

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

[2017-66]



New South Wales

## Status information

### Currency of version

Current version for 17 February 2023 to date (accessed 26 February 2023 at 07:55)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced. See [Historical Notes](#)

### Staged repeal status

This legislation is currently due to be automatically repealed under the *Subordinate Legislation Act 1989* on 1 September 2023

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the *Interpretation Act 1987*.

File last modified 17 February 2023.

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



New South Wales

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## 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 either or both of the following—
  - (i) a resource recovery licence,
  - (ii) an environment protection licence under the *Protection of the Environment Operations Act 1997* that authorises waste processing (non-thermal treatment), within the meaning of that Act, Schedule 1, clause 41.

***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 liquid milk product, a substance in the nature of milk produced from milk concentrate or milk powder and a plant-based milk substitute, but does not include the following—

- (a) fermented milk,
- (b) flavoured milk,
- (c) milk with added cultures, for example, drinking yoghurt or kefir.

**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.

**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.

**Scheme commencement day** means 1 December 2017.

**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,
  - (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 used 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

(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.

## 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,
- (c) Lord Howe Island waste facility 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.

**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.

## **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*.

### 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.

## Division 2 Collection point arrangements

### 10 Definitions

In this Division—

***collection point arrangement approval*** or ***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.

***condition***—see clause 13(1).

***holder*** of an approval—

- (a) means the holder of a collection point arrangement approval, and
- (b) includes the following parties to the collection point arrangement to which the approval relates—
  - (i) the collection point operator,
  - (ii) the network operator.

***vary a condition*** includes the following—

- (a) impose a new condition,
- (b) substitute a condition,
- (c) remove or amend a condition.

#### **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) If the EPA considers it necessary, the EPA may, by written notice, require further documents or information to be provided by—
  - (a) the applicant, or
  - (b) the collection point operator who is a party to the collection point arrangement to which the application relates.

#### **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.

- (3A) Without limiting subclause (1)(a), the EPA may impose conditions on a collection point arrangement approval for the following purposes—
- (a) to protect human health,
  - (b) to protect the environment.
- (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 conditions of approval**

- (1) The holder of an approval must apply to the EPA to vary a *condition*—
- (a) forming part of the collection point arrangement approved by the EPA, or
  - (b) imposed on the approval by the EPA.
- (2) The EPA may, on its own initiative or on the application of the holder of an approval, vary a condition.
- (3) The application must—
- (a) be in a form approved by the EPA, and
  - (b) include information or evidence the EPA reasonably requires to assess the application, and
  - (c) be accompanied by the written consent of each holder of the approval.
- (4) If the EPA considers it necessary, the EPA may, by written notice, require further documents or

information to be provided by the holder of the approval.

- (5) The EPA must give the applicant and each holder of the approval written notice of a decision to grant or refuse the variation.
- (6) A variation of a condition takes effect on the day specified in the notice.
- (7) Notice of a decision to refuse a variation must set out—
  - (a) the reasons for the refusal, and
  - (b) information about the applicant's right of review.
- (8) A variation is taken to have been refused if the EPA fails to give the applicant notice of a decision within a period of 42 days after—
  - (a) the application is made, or
  - (b) if the EPA requires further documents or information—the applicant provides the documents or information.
- (9) Subclause (8) does not prevent the EPA from continuing to deal with an application after the expiry of the period.

#### **14 Suspension or revocation of 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.

#### **14A Offence of contravening condition of approval**

A collection point operator or network operator is guilty of an offence if—

- (a) the operator is a party to a collection point arrangement approved by the EPA under this Division, and
- (b) the operator contravenes a condition of the approval.

Maximum penalty—

- (a) for a corporation—200 penalty units, or
- (b) otherwise—50 penalty units.

#### **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 or to refuse to vary a condition,
  - (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 supplied 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.

## Part 3 Supply and collection of containers

### 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.

#### 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.

#### **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.

#### **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 the material forming part of the container, including labelling, is not suitable for—
  - (i) recycling or reuse, or
  - (ii) considering the objects of the Act, another appropriate method of disposal,
- (d) that the containers belonging to the class of containers to which the application applies will not comply with the conditions of container approval set out in clause 23A.

#### **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,
- (f) that the EPA considers the material forming part of the container, including labelling, is not suitable for—
  - (i) recycling or reuse, or
  - (ii) considering the objects of the Act, another appropriate method of disposal.

## **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 transfers—the Act, s 40(9)**

- (1) An application for the transfer of a container approval may be made to the EPA, and determined by the EPA, in the same way as an application for a container approval under the Act, section 40.
- (2) For subclause (1), a reference to granting a container approval in the Act, section 40 includes transferring a container approval.

## **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 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 another way determined by the EPA by order published in the Gazette.
- (2) A collection point operator is guilty of an offence if the operator—
  - (a) is required to pay a refund amount by electronic funds transfer to an account nominated by a person, and
  - (b) fails to cause payment of the refund amount to be made to the person within 3 business days after the container is counted by a machine used by the collection point operator to count, verify and sort containers.

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) otherwise—50 penalty units.

- (3) In this clause—

**business day** means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

### 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.

### 32A Corresponding laws

For the Act, Part 5, definition of *corresponding law*, the following laws are declared to be corresponding laws—

- (a) the *Waste Management and Resource Recovery Act 2016* of the Australian Capital Territory,
- (b) the *Waste Reduction and Recycling Act 2011* of Queensland,
- (c) the *Environment Protection (Beverage Containers and Plastic Bags) Act 2011* of the Northern Territory,
- (d) the *Environment Protection Act 1993* of South Australia,
- (e) the *Waste Avoidance and Resource Recovery Act 2007* of Western Australia.

## Part 4 Miscellaneous

### 33 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.

## 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**

<b>Column 1</b>	<b>Column 2</b>
<b>Area</b>	<b>Minimum number of hours</b>
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.

## 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.

##### 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.

(1A) The holder of a container approval that is in force immediately before 1 December 2019 does not commit an offence under section 40(8) of the Act for any contravention of the prescribed approval condition referred to in clause 23A(b) of this Regulation that occurs during the period commencing on 1 December 2019 and ending on 31 May 2021.

(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.

#### 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.

**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.

## Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

## Table of amending instruments

*Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 (66)*. LW 10.3.2017. Date of commencement, Div 2 of Part 2 excepted, on publication on LW, cl 2 (1); date of commencement of Div 2 of Part 2, 7.4.2017, cl 2 (2). This Regulation has been amended as follows—

<b>2017</b>	(377)	<i>Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment Regulation 2017</i> . LW 28.7.2017. Date of commencement, 1.8.2017, cl 2.
	(650)	<i>Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment (Supply and Collection) Regulation 2017</i> . LW 24.11.2017. Date of commencement, 1.12.2017, cl 2.
<b>2019</b>	(556)	<i>Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment (Removable Ring-Pulls) Regulation 2019</i> . LW 22.11.2019. Date of commencement, on publication on, cl 2.
<b>2023</b>	(53)	<i>Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment (Miscellaneous) Regulation 2023</i> . LW 17.2.2023. Date of commencement, on publication on, sec 2.

## Table of amendments

Cl 3	Am 2017 (650), Sch 1 [1] [2]; 2023 (53), Sch 1[1] [2].
Cl 4	Am 2023 (53), Sch 1[3].
Cl 5	Am 2023 (53), Sch 1[4].
Cl 6	Subst 2017 (650), Sch 1 [3].
Cl 7	Am 2017 (650), Sch 1 [4] [5].
Cl 9A	Ins 2017 (377), Sch 1 [1].
Cl 10	Subst 2023 (53), Sch 1[5].
Cl 11	Am 2023 (53), Sch 1[6].
Cl 12	Am 2023 (53), Sch 1[7].
Cl 13	Subst 2023 (53), Sch 1[8].
Cl 14	Am 2023 (53), Sch 1[9].
Cl 14A	Ins 2023 (53), Sch 1[10].

CI 15	Am 2023 (53), Sch 1[11].
CI 21	Am 2017 (650), Sch 1 [6].
Part 3	Ins 2017 (377), Sch 1 [2].
Part 3, Div 1 (cl 22A, 22B)	Ins 2017 (650), Sch 1 [7].
CII 22, 23	Ins 2017 (377), Sch 1 [2].
CI 23A	Ins 2017 (650), Sch 1 [8].
CI 24	Am 2017 (650), Sch 1 [9]; 2023 (53), Sch 1[12].
CI 25	Ins 2017 (377), Sch 1 [2]. Am 2023 (53), Sch 1[13].
CI 26	Ins 2017 (377), Sch 1 [2].
CI 27	Ins 2017 (377), Sch 1 [2]. Subst 2023 (53), Sch 1[14].
Part 3, Div 2	Ins 2017 (650), Sch 1 [10].
CI 28	Ins 2017 (650), Sch 1 [10].
CI 29	Ins 2017 (650), Sch 1 [10].
CI 30	Ins 2017 (650), Sch 1 [10]. Am 2023 (53), Sch 1[15]–[17].
CI 31	Ins 2017 (650), Sch 1 [10].
CI 32	Ins 2017 (650), Sch 1 [10].
CI 32A	Ins 2023 (53), Sch 1[18].
Part 4	Ins 2017 (377), Sch 1 [2].
CI 28	Ins 2017 (377), Sch 1 [2]. Renumbered as cl 33, 2017 (650), Sch 1 [11].
CI 33 (previously cl 28)	Renumbered 2017 (650), Sch 1 [11].
Sch 1	Ins 2017 (377), Sch 1 [3].
Sch 2	Ins 2017 (377), Sch 1 [4]. Am 2017 (650), Sch 1 [12] [13]; 2019 (556), cl 3.