



New South Wales

Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment (Miscellaneous) Regulation 2023

under the

Waste Avoidance and Resource Recovery Act 2001

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

JAMES GRIFFIN, MP
Minister for Environment and Heritage

Explanatory note

The object of this Regulation is to amend the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017* as follows—

- (a) to specify that an alternative waste treatment plant operator includes a person who holds an environment protection licence under the *Protection of the Environment Operations Act 1997* that authorises waste processing (non-thermal treatment),
- (b) to apply the container deposit scheme to containers used for fermented milk and milk with added cultures,
- (c) to exclude glass containers used, rather than designed, to contain only wine or spirituous liquor from the container deposit scheme,
- (d) to require the holder of a collection point arrangement approval to apply to the EPA to vary a condition of approval and to specify the process for a variation application,
- (e) to make it clear that the EPA may impose certain conditions in relation to collection point arrangement approvals and to create an offence for contravening a condition,
- (f) to specify that the EPA may refuse to grant a container approval on the ground that the containers concerned will not comply with certain conditions,
- (g) to make it clear that the holder of a collection point arrangement approval includes the network operator and the collection point operator for the approval,
- (h) to specify that the EPA may suspend or revoke a container approval on the ground that the EPA considers the material forming part of the container, including labelling, is not suitable for recycling or reuse or, considering the objects of the Act, another appropriate method of disposal,
- (i) to enable an application for the transfer of a container approval to be made in the same way as an application for a container approval,
- (j) to make it an offence for a collection point operator to fail to cause payment of a refund amount payable to a person by electronic funds transfer within 3 days after a container is counted by a machine used by the collection point operator to count, verify and sort containers,

- (k) to declare certain laws of other jurisdictions to be corresponding laws for the container deposit scheme.

This Regulation is made under the *Waste Avoidance and Resource Recovery Act 2001*, including sections 20, definition of ***corresponding law***, 21, 22, 26(3), 40, 42(3) and 56, the general regulation-making power.

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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 (Miscellaneous) Regulation 2023*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

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

[1] Clause 3 Definitions

Omit clause 3(1), definition of *alternative waste treatment plant operator*, paragraph (b).

Insert instead—

- (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.

[2] Clause 3(1), definition of “milk”

Omit the definition. Insert instead—

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.

[3] Clause 4 Excluded beverages

Omit “(other than flavoured milk)” from clause 4(1)(a).

[4] Clause 5 Excluded containers

Omit “designed” from clause 5(1)(c). Insert instead “used”.

[5] Clause 10

Omit the clause. Insert instead—

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.

[6] Clause 11 Approval of collection point arrangements

Omit clause 11(2). Insert instead—

- (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.

[7] Clause 12 Determination of application

Insert after clause 12(3)—

- (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.

[8] Clause 13

Omit the clause. Insert instead—

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.

[9] Clause 14, heading

Omit “or approval”. Insert instead “of approval”.

[10] Clause 14A

Insert after clause 14—

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.

[11] Clause 15 Administrative review of decisions by Civil and Administrative Tribunal

Omit clause 15(1)(c). Insert instead—

- (c) a decision to vary or to refuse to vary a condition,

[12] Clause 24 Grounds for refusal of container approval

Omit clause 24(c) and (d). Insert instead—

- (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.

[13] Clause 25 Grounds for suspension or revocation of container approval

Insert after clause 25(e)—

- (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.

[14] Clause 27

Omit the clause. Insert instead—

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.

[15] Clause 30, heading

Omit “**Manner and timing of payment**”. Insert instead “**Payment**”.

[16] Clause 30(1)(d)

Omit “in any other manner”. Insert instead “in another way”.

[17] Clause 30(2)

Omit the subclause. Insert instead—

- (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.

[18] Clause 32A

Insert after clause 32—

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.