

Waste Reduction and Recycling (Container Refund Scheme) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 167

made under the

Waste Reduction and Recycling Act 2011

General Outline

Short title

Waste Reduction and Recycling (Container Refund Scheme) Amendment Regulation 2018

Authorising law

Section 271 of *Waste Reduction and Recycling Act 2011* (the Act)

Policy objectives and the reasons for them

The Act provides the head of power to introduce the container refund scheme (the scheme).

The objects of the scheme are to:

- increase the recovery and recycling of empty beverage containers;
- reduce the number of empty beverage containers that are littered or disposed of to landfill;
- ensure that the manufacturers of beverage products meet their product stewardship responsibility in relation to their beverage products;
- provide opportunities for social enterprise and benefits for community organisations; and
- complement existing collection and recycling activities for the state.

The *Waste Reduction and Recycling (Container Refund Scheme) Amendment Regulation 2018* (amendment regulation) provides for amendments to the *Waste Reduction and Recycling Regulation 2011* to give effect to these objects.

Achievement of policy objectives

The objective of this amendment regulation is to amend the *Waste Reduction and Recycling Regulation 2011* to give effect to the provisions of the scheme under the Act. The scheme is scheduled to commence on 1 November 2018.

The amendment regulation will achieve the policy objectives by providing:

1. the refund amount of 10 cents to be given to people returning empty beverage containers to a container refund point;
2. the beverage products and types of containers that are eligible for a refund under the scheme;
3. the definition for a small beverage manufacturer and the frequency of their scheme payments obligations;
4. setting scheme targets, including container recovery targets and container refund point accessibility targets, to be achieved by the Product Responsibility Organisation; and
5. providing for refund sharing arrangements between Material Recovery Facility operators and local governments in relation to containers collected through the kerbside system.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the objectives of the *Waste Reduction and Recycling Act 2011*, in relation to the scheme.

Inconsistency with policy objectives of other legislation

The amendment regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no other options for achieving the policy objectives.

Benefits and costs of implementation

There are significant identified benefits to the implementation of the scheme, including for charities, social enterprise and community groups who participate as refund or donation points under the scheme. As a donation point, where people can bring their empty eligible containers, the community groups or charity receives the benefit of the refund amount when the containers are taken to a container refund point.

Container refund point operators are paid a handling fee for the collection of containers that are returned for a refund and logistics and processing service providers are also paid for the transport and processing of containers for recycling markets.

All scheme costs are paid for through contributions that are made by beverage manufacturers as part of their obligations under Container Recovery Agreements between the Product Responsibility Organisation and a beverage manufacturer.

In order to reduce duplication and costs to beverage manufacturers and the scheme, a beverage manufacturer for the purposes of identification by the Organisation under s99Q to enter into a container recovery agreement is the first entity to sell an eligible beverage product into Queensland. A beverage manufacturer is identified by whether or not they have the right to sell, distribute or otherwise deal with the product. The sale is determined to have occurred when title for the product has passed from one entity to the other in Queensland.

For example, where a company manufactures and sells a beverage product in Queensland, this company is the beverage manufacturer. Where a company manufactures in another state and sells to an entity in another state for sale by the second entity into Queensland, the second company is the beverage manufacturer for the purposes of entering into a Container Recovery Agreement.

In regard to contract bottling, the contract bottler is taken not to be the beverage manufacturer in circumstances where they are undertaking the service for a third party and they do not have the rights to sell the product to another entity or otherwise deal with the product. However, in some instances the contractor may be identified as the beverage manufacturer. These include where a once-off low volume product test run is produced or where small volumes are produced for discreet events and conferences.

These decisions streamline the application of the scheme and therefore help to reduce the costs associated with the scheme. It also makes it clear how a beverage manufacturer is identified by the Organisation and who carries the liability for paying the scheme cost contributions.

Export arrangements, established through an Export Deed also allow a beverage manufacturer, or another entity that deals with the beverage products, who exports beverage product to another state or overseas to claim an export refund on containers that they have paid a scheme cost on in Queensland and subsequently exported.

Consistency with fundamental legislative principles

The *Legislative Standards Act 1992* was considered during the drafting of this regulation and the amendments are consistent with fundamental legislative principles.

Consultation

Extensive consultation on implementation of the scheme and proposed draft provisions of the regulation have been ongoing since 2017 through a Stakeholder Advisory Group and various technical working groups.

The Stakeholder Advisory Group consisted of representation from the following peak bodies and organisations:

- Australian Beverages Council;
- Australian Council of Recycling;
- Australian Food and Grocery Council;
- Boomerang Alliance;
- Local Government Association of Queensland;
- National Association of Charitable Recycling Organisations;
- National Retail Association;
- Scouts Queensland;
- Waste Management Association of Australia; and
- Waste Recycling Industry Association (Qld).

Individual beverage manufacturers, retailers, community organisations, waste companies and local governments were consulted through four technical working groups—Local Government Technical Working group; Community Group Working Group; Resource Recovery Working Group; and Retailer and Beverage Manufacturer Liaison Group.

Beverage manufacturer and retailer forums were also held around Queensland and in capital cities to ensure that beverage manufacturers and retailers were aware of their obligations and the time frames for signing Container Recovery Agreements and registering eligible containers under the scheme.

Separate meetings have also been held with local governments and material recovery facility operators to discuss specific issues around the refund sharing arrangements.

In accordance with *The Queensland Government Guide to Better Regulation*, an exemption was granted from preparing a Regulatory Impact Statement in relation to the scheme in recognition of the extensive public consultation that had already been undertaken through discussion paper processes; the Stakeholder Advisory Group; and the release of exposure drafts of legislation for targeted stakeholder consultation.

The amendment regulation is supported.

Notes on provisions

Clause 1. Short Title

This clause provides for the short title of the amendment regulation. This regulation may be cited as the Waste Reduction and Recycling (Container Refund Scheme) Amendment Regulation 2018.

Clause 2. Commencement

This clause provides for the regulation to commence on 1 November 2018.

Clause 3. Regulation amended

This clause provides that this amendment regulation amends the Waste Reduction and Recycling Regulation 2011.

Clause 4. Insertion of new pts 3A and 3B

This clause provides for the insertion of new parts to the Waste Reduction and Recycling Regulation 2011. These parts will be inserted after section 11.

Part 3A Container refund scheme

Division 1 Prescribed matters for definitions

12 Refund amount—Act, s99K

New section 12 provides the definition for the refund amount under section 99K of the Act. The refund amount is 10 cents.

13 Requirements for refund marking—Act, s99K

New section 13 provides the requirements for the refund mark to be displayed on eligible containers.

Subsection (1) states that the refund marking to be displayed in the container must state the refund amount and that the refund amount can be claimed at a container refund point in a participating State.

The refund marking must also be of a colour and size that ensures that it is clear and legible on the container.

For example, to fulfil the requirement of s13(1)(b) if the refund marking is to be displayed on the container label and the label background is white, the text for the refund marking must be a contrasting colour.

Subsection (2) states that for this section a participating State means Queensland or a corresponding jurisdiction.

Note that the *Acts Interpretation Act 1954* states that a reference to a State (except where the state is named) includes a reference to the Australian Capital Territory and the Northern Territory.

14 Liquids—Act, s99L

New section 14 provides that certain liquids are not beverages for the purposes of s99L(2) of the Act.

Liquids that are excluded beverages are:

- milk
- cordial or concentrated fruit or vegetable juice that is intended to be diluted before it is consumed
- a health tonic
- a syrup.

Subsection (2) defines a health tonic and milk.

For the purposes of this section a health tonic means liquid included in the Australian Register of Therapeutic Goods under the *Therapeutic Goods Act 1989* or another liquid that is supplied with a label and an accompanying document that states that the liquid is for medicinal purposes and carries a recommended dose for the liquid.

Milk includes a milk product other than flavoured milk or a product that is made through fermenting or adding a culture to the milk. An example of this product is a drinking yoghurt.

Milk is also a plant-based milk substitute such as soy, almond and oat milks.

15 Excluded containers—Act, s99M

New section 15 states that certain containers are not containers for the purposes of s 99M of the Act.

Any container that is made to contain less than 150ml and more than 3L is an excluded container.

A container that is made of glass to contain wine and a spirituous liquid is an excluded container. To be excluded the wine in the container cannot be mixed with another beverage that is not made from grapes. For example, a glass container containing fortified wine that is a mix of wine and a distilled non-grape spirit is not excluded. Other non-grape wines such as rice wine (sake), elderberry and fruit wines such as plum, pineapple and cherry are not defined as wine for the purpose of the scheme and therefore glass containers containing these wines are not excluded.

A glass container containing a spirit mixed with another beverage that is not a spirituous liquid is not an excluded container. Examples include ready to drink and

pre-mixed ‘alcopop’ products that are typically a mix of a spirit and a soft drink or fruit juice.

Any container that is made to contain 1L or more of flavoured milk or a beverage that is at least 90 percent fruit or vegetable juice is an excluded container. This is commonly known as a cask.

Any container that is made of cardboard and either plastic or foil (or both) and that is made to contain 1L or more of wine, a wine-based beverage or water is an excluded container.

Any container that is made of plastic or foil (or both) and that is made to contain 250ml or more of wine is an excluded container. This is commonly known as a sachet.

Subsection (2) defines wine for the purposes of this section to be a beverage that is made by fermenting grapes, whether or not it is mixed with another beverage made from grapes. However, it is not a wine if it is mixed with any beverage that is made from other than grapes.

Subsection (2) also defines a wine-based beverage for the purposes of the liquid contained in a cask. A wine-based beverage is a beverage that is a mixture of wine and another beverage that is not made from grapes and that contains at least 10 percent ethyl alcohol (by volume).

Division 2 Sale of beverages in containers

16 Other matters for container recovery agreement—Act, s99Q

New section 16 specifies that the matters for a container recovery agreement between a beverage manufacturer and the Organisation are in relation to a breach of the agreement by either party to the agreement. The container recovery agreement is to state the effect of the breach, a process to manage the breach and effect and a process for either party to the agreement to end the agreement.

17 Standard term for all container recovery agreements—Act, s99Q

New section 17 provides for standard terms in a container recovery agreement between a beverage manufacturer and the Organisation to be prescribed in Regulation.

Subsection (1) states that s17 prescribes a standard term for a container recovery agreement between a beverage manufacturer and the Organisation for section 99Q(5) of the Act.

Subsection (2) states that a scheme contribution amount for the beverage manufacturer is worked out using the scheme price for the type of container that is used for the beverage product.

Subsection (3) states that the *scheme price* for a type of container means the price expressed in cents that is published by the Organisation on its website as the unit price per type of container that is payable by a beverage manufacturer for a container of that type.

18 Further standard terms for particular container recovery agreements—Act, s99Q

New section 18 provides for specific terms to be included in the container recovery agreement between a small beverage manufacturer and the Organisation.

Subsection (1) states that this section prescribes, for section 99Q(5) the standard terms for a container recovery agreement between a small beverage manufacturer and the Organisation.

Subsection (2) states that unless a small beverage manufacturer elects otherwise under subsection 3(a), a scheme contribution payable by a small beverage manufacturer is worked out for a period that of not less than quarterly for any financial year; and the scheme contribution may not be required to be paid more than once in each quarter for a financial year.

Subsection (3) states that a small beverage manufacturer may, by giving a notice to the Organisation, elect to have the scheme contribution amounts worked out on a monthly basis and may pay those amounts monthly.

A small beverage manufacturer may choose at any time, to withdraw an election to make monthly payments.

Subsection (4) states that a small beverage manufacturer is referenced in s99R(2) of the Act.

19 Small beverage manufacturers—Act, s99R

New section 19 defines a small beverage manufacturer if, for a financial year, they manufacture not more than 300,000 beverage products for the year.

Division 3 Refund amounts for empty containers

20 Bulk quantity—Act, s99T

New section 20 defines bulk quantity, for the purposes of providing a refund declaration to a container refund point operator, as at least 1,500 empty containers.

Division 4 Container collection agreements

21 Other matters for container collection agreement—Act, s 99ZA

New section 21 provides matters for a container collection agreement.

The matters for a container collection agreement between the Organisation and a container refund point operator are, in relation to a breach of the agreement by either party, the effect of the breach and a process to manage the breach and effect of the breach. There must also be a process in the container collection agreement for either party to the agreement to end the agreement.

22 Standard terms for particular container collection agreements—Act, s99ZA

New section 22 prescribes, for section 99ZA(2), the standard terms for container collection agreements.

Subsection (1) states that this section prescribes the standard terms for a container collection agreement between the Organisation and the operator of two or more refund points.

Subsection (2) states that the agreement must include details of arrangements to comply with the operators obligations under the agreement in relation to each of the refund points for the operator.

Subsection (3) states that if the agreement provides for the operator to subcontract the operation of a refund point to another person, the operator must notify the Organisation within five business days of the subcontract stating of the name of the subcontractor; the date when the subcontract starts and ends and a summary of the provisions of the subcontract.

Division 5 Material recovery facilities

23 Excluded facilities and places—Act, s99ZE

New section 23 provides for certain facilities to be excluded as a material recovery facility for the purposes of s99ZE(2) of the Act.

Subsection (1) states that a waste transfer station, a waste facility or a premises that sells a beverage product in a glass container and on-site bottle crushing equipment is used to crush the empty container are not material recovery facilities for the purposes of 99ZE of the Act.

Subsection (2) provides definitions for *bottle crushing equipment* and *waste transfer station*.

An example of bottle crushing equipment is on-site equipment designed to sit behind a hotel or restaurant bar and empty bottles are fed into it and crushed. For the purposes of this section bottle crushing equipment does not include glass crushing equipment at a material recovery facility, where the material recovery facility have a vending machine that sells beverages in glass containers.

24 Other matters for material recovery agreement—Act, s99ZF

New section 24 provides the matters for a material recovery agreement between the Organisation and the material recovery facility operator. These matters are, in relation to a breach of the agreement by either party, the effect of the breach and a process to manage the breach and effect of the breach. There must also be a process in the agreement for either party to the agreement to end the agreement.

25 Standard terms for all material recovery agreements—Act, s99ZF

New section 25 provides the standard terms for all material recovery agreements.

Subsection (1) prescribes a standard term for a material recovery agreement under section 99ZF(3).

Subsection (2) states that for a quantity of containers that the material recovery facility operator sorts and prepares for recycling for a quarter in a financial year, the operator may only claim a recovery amount once in every quarter and must claim the recovery amount within 10 business days following the end of the quarter.

26 Further standard terms for particular material recovery agreements—Act, s99ZF

New section 26 provides the standard terms for particular material recovery agreements.

Subsection (1) prescribes standard terms for material recovery agreements where the agreement requires a written arrangement between the material recovery facility operator and a local government the operator receives kerbside collected recyclable waste from. This is the recovery sharing arrangement.

Subsection (2) states that the recovery sharing arrangement must state that the recovery amount for a quantity of containers under the arrangement is to be worked out under the recovery amount protocol for the quantity of containers.

The recovery sharing arrangement must also state:

- the proportion of the recovery amount (as a percentage) to be paid to the local government; and
- the frequency of payment made from the material recovery facility operator to the local government; and
- the date by which each payment must be made.

Subsection (3) states that the material recovery facility operator must give the Organisation a notice in writing about the recovery sharing arrangement that is signed by the operator and on behalf of the local government and states that matters that are mentioned in subsection (2).

Subsection (4) states that the standard term provided for under subsection (5) applies if the operator claims a recovery amount for a period before the operator gives the

Organisation a notice about the recovery sharing arrangement that complies with subsection (3).

Subsection (4) states that subsection (5) applies if the operator claims a recovery amount for a quantity of containers for a quarter in a financial year and the operator has not given the Organisation a notice about the recovery sharing arrangement that complies with the standard term in subsection (3).

Subsection (5) states that the Organisation must not pay the operator the recovery amount for the quantity until the Organisation receives the notice from the operator.

27 Review of recovery amount protocol—Act, s99ZK

New section 27 provides a review period for the recovery amount protocol. If the Organisation of the material recovery facility operator has not requested the chief executive, in writing, to review the protocol, the recovery amount protocol is to be reviewed at least once during each financial year.

Part 3B Outcomes for Product Responsibility Organisation

28 Purpose of part—Act, s102ZF

New section 28 prescribes the outcomes to be achieved by the Organisation as they relate to matters stated in section 102ZF(1) of the Act.

29 Definition for part

New section 29 states that the definition for container recovery rate, for a period, is the proportion of containers that are recycled for the period. This is expressed as a percentage and worked out using the formula:

$$R = \frac{C + M}{S} \times 100$$

R means the container recovery rate;

C means the number of containers received at a container refund point during the period;

M means the number of containers received at a material recovery facility during the period; and

S means the number of containers in which beverage products are sold in Queensland during the period.

*For illustrative purposes only—
if for the period 1 November 2018 to 30
June 2019:*

$C = 4\,000\,000$

$M = 2\,800\,000$

and

$S = 10\,500\,000$

then

*$R = 64\%$ - the recovery rate for the
period.*

30 Container recovery rate—preliminary years

New section 30 provides the container recovery rates to be achieved by the Organisation for preliminary years.

Subsection (1) states that for each preliminary year the Organisation must decide a percentage that it proposes to achieve as the container recovery rate for that year.

Subsection (2) states that the Organisation must publish on its website the percentage that is decided under subsection (1) for a preliminary year and that the percentage for the preliminary year starting on 1 November 2018 must be published on or before 1 December 2018. For the preliminary years starting 1 July 2019 and 2020, the percentage must be published on or before 1 June of those years.

Subsection (3) states that the Organisation is to achieve a container recovery rate for each preliminary that is at least the percentage that is published under subsection (2) for that year.

Subsection (4) provides that a preliminary year for the period starting 1 November 2018 ends on 30 June 2019. Subsequent preliminary years start on 1 July 2019 and 1 July 2020.

31 Container recovery rates—other years

New section 31 provides the container recovery rates to be achieved by the Organisation for years other than the preliminary years under section 30.

The Organisation must achieve a container recovery rate of at least 85% for the financial year starting 1 July 2021 and for each subsequent later financial year.

32 Container refund points

New section 32 provides the number of container refund points that the Organisation is required to establish.

The Organisation must ensure that at least 307 container refund points are established by 1 November 2019 and that these container refund points are operating for the

remainder of the financial year ending June 2020 and for each subsequent financial year.

Three hundred and seven is the minimum number of container refund points that has been determined to be required to maintain reasonable accessibility and coverage across the State. The Organisation will be expected to establish container refund points to provide coverage to accommodate population growth areas and fill identified gaps in the network.

5 Insertion of new s42B

Section 5 inserts new section 42B after s42A.

42B Laws—Act, schedule, definition *corresponding law*

New section 42B provides a definition of corresponding laws in other jurisdictions. These laws are the relevant container refund (deposit) scheme legislation in effect in South Australia, the Northern Territory, New South Wales and the Australian Capital Territory.

6 Insertion of new pt 7

Section 6 inserts new pt 7 after part 6.

Part 7 Transitional provisions for Waste Reduction and Recycling (Container Refund Scheme) Amendment Regulation 2018

46 references to quarter in financial year—Act, ss 99Q and 99ZF

New section 46 states that a reference in section 18(2), 25(2) or 26(4) to a quarter in a financial year includes the period that starts on 1 November 2018 and ends on 31 December 2018.

This is necessary in order to provide certainty for that quarter for small beverage manufacturers, local governments and material recovery facility operators as the scheme commences midway through the October to December quarter.

47 Further standard terms for particular material recovery agreements—Act, s99ZF

New section 47 provides an additional standard terms for particular material recovery agreements for section 99ZF(3).

Subsection (1) states that this section prescribes further standard terms for a material recovery agreement between the Organisation and the material recovery facility operator if that agreement requires the material recovery facility operator to enter into a recovery sharing arrangement with a local government and the operator claims the recovery amount for a quantity of containers for a quarter in a financial year during the relevant period.

Subsection (2) states that the claim must be made within 10 business days after the end of the quarter and that the recovery amount for the quantity is worked out under the recovery amount protocol.

Subsection (2) also states that, despite the standard term provided for the Organisation must pay the operator a recovery amount for the quantity of containers and that the proportion of the recovery amount the operator must pay the local government is 50%. This proportion must be paid to the local government within 5 business days after the Organisation pays the operator the recovery amount.

The effect of this section is that if a material recovery facility operator, if a recovery sharing arrangement is needed, does not have to have an arrangement with a local government agreed before 30 September 2019 in order for a recovery amount claim to be made and for that claim to be paid. Subsections (3) and (4) provide for circumstances where an arrangement hasn't been notified.

Subsection (3) states that a reference in this section to a quarter in a financial year includes a reference to the period starting on 1 November 2018 and ending on 31 December 2018.

Subsection (4) states that in this section the relevant period means the period starting on 1 November 2018 and ending on either the day that the operator gives the Organisation a notice under the standard term provided for under section 26(3) or 30 September 2019, whichever is the earlier.

48 Transition period for displaying refund marking on beverage containers—Act, s308

New section 49 provides, for section 308(3) of the Act, the definition for manufacture transition day for the purposes of displaying the refund mark on containers. The manufacture transition day is 1 December 2019.

7 Amendment of sch 9 (Dictionary)

Section 7 inserts definitions into Schedule 9 for *container recovery rate*; *quarter*; and *recovery sharing arrangement* and *scheme contribution amount*.

A *quarter*, in a financial year, means in the year—

- 1 July to 30 September
- 1 October to 31 December
- 1 January to 31 March or
- 1 April to 30 June.

Recovery sharing arrangement has the definition provided in section 26(1).

Scheme contribution amount means the amount payable by the beverage manufacturer to the Organisation to contribute to the costs of mentioned in section 99Q(4)(a)(i) and (ii) of the Act.