

# **Planning (Container Refund Scheme) Amendment Regulation 2018**

Explanatory notes for SL 2018 No. 146

made under the

*Planning Act 2016*

## **General Outline**

### **Short title**

*Planning (Container Refund Scheme) Amendment Regulation 2018*

### **Authorising law**

Section 284 of the *Planning Act 2016*

### **Policy objectives and the reasons for them**

The objective of the *Planning (Container Refund Scheme) Amendment Regulation 2018* (Amendment Regulation) is to clarify that certain uses for the purpose of the Container Refund Scheme (CRS) are a minor change of use and do not require a development application.

The CRS has been established and will operate under the *Waste Reduction and Recycling Amendment Act 2017* to reduce litter, increase recycling by providing an incentive, and provide opportunities for social enterprise jobs and community fundraising. Under the CRS, there will be a refund provided for eligible empty drink containers that are returned to a participating collection or refund point.

The CRS involves establishing participating container refund points across the State prior to the intended commencement on 1 November 2018. In some circumstances, this may involve a ‘material change of use’ development application under the *Planning Regulation 2017* (the *Planning Regulation*).

The *Planning Regulation* may prescribe the level of assessment for certain ‘material change of use’ development applications and may also clarify circumstances where an activity is considered to be a ‘minor change of use’. A development application is not required for a minor change of use.

To support delivery of the CRS, the Amendment Regulation provides a set of criteria which, if met by a container refund point, means that the activity is a minor change of use and a material change of use development application is not required. The arrangements will operate for six months from the commencement of the CRS to encourage operators to establish expeditiously. After this time, container refund points which were lawfully established under these provisions will remain a lawful use but any new facility proposed after this expiry date must be considered in accordance with the relevant local government planning scheme.

Any building approvals and approvals for operational work for a container refund point are still required.

## **Achievement of policy objectives**

The objective of the Amendment Regulation is to clarify that certain uses for the purposes of the CRS are a minor change of use and do not require a development application.

The application of these provisions is that a material change of use development application is not required for a premises if the stated requirements are met or a premises and activity occurring on the premises is listed in the table for prescribed premises for the CRS and meets stated requirements. Otherwise, the facility will need to comply with any requirements established by the local government planning scheme. A material change of use development application may be required.

The provisions also require the container refund point operator relying on the provisions to notify the relevant local government at least ten business days before commencing the use permitted under these provisions.

### New Part 3A - Minor changes of use

New section 17A provides for new Schedule 5A prescribing minor changes of use that are not a material change of use for particular premises. The *Planning Act 2016* (the Act) provides that a regulation made under section 284(2) of the Act may prescribe a minor change of use.

New section 17B provides that provisions will expire on 1 May 2019, six months after the CRS commences. Any container refund point lawfully established under the provisions prior to 1 May 2019 will remain a lawful use, but any new facility proposed after this date must be considered and progressed in accordance with any requirements of the relevant local government planning scheme.

### New Schedule 5A – Minor changes of use

The Amendment Regulation includes definitions for new Schedule 5A, including definitions for change of use, commercial character building, operating hours, prescribed industrial premises, prescribed retail premises, refund amount, relevant industrial use, relevant retail use and retail use.

### Minor change of use for shops participating in container refund scheme

The Amendment Regulation provides that where a retail use or a building that has been used for a commercial use is to be used for the collection, counting, handling, sorting, aggregating, storing and transfer of containers for the purpose of the CRS, and is included in a defined centre zone (i.e. centre zone, district centre zone, local centre zone, major centre zone, mixed-use zone, principal centre zone) or a prescribed zone (i.e. community facilities zone, neighbourhood centre zone, special purpose zone, specialised centre zone), this is a minor change of use. For this section, where a premises is in a prescribed zone, the premises must be located at least 150 metres from a residential zone.

For this section, retail use has been defined to include any of the following: a shop; a shopping centre; a showroom; and a service station if the service station is at least 150 metres from a residential zone.

The requirements for a minor change of use include that the use is carried out inside an existing building that does not contain a dwelling and the use meets any existing development approval and/or planning scheme requirements for matters such as noise, operating hours and car parking. The premises cannot be a local heritage place, State heritage place, or a commercial character building in the Brisbane local government area. The premises has to be located so that it does not impact on existing or future state transport corridors or state controlled roads.

### Minor change of use for low or medium impact industries for the container refund scheme

The Amendment Regulation provides that where a premises is used for a low impact industry or medium impact industry, or was previously used for a commercial use or an industry activity, and located in an industry zone or included in another area under the local categorising instrument that is specifically for low impact industry or medium impact industry or both (e.g. a precinct in an industry zone), and the premises is also used for the collection, receiving, sorting, counting, aggregating, storing, handling, distributing, crushing, compounding or transferring of containers for the purpose of the CRS, this is a minor change of use.

For this section, an industry zone does not include high impact industry zone, special industry zone, research and technology industry zone, industry investigation zone or waterfront and marine industry zone.

The requirements for a minor change of use include that the use is within any relevant planning scheme thresholds for low impact industry or medium impact industry and meets any existing development approval and/or planning scheme requirements for matters such as operating hours and car parking.

The premises cannot be a local heritage place, State heritage place, or a commercial character building in the Brisbane local government area. The premises has to be located so that it does not impact on existing or future state transport corridors or state controlled roads.

### Change of Use for Prescribed Premises

The Amendment Regulation provides that where a container refund point is a prescribed premises for the CRS, the use is a minor change of use, subject to certain requirements.

The requirements for a use occurring on a prescribed premises is that the use occurs within the operating hours for the premises and the meets any existing development approval and/or planning scheme requirements for matters such as noise, operating hours and car parking. For any new or changed access between the premises and a state-controlled road, any approvals required under the *Transport Infrastructure Act 1994* are to be in effect.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the objectives of the *Planning Act 2016*, which is to establish an efficient, transparent, integrated, coordinated and accountable system of land use planning, development assessment and related matters that facilitates the achievement of ecological sustainability.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

There is no alternative way to achieve the policy objectives other than the Amendment Regulation.

## **Benefits and costs of implementation**

There are no costs to the implementation of this Amendment Regulation.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is not inconsistent with fundamental legislative principles.

## **Consultation**

The Queensland Productivity Commission was consulted as per the *Queensland Government Guide to Better Regulation* and advised that further regulatory impact analysis is not required for the Amendment Regulation.

The Local Government Association of Queensland (LGAQ) has also been consulted in the development of the Amendment Regulation.