

**cordial** means concentrated syrup that:

- (a) contains the following ingredients (whether or not it also contains other ingredients):
  - (i) water,
  - (ii) any natural or artificial sweetener,
  - (iii) colouring (whether natural or artificial) or flavouring, or both, and
- (b) is intended to be diluted before consumption.

**registered health tonic** means a liquid that:

- (a) is included in the Australian Register of Therapeutic Goods under the *Therapeutic Goods Act 1989* of the Commonwealth, and
- (b) is supplied with a label or other accompanying document specifying:
  - (i) that the liquid is for medicinal purposes, and
  - (ii) a recommended maximum dosage.

#### 5 Excluded containers

- (1) For the purposes of section 22 of the Act, the following kinds of container are excluded from the operation of Part 5 of the Act:
- (a) containers designed to contain less than 150ml of beverage,
  - (b) containers designed to contain more than 3L of beverage,
  - (c) glass containers designed to contain only wine or spirituous liquor,
  - (d) containers designed to contain 1L or more of:
    - (i) flavoured milk, or
    - (ii) beverage comprising at least 90% fruit or vegetable juice (or a mixture of fruit and vegetable juices),
  - (e) containers made of cardboard and plastic, cardboard and foil or cardboard, plastic and foil (commonly known as casks or aseptic packs) designed to contain 1L or more of wine, wine-based beverage or water (including mineral water and spring water),
  - (f) containers made of plastic or foil, or both, (commonly known as sachets) designed to contain 250ml or more of wine.
- (2) For the purposes of this clause, a beverage is **spirituous liquor** if the beverage:

- (a) is a liqueur or any other alcoholic beverage produced by distillation (or a mixture of both), and
  - (b) is not mixed with any beverage other than a liqueur or an alcoholic beverage produced by distillation.
- (3) For the purposes of this clause, a beverage is **wine** if the beverage:
- (a) is produced by fermentation of grapes (whether or not it is mixed with any other grape product), and
  - (b) is not mixed with any beverage other than a grape product.
- (4) In this clause:
- wine-based beverage** means a beverage that:
- (a) contains a mixture of wine and another beverage that is not a grape product, and
  - (b) has an alcohol by volume content of less than 10%.

## 6 Refund amount

For the purposes of Part 5 of the Act, the amount prescribed as the refund amount is 10 cents.

## 7 Material recovery facility operators

- (1) For the purposes of the definition of **material recovery facility operator** in section 20 of the Act, each of the following is prescribed as a class of material recovery facility operators:
- (a) alternative waste treatment plant operators,
  - (b) bottle crushing service operators.
- (2) In this clause:
- bottle crushing machine** means a machine designed to crush empty glass containers.
- bottle crushing service operator** means a person who carries on a business that is or includes:
- (a) the supply to owners or operators of premises at which containers are sold of bottle crushing machines for permanent installation at the premises, and
  - (b) the collection and processing for reuse or recycling of the containers that are crushed by operation of those bottle crushing machines.

## Part 2 Administration of Scheme

### Division 1 Scheme administration agreements

#### 8 Application fee for Scheme administration agreement

For the purposes of section 24 (4) of the Act, the fee required to accompany an application for a Scheme administration agreement is the fee determined by the EPA by order published in the Gazette.

#### 9 Fit and proper persons

- (1) For the purposes of section 24 (6) of the Act, the Minister may consider the following matters in determining whether an applicant for a Scheme administration agreement is a fit and proper person:
- (a) whether the applicant has contravened a provision of any of the environment protection legislation,
  - (b) whether the applicant has contravened a provision of any other Scheme administration agreement,
  - (c) whether, if the applicant is a body corporate, a director of the body corporate is or has been the director of another body corporate that:
    - (i) has contravened a provision of any of the environment protection legislation, or
    - (ii) has contravened a provision of any other Scheme administration agreement,
  - (d) whether the applicant, in the previous 10 years, has been convicted in New South Wales or elsewhere of an offence involving fraud or dishonesty,
  - (e) whether the applicant, during the previous 3 years, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,
  - (f) if the applicant is an individual, whether he or she is or was a director of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed during the previous 3 years,
  - (g) if the applicant is a body corporate, whether the body corporate is the subject of a winding up order or has had a controller or administrator appointed during the previous 3 years,
  - (h) whether, in the opinion of the Minister, the applicant has the knowledge, skills and experience required to fulfil the applicant's obligations under the proposed agreement,
  - (i) whether, in the opinion of the Minister, the applicant is of good repute, having regard to character, honesty and integrity,
  - (j) whether the applicant has demonstrated to the Minister the financial capacity to comply with the applicant's obligations under the proposed agreement,
  - (k) whether the applicant is in partnership, in connection with activities that are subject to a Scheme administration agreement or the proposed agreement, with a person whom the Minister does not consider to be a fit and proper person under paragraphs (a)–(j).
- (2) A reference in subclause (1) (a), (c) or (h) to an applicant includes, if the applicant is a body corporate, a reference to a director of the body corporate.

- (3) Without limiting subclause (1), the Minister may disregard contraventions referred to in that subclause having regard to the seriousness of the contraventions, the length of time since they occurred, and other matters that appear relevant to the Minister.
- (4) In this clause, ***environment protection legislation*** has the same meaning as in the *Protection of the Environment Administration Act 1991*.

## **Division 2 Collection point arrangements**

### **10 Definition**

In this Division:

***collection point arrangement approval*** means an approval of a collection point arrangement for which an application is required to be made to the EPA under a network operator agreement.

### **11 Approval of collection point arrangements**

- (1) An application for a collection point arrangement approval must:
  - (a) be in the form approved by the EPA, and
  - (b) be accompanied by the information required by the EPA, and
  - (c) be accompanied by the application fee determined by the EPA by order published in the Gazette, and
  - (d) be accompanied by the approval fee determined by the EPA under clause 16.
- (2) The EPA may, by notice in writing, require an applicant for a collection point arrangement approval to provide to the EPA any further information the EPA considers relevant to the determination of the application.

### **12 Determination of application**

- (1) The EPA may, after considering an application for a collection point arrangement approval:
  - (a) grant the application, with or without conditions, or
  - (b) refuse the application.
- (2) Without limiting the matters that the EPA may consider in determining an application for a collection point arrangement approval, the EPA may consider any of the following matters in determining the application:
  - (a) whether the proposed collection point arrangement complies with the requirements of the Act or this Regulation,
  - (b) whether, in the opinion of the EPA, the proposed collection point arrangement makes adequate provision for environmental protection measures,
  - (c) whether any necessary development consent under the *Environmental Planning and Assessment Act 1979* or approval of a local council under the *Local Government Act 1993* has been or, in the opinion of the EPA, is likely to be obtained in relation to the activities authorised or required under the proposed arrangement,
  - (d) whether the proposed collection point operator is a fit and proper person to fulfil the obligations under the arrangement.
- (3) If the EPA grants an application for a collection point arrangement approval, it must issue the approval to the applicant in a form that sets out the conditions to which the approval is subject.

- (4) If the EPA refuses an application for a collection point arrangement approval, it must give notice of the refusal in writing to the applicant setting out the reasons for the refusal and information relating to the applicant's rights of review under this Regulation.
- (5) If the EPA refuses an application for a collection point arrangement approval, it must refund any approval fee that was submitted by the applicant in connection with the application.
- (6) An application for a collection point arrangement approval is taken to have been refused if it is not determined by the EPA:
  - (a) except as provided by paragraph (b)—within 42 days after the date on which the application is lodged with the EPA, or
  - (b) if the EPA requires the applicant to provide further information in connection with the application under clause 11 (2)—within 42 days after the applicant provides the information to the EPA.
- (7) For the purposes of subclause (2) (d), the EPA may consider any matter that the Minister may consider in determining whether an applicant for a Scheme administration agreement is a fit and proper person under clause 9. For that purpose any reference in that clause to:
  - (a) the proposed agreement is taken to be a reference to the proposed collection point arrangement, and
  - (b) the contravention of a provision of a Scheme administration agreement is taken to be a reference to the contravention of a condition of a collection point arrangement approval.

### **13 Variation of terms and conditions of approval**

- (1) The EPA may vary any term of a collection point arrangement approval imposed by the EPA on the approval or may impose additional conditions on the approval.
- (2) A variation of a term or condition of an approval:
  - (a) must be made by notice in writing given to the holder of the approval, and
  - (b) takes effect on the day on which the notice is given or on a later day specified in the notice.

### **14 Suspension or revocation or approval**

- (1) The EPA may suspend or revoke a collection point arrangement approval on any of the following grounds:
  - (a) that the holder of the approval has contravened a condition of the approval,
  - (b) that the holder of the approval has contravened a provision of Part 5 of the Act,
  - (c) that the holder of the approval has failed to pay the approval fee due and payable under clause 16,
  - (d) that the collection point arrangement to which the approval applies 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.
- (2) The suspension or revocation of an approval:
  - (a) must be made by notice in writing given to the holder of the approval, and
  - (b) takes effect on the day on which the notice is given or on a later day specified in the notice.

#### **15 Administrative review of decisions by Civil and Administrative Tribunal**

- (1) An affected person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions under this Division:
  - (a) a decision to refuse to issue a collection point arrangement approval,
  - (b) a decision to issue a collection point arrangement approval subject to conditions imposed by the EPA,
  - (c) a decision to vary the conditions of a collection point arrangement approval or to impose a condition on the approval,
  - (d) a decision to suspend or revoke a collection point arrangement approval.
- (2) An *affected person* in relation to a decision about a collection point arrangement approval referred to in subclause (1) is any network operator or collection point operator to whom the relevant collection point arrangement, or proposed collection point arrangement, applies.

#### **16 Approval fees**

- (1) The holder of a collection point arrangement 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 collection point arrangement approval is the amount determined by the EPA by order published in the *Gazette*.
- (3) The approval fee is payable under this clause even if the collection point arrangement approval is suspended.

### **Division 3 Payment of refund amounts to material recovery facility operators**

#### **17 Definitions**

In this Division:

*quarter* means the 3-month period commencing on 1 January, 1 April, 1 July or 1 October in each year.

*recycling facility* means any premises, in or outside New South Wales, at which the processing of waste (generated by beverage product packaging) for reuse or recycling can be lawfully carried out.

#### **18 Entitlement to processing refunds**

- (1) Processing refunds are not payable to a material recovery facility operator in respect of containers obtained by the operator before the Scheme commencement day.
- (2) Processing refunds are not payable to a material recovery facility operator in respect of containers that have been collected in a local council's area during the course of domestic waste management services, except in the following circumstances:
  - (a) if there is no refund sharing agreement in force between the operator and the council:
    - (i) the council has notified the EPA in writing that it considers that in the circumstances it is fair and reasonable that there is no such agreement in force, or
    - (ii) the council has entered into a processing agreement with the operator on or after the Scheme commencement day.

- (b) if there is a refund sharing agreement in force between the operator and the council—the council has notified the EPA in writing that it considers the terms of the agreement to be fair and reasonable.
- (3) Processing refunds are not payable to an alternative waste treatment plant operator in respect of containers that are processed for reuse or recycling at any premises in respect of which the operator does not hold a resource recovery licence.
- (4) Subclause (2) does not apply if the containers to which the claim relates are processed by the material recovery facility operator within 12 months after the Scheme commencement day.
- (5) In this clause:
  - area* has the same meaning as in the *Local Government Act 1993*.
  - processing agreement* means an arrangement between a local council and a material recovery facility operator under which the operator agrees to process for reuse or recycling domestic waste designated for recycling and collected in the council's area during the course of domestic waste management services.
  - refund sharing agreement* means an arrangement between a local council and a material recovery facility operator under which the operator agrees to pay to the council a proportion of all refund amounts paid to the operator by the Scheme Coordinator on or after the Scheme commencement day in respect of containers collected in the council's area during the course of domestic waste management services.

#### 19 Claims for refund amounts

- (1) A material recovery facility operator may make a claim for the payment of a processing refund by lodging with the Scheme Coordinator a claim in the form approved by the EPA.
- (2) Before a claim is lodged with the Scheme Coordinator, the claim must be assessed by an approved person for the purposes of determining whether the processing refund protocol has been correctly applied in determining the amount of the claim.
- (3) A claim must be accompanied by a declaration signed by an approved person certifying that, in the opinion of the approved person, the claimant has correctly applied the processing refund protocol in determining the amount of the claim.
- (4) A processing refund is not payable in respect of any container that has not been:
  - (a) recycled by the claimant, or
  - (b) delivered to a recycling facility in Australia or consigned for transport to a recycling facility in a foreign country.
- (5) Only one claim may be made in respect of each quarter during which containers are recycled by the claimant, delivered to a recycling facility in Australia or consigned by the claimant for transport to a recycling facility in a foreign country.
- (6) A claim must not be made:
  - (a) before the end of the quarter to which the claim relates, or
  - (b) after the expiration of the period of 28 days commencing on the last day of that quarter.
- (7) In this clause:
  - approved person* means a person approved by the EPA for the purposes of this clause.

## **20 Disposal of containers**

- (1) A material recovery facility operator must not permit any container in respect of which the operator has made a claim for the payment of a processing refund to be disposed of to landfill.
- (2) A material recovery facility operator must not make a claim for the payment of a processing refund in respect of any container that:
  - (a) the operator has permitted to be disposed of to landfill, or
  - (b) the operator knows has been disposed of to landfill.
- (3) For the purposes of this clause, a material recovery facility operator is taken to have permitted a container to be disposed of to landfill if:
  - (a) the material recovery facility operator has consigned the container for transport to the operator of a recycling facility, and
  - (b) at the time of the consignment, the material recovery facility operator knew, or ought reasonably to have known, that the operator of the recycling facility was likely to dispose of the container to landfill or to permit the container to be disposed of to landfill, and
  - (c) the container has been disposed of to landfill.
- (4) This clause does not apply to the disposal of any part of a container if:
  - (a) the container has been consigned for transport to a recycling facility at which containers of that kind are capable of being recycled, and
  - (b) that part of the container is not capable of being recycled at that facility.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
- (b) in the case of an individual—200 penalty units.

## **Division 4 Miscellaneous**

### **21 Reports by Scheme Coordinator**

- (1) For the purposes of section 35 (1) (c) of the Act, a report of the Scheme Coordinator must include details of the following matters:
  - (a) the number of containers for which refund amounts have been paid by collection point operators at collection points during the reporting period,
  - (b) the number of material recovery facility operators that have lodged claims for the payment of refund amounts during the reporting period,
  - (c) the number of containers for which refund amounts have been paid by the Scheme Coordinator to material recovery facility operators during the reporting period,
  - (d) the number and location of collection points in respect of which network operators have collection point arrangements in force at any time during the reporting period,
  - (e) the number of suppliers in relation to whom a supply arrangement has been in force at any time during the reporting period and the total number of containers that have been sold during that period by those suppliers,
  - (f) the amounts paid to each network operator under network arrangements during the reporting period,
  - (g) the total operating costs of the Scheme Coordinator for the reporting period,

- (h) any persons with whom the Scheme Coordinator has entered into arrangements (other than Scheme arrangements) during the reporting period for the transport, handling, recycling or processing of containers,
  - (i) the arrangements made by the Scheme Coordinator during the reporting period for the protection of the confidentiality of commercial information provided to the Scheme Coordinator by suppliers,
  - (j) the arrangements made by the Scheme Coordinator during the reporting period for governance and risk management,
  - (k) the arrangements made by the Scheme Coordinator and network operators during the reporting period for minimising the risk of false claims for the payment of refund amounts,
  - (l) any incidents of false claims for the payment of refund amounts identified by the Scheme Coordinator during the reporting period,
  - (m) any incidents resulting in serious personal injury or property or environmental damage occurring in the course of the collection, handling or transportation of containers in connection with the operation of the Scheme identified by the Scheme Coordinator during the reporting period,
  - (n) the reasons for any failure of the Scheme Coordinator to meet a performance target during the reporting period, and strategies for rectifying the failure,
  - (o) the trends in the types of beverage containers supplied in the State,
  - (p) the rate of collection and recycling of containers in the State.
- (2) The information included in a report referred to in subclause (1) (a)–(d) is to be provided both in aggregate (on a State-wide or regional basis) and by reference to individual network operators, collection point operators, material recovery facility operators and types of container, as appropriate.