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Western Australia

## **Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment Regulations 2019**

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## **Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment Regulations 2019**

Made by the Governor in Executive Council.

### **1. Citation**

These regulations are the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Amendment Regulations 2019*.

### **2. Commencement**

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

### **3. Regulations amended**

These regulations amend the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019*.

### **4. Regulation 3 amended**

- (1) In regulation 3(1) insert in alphabetical order:

*bale* means containers that have been mechanically compressed together;

*bottle crushing machine* means a machine that is designed to crush empty glass containers;

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**bottle crushing service business** means a business that is or includes the collection for processing for re-use or recycling of containers that are crushed by operation of bottle crushing machines periodically or permanently installed at premises at which beverage products are sold;

**business day** means a day other than —

- (a) a Saturday or Sunday; or
- (b) a public holiday throughout the State;

**common transaction platform** has the meaning given in regulation 9A;

**relevant beverage product**, in relation to a container, means the beverage product that the container is or was used for;

**reverse vending machine** means a device from which refund amounts can be obtained by an operation that involves placing empty containers into the device, whether or not some other action is required to activate the device;

(2) After regulation 3(1) insert:

- (1A) In these regulations, a beverage product is an **approved beverage product** if a container approval that applies to the beverage product is in force.
- (1B) In these regulations —
  - (a) an amount has been claimed or attempted to be claimed under a material recovery agreement for a container if the container is included in a quantity of containers for which an amount has been claimed or attempted to be claimed; and
  - (b) an amount has been paid under a material recovery agreement for a container if the

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container is included in a quantity of containers for which an amount has been paid.

(3) After regulation 3(2) insert:

(2A) For the purposes of the definition of *material recovery facility* in section 47C(1) of the Act, a facility or other place operated by a person for the purposes of carrying on a bottle crushing service business (not being premises where a bottle crushing machine is periodically or permanently installed for crushing containers sold at those premises) is prescribed to be a material recovery facility.

(4) After regulation 3(3) insert:

(3A) For the purposes of the definition of *refund point* in section 47C(1) of the Act, a reverse vending machine is prescribed to be a refund point.

**5. Regulations 3A to 3E inserted**

At the end of Part 1 insert:

**3A. Things excluded from meaning of beverage**

(1) In this regulation —

*cordial* means concentrated syrup that —

(a) contains the following ingredients (whether or not it also contains other ingredients) —

(i) water;

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- (ii) a sweetener (whether natural or artificial);
- (iii) colouring (whether natural or artificial) or flavouring, or both;

and

- (b) is intended to be diluted before consumption;

**fermented milk product** means a product made by fermenting milk or adding a culture to milk (for example, drinking yoghurt);

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

**flavouring** means any natural or artificial flavouring but does not include a sweetener;

**milk** includes —

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

**registered health tonic** means a liquid that is —

- (a) included in the Australian Register of Therapeutic Goods maintained under the *Therapeutic Goods Act 1989* (Commonwealth) section 9A; and
- (b) supplied with a label or other accompanying document specifying —
  - (i) that the liquid is for medicinal purposes; and
  - (ii) a recommended maximum dosage.



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- (2) For the purposes of the definition of *beverage* in section 47C(1) of the Act, each of the following things is prescribed not to be a beverage —
- (a) milk, other than flavoured milk;
  - (b) concentrated fruit or vegetable juice (or a mixture of concentrated fruit and vegetable juices) that is intended to be diluted before consumption;
  - (c) cordial;
  - (d) a registered health tonic.

**3B. Things included in or excluded from meaning of container**

- (1) In this regulation —
- flavoured milk* has the meaning given in regulation 3A(1);
- flavouring* means any natural or artificial flavouring but does not include a sweetener;
- growler* means a vessel that is designed to be —
- (a) filled with a beverage and sealed; and
  - (b) once the beverage has been consumed, returned to the person from whom the beverage was purchased for re-filling and re-sealing;
- sealable aluminium can* means an aluminium can that —
- (a) is designed to contain between 150 mL and 3 L (inclusive) of a beverage; and
  - (b) can be sealed on demand at the site at which it is sold; and
  - (c) is designed to be non-reusable;

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- wine-based beverage** means a beverage that contains (whether or not it also contains other ingredients) a mixture of wine and either or both of the following —
- (a) another beverage that is not a grape product;
  - (b) an added flavouring.
- (2) In this regulation, a beverage is a **spirituous liquor** if the beverage is —
- (a) a liqueur or alcoholic beverage produced by distillation (or a mixture of both); and
  - (b) not mixed with any beverage other than a liqueur or alcoholic beverage produced by distillation.
- (3) In this regulation, 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; and
  - (c) does not contain any added flavouring.
- (4) For the purposes of the definition of **container** in section 47C(1) of the Act, a sealable aluminium can is prescribed to be a container.
- (5) For the purposes of the definition of **container** in section 47C(1) of the Act, each of the following things is prescribed not to be a container —
- (a) a vessel designed to contain less than 150 mL of beverage;
  - (b) a vessel designed to contain more than 3 L of beverage;

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- (c) a vessel made wholly or partly of glass and designed to contain only wine or spirituous liquor;
- (d) a vessel designed to contain 1 L or more of —
  - (i) flavoured milk; or
  - (ii) a beverage composed of at least 90% fruit or vegetable juice (or a mixture of both);
- (e) a vessel made of cardboard and plastic, cardboard and foil, or cardboard, plastic and foil (commonly known as a cask or an aseptic pack) and designed to contain 1 L or more of —
  - (i) wine; or
  - (ii) a wine-based beverage; or
  - (iii) water (including mineral water and spring water);
- (f) a vessel made of plastic or foil, or both, (commonly known as a sachet) and designed to contain 250 mL or more of wine;
- (g) a growler.

**3C. Manner prescribed to be or not to be prohibited manner**

- (1) In this regulation —  
***processed disposal***, in relation to a glass container, means processing the container and using the output material —
  - (a) as a substitute for sand or aggregate in the construction of roads, asphalt or concrete; or
  - (b) as a substitute for sand for bedding of pipework or cables; or

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- (c) as a bedding for slab and footpath construction;  
or
    - (d) as abrasive blast material; or
    - (e) for water purification or drainage.
  - (2) For the purposes of the definition of ***prohibited manner*** in section 47C(1) of the Act, disposing of a container by burning or incinerating the container is prescribed to be a prohibited manner.
  - (3) For the purposes of the definition of ***prohibited manner*** in section 47C(1) of the Act, each of the following manners of disposal is prescribed not to be a prohibited manner —
    - (a) disposing of a glass container by processed disposal;
    - (b) disposing of a container by processing the container and using the output material for a purpose approved by the CEO.
- 3D. Persons included in or excluded from meaning of refund point operator**
- (1) For the purposes of the definition of ***refund point operator*** in section 47C(1) of the Act, each of the following persons is prescribed to be a refund point operator —
    - (a) a person who owns a reverse vending machine, unless the reverse vending machine has been leased or hired to another person;
    - (b) a person who leases or hires a reverse vending machine from the owner of the reverse vending machine.
  - (2) For the purposes of the definition of ***refund point operator*** in section 47C(1) of the Act, a person who merely uses a reverse vending machine (and is not also

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a person prescribed under subregulation (1) or the operator of a refund point that is not a reverse vending machine) is not a refund point operator.

**3E. Meaning of first responsible supplier**

- (1) This regulation applies if a person (the *contract bottler*) is engaged under a contract to make beverage products or fill containers with a beverage for another person (the *contract counterparty*), in circumstances where the beverage products are manufactured solely for the contract counterparty.
- (2) If the contract bottler and the contract counterparty do not expect that the contract bottler will make more than 300 000 beverage products (or fill more than 300 000 containers) for the contract counterparty in a financial year, the contract bottler and the contract counterparty may enter into an agreement under which the contract bottler agrees that it is the first responsible supplier of the beverage products (a *first supplier agreement*).
- (3) For the purposes of section 47D of the Act, if the contract bottler and the contract counterparty have entered into a first supplier agreement, then, in relation to the first 300 000 beverage products the contract bottler makes (or the first 300 000 beverage products consisting of containers the contract bottler fills) for the contract counterparty in each financial year, the contract bottler is taken to be the first responsible supplier and the contract counterparty is taken not to be the first responsible supplier.
- (4) Subregulation (3) does not apply unless the contract bottler has —
  - (a) provided a copy of the first supplier agreement to the Coordinator; and

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- (b) if the first supplier agreement is amended —  
provided a copy of the amended agreement to  
the Coordinator.
- (5) The contract bottler must notify the Coordinator if the  
first supplier agreement ceases to be in force.

**6. Part 1A inserted**

Before Part 2 insert:

**Part 1A — Supply of beverage products**

**Division 1 — Preliminary**

**3F. Terms used**

- (1) In this Part —  
*equivalent approval*, in relation to a container  
approval, or an application for a container approval,  
that applies to a beverage product, means an approval  
(however described) under a corresponding law that  
applies to the beverage product (or that applies to the  
type of container used for the beverage product).
- (2) In this Part, 2 or more beverage products belong to the  
same *beverage product class* if the beverage products  
all consist of the same particular beverage packaged in  
a container of the same particular type.

**Division 2 — Requirement for container approval,  
refund mark and barcode**

**3G. Refund mark**

For the purposes of the definition of *refund mark* in  
section 47C(1) of the Act, the requirement is that the

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refund mark contain the words “10c refund at collection depots/points in participating State/Territory of purchase” in clear and legible characters.

**3H. Barcode requirements**

- (1) In this regulation —  
*GS1 Standard* means the *GS1 General Specifications* standard published by GS1 AISBL from time to time;  
*GTIN barcode* means a product barcode that contains a Global Trade Item Number (GTIN) encoding and complies with the GS1 Standard.
- (2) This regulation sets out the requirements that a barcode for a container must comply with for the purposes of section 47E(2)(c) of the Act.
- (3) Subject to subregulation (4), the barcode for the container must be either —
  - (a) a GTIN barcode unique to the beverage product class to which the relevant beverage product belongs; or
  - (b) a product barcode unique to the beverage product class to which the relevant beverage product belongs 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

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- (iv) is not fewer than 7, and not more than 13, digits.
- (4) If the relevant beverage product is sold only in a multipack of beverage products and is not intended for individual sale, the barcode for the container —
  - (a) does not need to be unique to the beverage product class to which the relevant beverage product belongs; but
  - (b) must be unique to all beverage products manufactured by the same manufacturer that use the same type of container and are sold only in multipacks.
- (5) The barcode must be positioned on the container so that when the container is empty, the barcode is easily readable by a scanner designed to read barcodes without the container needing to be significantly manipulated or modified.

**Division 3 — Container approvals**

**Subdivision 1 — Grant of container approval**

**3I. Application process for container approval**

- (1) An application to the CEO under section 47F(1) of the Act is made by lodging the application with the Coordinator in a way approved by the CEO.
- (2) The application must —
  - (a) be in a form approved by the CEO; and
  - (b) contain or be accompanied by the information or documents required by the CEO (as indicated in the form or in material accompanying the form); and



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- (c) be accompanied by the fee determined by the CEO by order published in the *Gazette*.
  - (3) Within 10 business days after the application is lodged with the Coordinator, the Coordinator must —
    - (a) review the application and —
      - (i) if the Coordinator considers that the criteria for the grant of a container approval in regulation 3J have not been met or the container approval should otherwise be refused — must make written submissions to the CEO in relation to the application; and
      - (ii) in any other case — may make written submissions to the CEO in relation to the application;
    - and
    - (b) forward the application to the CEO.
  - (4) For the purposes of deciding whether to grant the container approval, the CEO may —
    - (a) request the applicant to provide further specified information (including, without limitation, information in relation to the recyclability of the container) or documents within a specified time; or
    - (b) invite any person to provide written submissions or information in relation to the application within a specified time.
  - (5) The CEO may refuse to consider an application if the applicant does not comply with a request under subregulation (4)(a) within the specified time.

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**3J. Criteria for grant of container approval**

The CEO may grant a container approval that applies to a beverage product only if satisfied that —

- (a) the type of container used for the beverage product is capable of being recycled or re-used; and
- (b) the labelling, and the proposed way of displaying the refund mark, on the type of container used for the beverage product does not affect the capability of the type of container to be recycled and will not contaminate the recycling stream; and
- (c) a barcode that complies with the requirements prescribed for the purposes of section 47E(2)(c) of the Act (other than the requirement in regulation 3H(5)) has been allocated for the beverage product.

**3K. Grounds for refusal of container approval**

- (1) The CEO may refuse to grant a container approval that applies to a beverage product if —
  - (a) an application for an equivalent approval has been refused, or an equivalent approval has been suspended or cancelled; or
  - (b) the type of container used for the beverage product is, while capable of being recycled or re-used, not suitable for recycling or re-use; or
  - (c) ongoing, effective and appropriate arrangements are not available for the type of container used for the beverage product to be collected, sorted and recycled or re-used.
- (2) Subregulation (1) does not limit the grounds on which the CEO may refuse to grant a container approval.

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**3L. Matters to be considered by CEO in deciding application**

- (1) In deciding an application under section 47F(1) of the Act, the CEO —
- (a) must have regard to the following —
    - (i) the information and documents provided by the applicant in or with the application or in response to a request from the CEO for further information or documents;
    - (ii) the objects of Part 5A of the Act and whether the decision the CEO proposes to make would assist in the achievement of those objects;
    - (iii) any written submissions made by the Coordinator in relation to the application within 10 business days after the application is lodged with the Coordinator;
    - (iv) if the CEO has invited any person to make written submissions or provide information in relation to the application within a specified time — any written submissions made or information provided by that person within the specified time;
- and
- (b) may have regard to —
    - (i) whether an equivalent approval is held or has been suspended or cancelled, or whether an application for an equivalent approval has been refused; and

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- (ii) if an approval referred to in subparagraph (i) is or has been held — any conditions attached to that approval;
  - and
  - (c) may consult with the Coordinator.
- (2) Subregulation (1) does not limit the matters the CEO may consider in deciding an application.

**3M. Decision in relation to container approval**

- (1) The CEO must decide an application under section 47F(1) of the Act within 20 business days after the later of the following days —
- (a) the day on which the CEO receives the application from the Coordinator;
  - (b) if the CEO makes one or more requests under regulation 3I(4)(a) in relation to the application — the day on which the last of the requests to be complied with is complied with.
- (2) If the CEO decides to grant a container approval, the CEO must notify the Coordinator of the decision within 5 business days after making the decision.
- (3) The notice must include the details of the container approval that are set out in regulation 3V(2) (as applicable).
- (4) The Coordinator must enter the details of the container approval in the register of container approvals kept under regulation 3V within 5 business days after receiving the notification under subregulation (2).
- (5) The container approval commences when it is entered into the register of container approvals by the Coordinator.

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- (6) If the CEO decides to refuse to grant a container approval, the CEO must, within 10 business days after making the decision, give the applicant and the Coordinator written notice of the decision, stating the grounds on which the approval was refused.

**3N. Conditions on container approvals**

- (1) For the purposes of section 47F(3)(a) of the Act, the following conditions are prescribed —
- (a) the holder of the container approval and any first responsible supplier of a beverage product to which the container approval applies must give the Coordinator written notice if they have reason to believe that no beverage product to which the container approval applies will be supplied in the State in the future;
  - (b) the holder of the container approval and any first responsible supplier of a beverage product to which the container approval applies must give the Coordinator written notice if an equivalent approval that is held by the holder or the first responsible supplier is amended, transferred, suspended or cancelled.
- (2) Without limiting the conditions that may be imposed, the CEO may impose a condition on a container approval that relates to the term of the container approval.
- (3) If the Coordinator receives a notice under subregulation (1), the Coordinator must notify the CEO within 10 business days after receiving the notice.

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**Subdivision 2 — Transfer of container approval by  
application**

**30. Application to transfer container approval**

- (1) The holder of a container approval may apply to the CEO to transfer the approval to another person.
- (2) An application to the CEO is made by lodging the application with the Coordinator in a way approved by the CEO.
- (3) The application must —
  - (a) be in a form approved by the CEO; and
  - (b) contain or be accompanied by the information or documents required by the CEO (as indicated in the form or in material accompanying the form); and
  - (c) be accompanied by the signed consent of the proposed transferee; and
  - (d) be accompanied by the fee determined by the CEO by order published in the *Gazette*.
- (4) Within 10 business days after the application is lodged with the Coordinator, the Coordinator must —
  - (a) review the application and —
    - (i) if the Coordinator considers that the application should be refused — must make written submissions to the CEO in relation to the application; and
    - (ii) in any other case — may make written submissions to the CEO in relation to the application;and
  - (b) forward the application to the CEO.

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- (5) For the purposes of deciding whether to grant the transfer, the CEO may —
- (a) request the applicant to provide further specified information or documents within a specified time; or
  - (b) invite any person to provide written submissions or information in relation to the application within a specified time.
- (6) The CEO may refuse to consider an application if the applicant does not comply with a request under subregulation (5)(a) within the specified time.

**3P. Deciding transfer application**

- (1) If the CEO is deciding whether or not to transfer a container approval on an application under regulation 3O(1) —
- (a) regulation 3K applies as if a refusal to transfer the container approval were a refusal to grant a container approval; and
  - (b) regulation 3L applies as if the decision were a decision about an application under section 47F(1) of the Act.
- (2) The CEO must decide an application under regulation 3O(1) within 20 business days after the later of the following days —
- (a) the day on which the CEO receives the application from the Coordinator;
  - (b) if the CEO makes one or more requests under regulation 3O(5)(a) in relation to the application — the day on which the last of the requests to be complied with is complied with.

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- (3) If the CEO decides to transfer the container approval, the CEO must notify the Coordinator of the decision within 5 business days after making the decision.
- (4) The notice must include the following information —
  - (a) the person to whom the container approval is being transferred;
  - (b) the date on which the transfer takes effect.
- (5) The Coordinator must update the details of the container approval in the register of container approvals kept under regulation 3V within 5 business days after receiving the notification under subregulation (3) or, if later, within 5 business days after the date on which the transfer takes effect.
- (6) If the CEO decides to refuse to transfer the container approval, the CEO must, within 10 business days after making the decision, give the applicant, the proposed transferee and the Coordinator written notice of the decision, stating the grounds on which the transfer was refused.

**Subdivision 3 — Amendment, suspension or cancellation of container approval on CEO's initiative**

**3Q. Amendment of container approval on CEO's initiative**

The CEO may, on the CEO's own initiative, amend a container approval, including amending or revoking the conditions on the approval, or attaching new conditions to the approval.



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**3R. Suspension or cancellation of container approval**

Without limiting the grounds on which the CEO may suspend or cancel a container approval, the CEO may suspend or cancel a container approval if —

- (a) the type of container used for the beverage products to which the container approval applies is not, or is no longer, capable of being recycled or re-used; or
- (b) a container approval is no longer required under the scheme for the beverage products to which the container approval applies; or
- (c) no beverage product to which the container approval applies is to be supplied in the State in the future; or
- (d) the container approval was granted because of a materially false or misleading representation or declaration; or
- (e) an equivalent approval is amended, transferred, suspended or cancelled; or
- (f) the CEO considers that the suspension or cancellation is necessary for the proper operation of the scheme.

**3S. Process for amendment, suspension or cancellation of container approval**

- (1) This regulation applies if the CEO proposes to amend, suspend or cancel a container approval (the *proposed action*).
- (2) The CEO must —
  - (a) give the holder a written notice about the proposed action; and
  - (b) publish a copy of the notice on the Department's website.

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- (3) The notice must —
- (a) state the proposed action; and
  - (b) if the proposed action is to amend the container approval — state the proposed amendment; and
  - (c) if the proposed action is to suspend the container approval — state the proposed period of the suspension; and
  - (d) state the grounds for the proposed action; and
  - (e) state the facts and circumstances that form the basis for the grounds; and
  - (f) invite any person to make written submissions to the CEO about why the proposed action should not be taken; and
  - (g) state the period (which must be at least 20 business days after the notice is given to the holder) within which written submissions may be made (the *submission period*).
- (4) The CEO may, after the end of the submission period —
- (a) take the proposed action; or
  - (b) if the proposed action was to suspend the container approval for a stated period — suspend the container approval for a period shorter than the stated period (the *alternative action*); or
  - (c) if the proposed action was to cancel the container approval — suspend the container approval for a period (also the *alternative action*).
- (5) The CEO —
- (a) must consider any written submissions made by any person within the submission period; and

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- (b) may consider any other information the CEO considers relevant.

**3T. Notice of amendment, suspension or cancellation of container approval**

- (1) This regulation applies if the CEO has made a decision to take or not take a proposed action under regulation 3S(1) (the *proposed action*), or to take an alternative action under regulation 3S(4) (the *alternative action*).
- (2) The CEO must give the holder and the Coordinator written notice that the CEO has —
  - (a) taken the proposed action or the alternative action; or
  - (b) decided not to take the proposed action.
- (3) A written notice under subregulation (2)(a) must specify the day on which the proposed action or the alternative action takes effect, which must be at least 10 business days after the CEO has given the written notice to the holder and the Coordinator, and published a copy of the notice under subregulation (4).
- (4) The CEO must publish a copy of a written notice given under subregulation (2) on the Department's website.
- (5) If the Coordinator receives written notice under subregulation (2)(a), the Coordinator must, not later than the day on which the proposed action or alternative action takes effect, update the register of container approvals kept under regulation 3V to record the action taken.
- (6) The Coordinator must ensure that the register specifies the day on which the action takes effect.

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**3U. Container approval continues in force**

- (1) A container approval continues in force until either of the following happens —
  - (a) if the approval was granted for a term — the term ends;
  - (b) the container approval is cancelled.
- (2) However, if a container approval is suspended, the approval is not in force for the period of the suspension.

**Subdivision 4 — Miscellaneous**

**3V. Register of container approvals**

- (1) The Coordinator must establish and maintain an up-to-date register of container approvals.
- (2) The register must contain the following details for each container approval —
  - (a) a description of the beverage products to which the approval applies, including the following —
    - (i) the beverage in the products;
    - (ii) the volume of beverage in the products;
    - (iii) the type of container used for the products;
    - (iv) the barcode for the products;
  - (b) the person who holds the approval;
  - (c) whether the approval has been suspended;
  - (d) the following days —
    - (i) the day on which the approval commences (being the day on which the approval is entered into the register);

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- (ii) if the approval is granted for a term — the day on which the approval ends;
  - (iii) if the approval is suspended — the day on which the suspension ends;
  - (iv) if the approval is cancelled — the day on which the cancellation takes effect;
- (e) any conditions on the approval.
- (3) The Coordinator may also record in the register any other information the Coordinator considers appropriate.
- (4) The register —
  - (a) may be kept in any form, including electronically, that the Coordinator considers appropriate; but
  - (b) subject to subregulation (5), must be accessible and searchable by scheme participants and the public.
- (5) The Coordinator may restrict access to, and visibility of, the details of any container approval recorded on the register if no beverage product to which the approval applies has been supplied in the State.

**3W. Verification by statutory declaration**

The CEO may require any information or documents supplied by an applicant for a container approval or by a holder of a container approval to be verified by statutory declaration.

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**7. Part 2 Division 1 heading inserted**

At the beginning of Part 2 insert:

**Division 1 — Refund point operators**

**8. Part 2 Divisions 2 and 3 inserted**

At the end of Part 2 insert:

**Division 2 — Claiming refund amount**

**4A. Refund amount (s. 47J)**

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

**4B. Claiming refund amount from refund point**

- (1) On and after the appointed day for section 47E of the Act, a person may claim or attempt to claim a refund amount for an empty container by presenting the container at a refund point.
- (2) Subject to regulation 4C, the refund point operator of the refund point must accept the container and pay the person the refund amount for the container.  
Civil penalty: \$25 000.
- (3) This regulation does not apply to a refund point that is a reverse vending machine.

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**4C. When refund point operator not required to accept container and pay person refund amount**

- (1) In this regulation —

**contaminated container** means a container (including any labelling) presented to a refund point that is contaminated with any substance such that, in the reasonable opinion of the refund point operator of the refund point (taking into account any guidelines prepared under regulation 4D), the container —

- (a) is unsuitable for re-use or recycling; or
- (b) poses a serious risk to health or safety or to the proper operation of the refund point;

**damaged container** means a container (including any labelling) presented to a refund point that is so damaged, or in such a condition, that the barcode cannot be scanned or otherwise recognised;

**whole container** means a container that is whole, or that is not missing anything other than labelling or a lid, ring pull or other portion of the container that is designed to be removed by consumers for the purposes of accessing the contents of the container.

- (2) If a person presenting a container at a refund point requests the refund amount for the container be paid to another entity, the refund point operator of the refund point may pay the refund amount to that other entity.

Example for this subregulation:

A refund point operator may agree to pay the refund amount to a charity.

- (3) If a person donates a container to a refund point operator, the refund point operator is not required to pay the person a refund amount for the container.

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- (4) A refund point operator may refuse to accept a container and to pay the refund amount for the container if —
- (a) the container is a damaged container; or
  - (b) on and after the transition day (as defined in regulation 41(1)), the refund mark is not displayed on the container or the container is in such a condition that the refund mark cannot be read; or
  - (c) the refund point operator reasonably believes that the relevant beverage product was supplied in the State before the appointed day for section 47E of the Act; or
  - (d) if a sign at the refund point operated by the refund point operator states that the refund point operator pays refund amounts in a way other than in cash — the person presenting the container refuses to accept the refund amount paid in the other way; or
  - (e) the refund point operator suspects the container was part of a bale.
- (5) A refund point operator must refuse to accept a container and to pay a person the refund amount for the container if —
- (a) the refund point operator knows, or ought reasonably to know, that —
    - (i) a refund amount has already been paid for the container; or
    - (ii) the relevant beverage product is not an approved beverage product; or
    - (iii) the container was collected or received by an MRF operator in its capacity as an MRF operator; or



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- (iv) the container was collected pursuant to an agreement to collect the container and deliver it to an MRF operator; or
  - (v) an amount has already been claimed (or attempted to be claimed) for the container under a refund point agreement or a material recovery agreement (whether the claim or attempted claim was by the refund point operator, or another person); or
  - (vi) the container is or was part of a bale; or
  - (vii) the relevant beverage product was not supplied in the State;
- or
- (b) the container is not empty; or
  - (c) the container is not a whole container; or
  - (d) the container is a contaminated container; or
  - (e) the refund point operator is not able to ascertain the relevant beverage product; or
  - (f) the container is in such a condition that the refund point operator is not reasonably able to confirm that it is a container; or
  - (g) the person is required to give the refund point operator a refund declaration under regulation 4E and does not comply with the requirement.
- (6) This regulation does not apply to a refund point that is a reverse vending machine.

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**4D. Guidelines in relation to contaminated containers**

- (1) The CEO may prepare, and amend or revoke at any time, a document that sets out guidelines for determining if a container is a contaminated container for the purposes of regulations 4C and 4G.
- (2) The CEO must publish a document prepared under subregulation (1) on the Department's website.

**4E. Refund declaration and proof of identity**

- (1) In this regulation —  
*bulk claim arrangement*, between a person and a refund point operator, is an arrangement in writing —
  - (a) under which the refund point operator agrees to accept claims for refund amounts for bulk quantities of empty containers from the person; and
  - (b) that states the person's obligations under the arrangement in relation to claiming the refund amounts and delivering empty containers to the refund point; and
  - (c) under which the person warrants the matters in subregulation (3)(a) and (b) in relation to the containers delivered under the arrangement;*bulk quantity*, of empty containers, means 1 500 or more containers.
- (2) A person who claims or attempts to claim a refund amount at a refund point under regulation 4B must give the refund point operator of the refund point a refund declaration if —
  - (a) the claim is for a bulk quantity of empty containers and is not covered by a bulk claim arrangement between the person and the refund point operator; or

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- (b) the claim is not for a bulk quantity of empty containers and the refund point operator asks the person for a refund declaration.
- (3) A **refund declaration** is a notice in which a person declares, for the containers for which the person is claiming or attempting to claim a refund amount —
- (a) that the containers were collected in the State for the purpose of claiming the refund amount under the scheme; and
- (b) that the person reasonably believes that —
- (i) all of the containers were first supplied in the State on or after the appointed day for section 47E of the Act; and
- (ii) the relevant beverage product in relation to each container is an approved beverage product; and
- (iii) a refund amount has not previously been paid for any container; and
- (iv) none of the containers are or were part of a bale.
- (4) A refund declaration must be —
- (a) in a form approved by the CEO; and
- (b) signed by the person making the declaration; and
- (c) witnessed by the refund point operator to whom the refund declaration is given or by an employee of that refund point operator; and
- (d) accompanied by an official document containing the person's photograph (for example, a passport or driver's licence) as proof of the person's identity.

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**4F. Ways refund amount may be paid**

- (1) A refund point operator may pay refund amounts for containers presented at a refund point in one or more of the following ways, and in different ways for different quantities of containers —
  - (a) in cash;
  - (b) if the Coordinator agrees to another way of payment (for example, electronic funds transfer to a bank account or credit card account) — in that other way.
- (2) If a refund point operator pays a refund amount as a voucher or card redeemable for cash, goods or services, the refund point operator must ensure that —
  - (a) the voucher expires 3 years after the date on which the refund amount is paid; and
  - (b) either the expiry date, or the date on which the voucher was issued plus a statement that the voucher expires 3 years after that date, is shown on the voucher.

Civil penalty: \$5 000.
- (3) If a refund point operator pays a refund amount for containers presented at a refund point other than in cash, the refund point operator must ensure that the following information is clearly displayed at the refund point —
  - (a) the way or ways in which the refund point operator pays the refund amount;
  - (b) if the refund point operator pays a refund amount as a voucher or card redeemable for cash, goods or services — what the holder of the voucher will be entitled to redeem the voucher or card for;

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- (c) if the refund point operator pays the refund amount in different ways for different quantities of containers — the quantities of containers that apply for each different way.

Civil penalty: \$5 000.

- (4) This regulation does not apply to a refund point that is a reverse vending machine.

**4G. Claiming refund amount from refund point that is reverse vending machine**

- (1) In this regulation —

*contaminated container* means a container (including any labelling) placed into a reverse vending machine that is contaminated with any substance such that, in the reasonable opinion of the person who owns the reverse vending machine (or, if the machine has been leased or hired to another person, that other person), taking into account any guidelines prepared under regulation 4D, the container —

- (a) is unsuitable for re-use or recycling; or
  - (b) poses a serious risk to health or safety or to the proper operation of the reverse vending machine.
- (2) On and after the appointed day for section 47E of the Act, a person may claim or attempt to claim a refund amount for an empty container from a refund point that is a reverse vending machine by placing the container in the machine.

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- (3) Subject to subregulations (4) and (5), the person who owns the reverse vending machine (or, if the machine has been leased or hired to another person, that other person) must ensure that the machine, if working properly, pays a refund amount for the container.  
Civil penalty: \$25 000.
- (4) The person who owns the reverse vending machine (or, if the machine has been leased or hired to another person, that other person) must ensure that the machine does not pay a refund amount for a container if the relevant beverage product is not an approved beverage product.
- (5) A refund amount is not required to be paid by a reverse vending machine for a container that —
- (a) is so damaged, or in such a condition, that —
    - (i) the barcode cannot be scanned or otherwise recognised; or
    - (ii) the reverse vending machine is not able to confirm that it is a container;
  - or
  - (b) is not empty; or
  - (c) is not a whole container (as defined in regulation 4C(1)); or
  - (d) is a contaminated container.
- (6) A refund amount is paid for the container when the reverse vending machine —
- (a) accepts the container; and
  - (b) dispenses the refund amount for the container in a way mentioned in regulation 4H(1); and

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- (c) gives the person a written record (which may be given electronically) of —
  - (i) the container accepted; and
  - (ii) the refund amount for the container; and
  - (iii) how and, if the refund amount was not dispensed to the person, to whom the refund amount was dispensed.
- (7) A refund amount paid by a reverse vending machine is taken to be a refund amount paid by the person who owns the reverse vending machine (or, if the machine has been leased or hired to another person, that other person).

**4H. Ways reverse vending machine may dispense refund amount**

- (1) A refund amount may be dispensed by a reverse vending machine —
  - (a) to —
    - (i) the person claiming the refund amount; or
    - (ii) if the person claiming the refund amount requests the refund amount be paid to another entity — that other entity;
  - and
  - (b) in one or more of the following ways and in different ways for different quantities of containers —
    - (i) in cash;
    - (ii) if the Coordinator agrees to another way of payment (for example, electronic funds transfer to a bank account or credit card account) — in that other way.

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- (2) If a reverse vending machine dispenses a refund amount as a voucher or card redeemable for cash, goods or services, the person who owns the machine (or, if the machine has been leased or hired to another person, that other person) must ensure that —
- (a) the voucher expires 3 years after the date on which the refund amount is dispensed; and
  - (b) either the expiry date, or the date on which the voucher was dispensed plus a statement that the voucher expires 3 years after that date, is shown on the voucher.

Civil penalty: \$5 000.

- (3) If a reverse vending machine dispenses a refund amount for a container other than in cash, the person who owns the machine (or, if the machine has been leased or hired to another person, that other person) must ensure that the following information is clearly displayed on or near the machine —
- (a) the way or ways in which the refund amount is dispensed;
  - (b) if the machine dispenses a refund amount as a voucher or card redeemable for cash, goods or services — what the holder of the voucher will be entitled to redeem the voucher or card for;
  - (c) if the machine dispenses a refund amount in different ways for different quantities of containers — the quantities of containers that apply for each different way.

Civil penalty: \$5 000.



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**4I. When refund amount must not be claimed**

A person must not claim or attempt to claim a refund amount for an empty container at a refund point if —

- (a) the person —
  - (i) is an MRF operator that has collected or received the container in its capacity as an MRF operator; or
  - (ii) otherwise knows, or ought reasonably to know, that the container was collected or received by an MRF operator in its capacity as an MRF operator;

or

- (b) the person has collected the container pursuant to an agreement to collect the container and deliver it to an MRF operator; or
- (c) the person knows, or ought reasonably to know, that —
  - (i) a refund amount has already been paid for the container; or
  - (ii) the container is or was part of a bale.

Penalty: a fine of \$10 000.

**Division 3 — Obligations in relation to refund points**

**4J. Refund point operator must keep refund declarations**

- (1) A refund point operator must —
  - (a) keep each refund declaration given to the refund point operator under regulation 4E for at least 3 years after the declaration was given; and

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- (b) for the proof of identity document mentioned in regulation 4E(4)(d) that accompanied the declaration —
  - (i) make a copy of the proof of identity document; and
  - (ii) keep the copy with the declaration for the period mentioned in paragraph (a).

Civil penalty: \$25 000.

- (2) For this regulation, a document may be made or kept —
  - (a) electronically; or
  - (b) by making or keeping a copy of the document.

**4K. Obligations in relation to refund points other than reverse vending machines**

- (1) On and after the appointed day for section 47E of the Act, a refund point operator must, in relation to each refund point that the refund point operator operates —
  - (a) ensure that the refund point is maintained in good working order; and
  - (b) ensure that facilities are —
    - (i) provided at the refund point to receive material that is not accepted at the refund point to prevent litter in and around the refund point; and
    - (ii) maintained to a standard acceptable to the Coordinator.

Civil penalty: \$25 000.

- (2) This regulation does not apply to a refund point that is a reverse vending machine.

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**4L. Obligations in relation to reverse vending machines**

- (1) This regulation applies to a refund point operator that is prescribed under regulation 3D(1).
- (2) On and after the appointed day for section 47E of the Act, the refund point operator must, in relation to each reverse vending machine that the refund point operator owns (other than a reverse vending machine that has been leased or hired to another person) or leases or hires from another person, ensure as far as is reasonably practicable —
  - (a) that the reverse vending machine is working properly; and
  - (b) if the machine is not working properly —
    - (i) that the machine is turned off; or
    - (ii) that a sign or other method is used to indicate to users the machine is not working properly;and
  - (c) that the machine, if working properly, dispenses a refund amount for each container that it accepts; and
  - (d) that facilities are —
    - (i) provided at the reverse vending machine to receive material that is not accepted at the reverse vending machine to prevent litter in and around the reverse vending machine; and
    - (ii) maintained to a standard acceptable to the Coordinator.

Civil penalty: \$25 000.

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**9. Part 2A inserted**

Before Part 3 insert:

**Part 2A — Scheme agreements and scheme participants**

**Division 1 — Scheme agreements**

**4M. Terms used**

In this Division —

***approved scheme agreement template*** means each template approved by the CEO under regulation 4N(5), as amended by any amendments that have effect under regulation 4O;

***counterparty*** means a party, or proposed party, to a scheme agreement, not being the Coordinator.

**4N. Scheme agreement template**

- (1) If required by the CEO, the Coordinator must prepare, and give to the CEO within the time specified by the CEO, at least one proposed template for each of the following types of scheme agreement —
  - (a) an export rebate agreement;
  - (b) a material recovery agreement;
  - (c) a refund point agreement;
  - (d) a supply agreement.
- (2) A proposed template for a particular type of scheme agreement may —
  - (a) apply to all scheme agreements of that type that are to be entered into; or

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- (b) apply only to certain scheme agreements of that type that are to be entered into, by reference to specified factors including (without limitation) by reference to characteristics of the counterparty that is to enter into the scheme agreement.
- (3) A proposed template must set out the standard provisions that the Coordinator proposes should, unless otherwise approved by the CEO, be included in each scheme agreement to which the template applies.
- (4) If there is more than one proposed template for a particular type of scheme agreement, each template may contain different standard provisions to the other proposed templates for that particular type of scheme agreement.
- (5) If the Coordinator gives the CEO a template under subregulation (1) or (7), the CEO may, by written notice —
  - (a) approve the template; or
  - (b) direct the Coordinator to, within the period specified in the notice (which must be at least 20 business days after the notice is given to the Coordinator) —
    - (i) take specified steps in relation to the template or make specified modifications to the template (including, without limitation, modifications in relation to the scheme agreements to which the template applies); and
    - (ii) submit a revised template.
- (6) Before directing the Coordinator under subregulation (5)(b), the CEO must consult with the

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Coordinator on the proposed direction and have regard to any views expressed by the Coordinator.

- (7) The Coordinator must comply with a direction under subregulation (5)(b) as soon as is practicable and in any event within the period specified in the notice.

**40. Amendment of scheme agreement template**

- (1) If the Coordinator wishes to amend a scheme agreement template, the Coordinator must give the amended scheme agreement template to the CEO.
- (2) An amendment to a scheme agreement template under subregulation (1) has no effect until the amended scheme agreement template has been approved by the CEO.
- (3) The CEO may, after consultation with the Coordinator and having regard to any views expressed by the Coordinator, amend a scheme agreement template by giving a written notice to the Coordinator that states —
- (a) the amendment; and
  - (b) the date on which the amendment is to take effect (which must be after the notice is given to the Coordinator).
- (4) An amendment to a scheme agreement template under subregulation (3) has effect on the date stated in the notice given under subregulation (3).

**4P. Content and publication of approved scheme agreement template**

- (1) Each approved scheme agreement template must include provisions about the following —
- (a) how and when claims and payments are to be made between the Coordinator and the

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- counterparty and how any GST impacts are to be dealt with;
- (b) how and when claims and payments are to be made between the Coordinator and the counterparty in relation to overpaid and underpaid amounts;
  - (c) record keeping by the counterparty;
  - (d) the counterparty's obligations in relation to giving information or documents to the Coordinator, including how and when the information or documents are to be given;
  - (e) the circumstances and manner in which the Coordinator can appoint an independent auditor to audit the counterparty's systems in relation to the scheme or verify or review data supplied by the counterparty to the Coordinator;
  - (f) a dispute resolution process for settling disputes between the Coordinator and the counterparty;
  - (g) the term of the agreement and when the agreement must be reviewed;
  - (h) a process for either party to the agreement to seek an earlier review of the agreement or an amendment to it;
  - (i) the consequences of a breach of the agreement and a process to manage breaches;
  - (j) termination, including the events or circumstances giving rise to a right to terminate and a process for either party to terminate in the absence of any breach;
  - (k) assignment of the agreement by the counterparty;
  - (l) the categories of information that may be published or disclosed by the Coordinator;

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- (m) protection of confidential information disclosed by the counterparty, and permitted uses of that information by the Coordinator;
  - (n) any other matter the CEO may require in support of the objectives of Part 5A of the Act.
- (2) In addition to the matters in subregulation (1), each approved scheme agreement template must include provisions about the matters set out in regulations 4W, 4Z, 4ZA and 4ZJ to the extent that the regulation relates to the type of scheme agreement to which the approved scheme agreement template applies.
  - (3) The Coordinator must publish each approved scheme agreement template on its website.

**4Q. Compliance with approved scheme agreement template**

- (1) In this regulation —  
*relevant approved scheme agreement template*, in relation to a scheme agreement, means the approved scheme agreement template that applies to the scheme agreement, as at the date on which the scheme agreement is entered into.
- (2) Unless the CEO approves otherwise, each scheme agreement that the Coordinator enters into must contain the standard provisions set out in the relevant approved scheme agreement template.
- (3) Subregulation (2) does not limit the provisions which a scheme agreement may contain.
- (4) Unless approved by the CEO, a provision of a scheme agreement has no effect to the extent the provision is inconsistent with the standard provisions set out in the relevant approved scheme agreement template (except



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to the extent the inconsistency arises from the Coordinator's compliance with subregulation (5)).

- (5) If amendments are made (and have effect under regulation 4O) to a scheme agreement template that applies to a scheme agreement after the scheme agreement is entered into, the Coordinator must use its best endeavours to incorporate the amendments into the scheme agreement.

**4R. Deemed term in scheme agreements**

It is a term of every scheme agreement that the counterparty —

- (a) consents to any novation of the agreement by the Coordinator on terms determined by the Coordinator; and
- (b) agrees to enter into a deed of novation reflecting those terms.

**Division 2 — Supply agreements**

**4S. Term used: approved supply amounts calculation methodology**

In this Division —

*approved supply amounts calculation methodology* means the document approved by the CEO under regulation 4T(4), as amended by any amendments that have effect under regulation 4U.

**4T. Supply amounts calculation methodology**

- (1) If required by the CEO, the Coordinator must prepare, and give to the CEO within the time specified by the CEO, a document setting out how supply amounts are to be calculated.

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- (2) The document may include more than one method of calculating supply amounts.
- (3) A method of calculating supply amounts may —
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors; or
  - (b) apply differently according to different factors of a specified kind; or
  - (c) authorise any matter to be from time to time determined, applied or regulated by any specified person or body.
- (4) If the Coordinator gives the CEO a document under subregulation (1) or (6), the CEO may, by written notice —
  - (a) approve the document; or
  - (b) direct the Coordinator to, within the period specified in the notice (which must be at least 20 business days after the notice is given to the Coordinator) —
    - (i) take specified steps in relation to the document or make specified modifications to the document; and
    - (ii) submit a revised document.
- (5) Before directing the Coordinator under subregulation (4)(b), the CEO must consult with the Coordinator on the proposed direction and have regard to any views expressed by the Coordinator.
- (6) The Coordinator must comply with a direction under subregulation (4)(b) as soon as is practicable and in any event within the period specified in the notice.

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**4U. Amendment of supply amounts calculation methodology**

- (1) The CEO may, after consultation with the Coordinator and having regard to any views expressed by the Coordinator, amend the supply amounts calculation methodology by giving a written notice to the Coordinator that states —
  - (a) the amendment; and
  - (b) the date on which the amendment is to take effect (which must be after the notice is given to the Coordinator).
- (2) An amendment to the supply amounts calculation methodology under subregulation (1) has effect on the date stated in the notice given under subregulation (1).

**4V. Content and publication of approved supply amounts calculation methodology**

- (1) Each method of calculating supply amounts contained in the approved supply amounts calculation methodology must provide for supply amounts under a supply agreement between the Coordinator and a person (the *counterparty*) for a particular period to be calculated by reference to the following factors (whether or not other factors are also referred to) —
  - (a) the number of beverage products the counterparty to the supply agreement declares it has first supplied in the State during the period;
  - (b) an estimate of the number of containers that are returned to refund points or collected or received by an MRF operator during the period;
  - (c) the container recovery rate for the period;
  - (d) the recovery value of the material used for the container, being the cost incurred in, or revenue

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received from, getting the material recycled, as determined by the Coordinator.

- (2) The Coordinator must publish the approved supply amounts calculation methodology on its website.

**4W. Content of supply agreement**

- (1) For the purposes of section 47O(1)(b) of the Act, the following matters are prescribed as matters that a supply agreement between the Coordinator and a person (the *counterparty*) must include provisions about —
  - (a) the matters set out in regulation 4P(1);
  - (b) the calculation of supply amounts in accordance with the approved supply amounts calculation methodology.
- (2) Where, in the Coordinator's opinion, the counterparty is a minor beverage supplier, the frequency of payments and reporting to the Coordinator required under the supply agreement must not, unless the counterparty elects for the frequency to be monthly, be more than quarterly.

**Division 3 — Export rebate agreements**

**4X. Term used: export rebate protocol**

In this Division —

*export rebate protocol* has the meaning given in regulation 4Y(1).

**4Y. Export rebate protocol**

- (1) The CEO may prepare, and amend or revoke at any time, a document that relates to exporters and export rebate agreements (the *export rebate protocol*).

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- (2) The CEO must publish the export rebate protocol on the Department's website.
  - (3) If the CEO prepares an export rebate protocol, the CEO —
    - (a) may review the document at any time the CEO considers it appropriate; and
    - (b) must review the document if the Coordinator or an exporter asks the CEO in writing to review the document.

**4Z. Content of export rebate agreements**

- (1) For the purposes of section 47P(3)(b) of the Act, the following matters are prescribed as matters that an export rebate agreement must include provisions about —
  - (a) the matters set out in regulation 4P(1);
  - (b) the calculation of amounts payable to the exporter under the agreement in accordance with the export rebate protocol;
  - (c) the exporter's obligations in relation to demonstrating that the containers for which payment is claimed are scheme containers (as defined in section 47P(1) of the Act);
  - (d) the process if the Coordinator reasonably suspects a fraudulent claim.
- (2) To the extent that the export rebate protocol deals with any of the matters in subregulation (1), the export rebate agreement must provide that the matter be dealt with in accordance with the export rebate protocol.

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**Division 4 — Refund point agreements**

**4ZA. Content of refund point agreements**

For the purposes of section 47Q(1)(b) of the Act, the following matters are prescribed as matters that a refund point agreement between the Coordinator and a person (the *counterparty*) must include provisions about —

- (a) the matters set out in regulation 4P(1);
- (b) how the amounts payable to the counterparty under the agreement are to be calculated, including amounts for —
  - (i) refund amounts paid, or to be paid, by the counterparty for containers; and
  - (ii) handling and sorting the containers for recycling;
- (c) the counterparty's obligation to comply with the Minimum Network Standards (as defined in regulation 12(1));
- (d) the counterparty's obligation not to accept bales;
- (e) the counterparty's obligations in relation to sorting and transporting empty containers;
- (f) the counterparty's obligations in relation to operating refund points, including in relation to accessibility, public safety, compliance with relevant laws, public liability insurance and theft prevention;
- (g) whether the counterparty can subcontract the operation of the refund point and the counterparty's obligations to the Coordinator if the operation is subcontracted;

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- (h) the ability for the Coordinator to undertake an audit of the counterparty's performance of its obligations and the counterparty's obligations to give access to the counterparty's premises for the purposes of the audit and provide any information and documents that the Coordinator requests;
- (i) the process if the Coordinator reasonably suspects a fraudulent claim.

**4ZB. Circumstances in which refund point operator must not claim payment**

- (1) For the purposes of section 47Q(2)(b) of the Act, a refund point operator must not claim, or attempt to claim, payment from the Coordinator under a refund point agreement in relation to a container if any of the following apply —
  - (a) the refund point operator has not paid a refund amount for the container (unless the container was donated to the refund point operator);
  - (b) the refund point operator should have refused to accept the container under regulation 4C(5);
  - (c) if the claim relates to a container accepted by a reverse vending machine —
    - (i) the relevant beverage product is not an approved beverage product; or
    - (ii) the container is not empty; or
    - (iii) the container is not a whole container (as defined in regulation 4C(1)); or
    - (iv) the container is a contaminated container (as defined in regulation 4G(1));

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- (d) the refund point operator has contravened section 47M(5) of the Act in relation to the container;
  - (e) the refund point operator knows, or ought reasonably to know, that the container has been disposed of in contravention of section 47M(3), (4) or (5) of the Act;
  - (f) the refund point operator is also an MRF operator and collected or received the container in its capacity as MRF operator;
  - (g) the refund point operator knows, or ought reasonably to know, that an amount has already been claimed (or attempted to be claimed) for the container under a refund point agreement or a material recovery agreement (whether the claim or attempted claim was by the refund point operator or another person);
  - (h) the refund point operator knows, or ought reasonably to know, that a refund amount has been paid for the container on more than one occasion at any one or more refund points.
- (2) Subregulation (1)(d) and (e) does not apply to a container that is the subject of an extraordinary circumstances exemption granted under section 47N(3) of the Act.

**Division 5 — Material recovery agreements**

**Subdivision 1 — Eligible container factor**

**4ZC. Terms used**

In this Subdivision —

***approved sampling plan*** means the document approved by the CEO under regulation 4ZD(3), as



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amended by any amendments that have effect under regulation 4ZE;

*recovery amount protocol* has the meaning given in regulation 4ZI(1).

**4ZD. Coordinator to prepare draft sampling plan**

- (1) If required by the CEO, the Coordinator must prepare, and give to the CEO within the time specified by the CEO, a draft sampling plan.
- (2) The draft sampling plan must set out the Coordinator's proposed arrangements for engaging independent auditors (including the frequency of audits and the responsibility for the costs of the audits) to undertake sampling in order for the Coordinator to make a determination under regulation 4ZG(1), including sampling of quantities of recyclable material that include containers to work out the proportion of the material that is containers.
- (3) If the Coordinator gives the CEO a document under subregulation (1) or (5), the CEO may, by written notice —
  - (a) approve the document; or
  - (b) direct the Coordinator to, within the period specified in the notice (which must be at least 20 business days after the notice is given to the Coordinator) —
    - (i) take specified steps in relation to the document or make specified modifications to the document; and
    - (ii) submit a revised document.
- (4) Before directing the Coordinator under subregulation (3)(b), the CEO must consult with the

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Coordinator on the proposed direction and have regard to any views expressed by the Coordinator.

- (5) The Coordinator must comply with a direction under subregulation (3)(b) as soon as is practicable and in any event within the period specified in the notice.
- (6) The Coordinator must publish the approved sampling plan on its website.

**4ZE. Amendment of sampling plan**

- (1) If the Coordinator wishes to amend the sampling plan, the Coordinator must give the amended sampling plan to the CEO.
- (2) An amendment to a sampling plan has no effect until the amended sampling plan has been approved by the CEO.

**4ZF. Cooperation with sampling**

A local government and an MRF operator must —

- (a) cooperate with the conduct of any audit or other procedure carried out under the approved sampling plan; and
- (b) in the case of an MRF operator — give access to the MRF operator's premises for the purposes of the audit or procedure; and
- (c) provide any information and documents requested in connection with the audit or procedure.

**4ZG. Eligible container factor**

- (1) The Coordinator must, for each material type listed in the recovery amount protocol, determine an estimate of the number of containers of that material type that are in a tonne of that material type.

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- (2) The determination must be made using —
  - (a) the data obtained from the sampling undertaken in accordance with the approved sampling plan; and
  - (b) information in relation to claims under material recovery agreements (if any); and
  - (c) any other relevant information.
- (3) The Coordinator must make a new determination under subregulation (1) for a material type if —
  - (a) directed to do so by the CEO; or
  - (b) the Coordinator considers that the existing determination no longer accurately estimates the number of containers of the material type that are in a tonne of that material type.
- (4) The Coordinator must publish each determination made under subregulation (1) on its website within 20 business days after making the determination.

**Subdivision 2 — MRF operators and material recovery agreements**

**4ZH. Terms used**

In this Subdivision —

*eligible container factor*, for a material type, means the latest estimate determined for the material type under regulation 4ZG(1);

*recovery amount protocol* has the meaning given in regulation 4ZI(1).

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**4ZI. Recovery amount protocol**

- (1) The CEO may prepare, and amend or revoke at any time, one or more documents that relate to MRF operators and payments under material recovery agreements (each a *recovery amount protocol*).
- (2) Without limiting subregulation (1), a recovery amount protocol may do one or both of the following —
  - (a) state that payments under a material recovery agreement for a quantity of containers are, if the number of containers in the quantity is known, to be calculated by totalling the refund amounts for the number of containers;
  - (b) provide for payments under a material recovery agreement for a quantity of containers to, if the number of containers in the quantity is not known, be calculated by reference to the eligible container factor for the material type the containers are made of.
- (3) A particular recovery amount protocol may —
  - (a) apply generally to all MRF operators or be limited in its application by reference to specified exceptions or factors; or
  - (b) apply to an MRF operator in relation to a certain type of material recovery facility only; or
  - (c) apply differently to MRF operators according to different factors of a specified kind; or
  - (d) authorise any matter to be from time to time determined, applied or regulated by any specified person or body.
- (4) The CEO must publish each recovery amount protocol on the Department's website.

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- (5) If the CEO prepares a recovery amount protocol, the CEO —
- (a) may review the document at any time the CEO considers it appropriate; and
  - (b) must review the document if the Coordinator or an MRF operator asks the CEO in writing to review the document.

**4ZJ. Content of material recovery agreement**

- (1) For the purposes of section 47R(2)(b) of the Act, the following matters are prescribed as matters that a material recovery agreement between the Coordinator and an MRF operator must include provisions about —
- (a) the type of material recovery facility to which the agreement applies;
  - (b) the matters set out in regulation 4P(1);
  - (c) the calculation of amounts payable to the MRF operator under the agreement which must —
    - (i) if a recovery amount protocol applies to the MRF operator in relation to the type of material recovery facility to which the agreement applies — be in accordance with the recovery amount protocol; or
    - (ii) if the MRF operator carries on a bottle crushing service business and the agreement applies to the material recovery facility prescribed under regulation 3(2A) — be based on the number of containers for which the relevant beverage product is an approved beverage product that have been crushed by the bottle crushing machines and collected by the MRF

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- operator, or be worked out in accordance with another methodology that has been approved by the CEO in consultation with the Coordinator;
- (d) the MRF operator's obligations in relation to audits;
  - (e) the arrangements the MRF operator and the Coordinator have in place for recycling the containers or sending the containers to a facility for recycling including, if the Coordinator has established a common transaction platform, the circumstances in which the MRF operator is required to use the platform;
  - (f) whether the MRF operator can subcontract the operation of the material recovery facility and the MRF operator's obligations to the Coordinator if the operation is subcontracted;
  - (g) the process if the Coordinator reasonably suspects a fraudulent claim.
- (2) Subregulation (3) applies if a recovery amount protocol (the **relevant recovery amount protocol**) applies to an MRF operator in relation to the type of material recovery facility to which a material recovery agreement applies.
- (3) To the extent that the relevant recovery amount protocol deals with any of the matters in subregulation (1), the material recovery agreement must provide that the matter be dealt with in accordance with the relevant recovery amount protocol.

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**4ZK. Circumstances in which MRF operator must not claim recovery amount**

- (1) For the purposes of section 47R(3)(b) of the Act, an MRF operator must not claim, or attempt to claim, payment from the Coordinator under a material recovery agreement for a container if any of the following apply —
  - (a) the MRF operator knows, or ought reasonably to know, that a refund amount has been paid for the container at a refund point;
  - (b) the MRF operator knows, or ought reasonably to know, that the relevant beverage product is not an approved beverage product;
  - (c) the material recovery agreement applies to a material recovery facility prescribed under regulation 3(2A) and the container was not collected as part of the MRF operator's bottle crushing service business;
  - (d) the MRF operator has contravened section 47M(4) of the Act in relation to the container;
  - (e) the MRF operator knows, or ought reasonably to know, that the container has been disposed of in contravention of section 47M(3), (4) or (5) of the Act;
  - (f) the MRF operator is also a refund point operator and received the container in its capacity as a refund point operator;
  - (g) the MRF operator knows, or ought reasonably to know, that an amount has already been claimed (or attempted to be claimed) for the container under a refund point agreement or a material recovery agreement (whether the claim

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or attempted claim was by the MRF operator or another person);

- (h) the container was collected or received by the MRF operator prior to the date on which the MRF operator and the Coordinator entered into the material recovery agreement.
- (2) Subregulation (1)(d) and (e) does not apply to a container that is the subject of an extraordinary circumstances exemption granted under section 47N(3) of the Act.

**4ZL. Audits of MRF operators**

- (1) In this regulation —
- bottle crushing machine operator*** means an MRF operator who is the operator of a material recovery facility prescribed under regulation 3(2A) and not the operator of any other type of material recovery facility.
- (2) The Coordinator, in relation to each MRF operator who is party to a material recovery agreement —
- (a) must engage, at the cost of the Coordinator, an auditor to conduct an audit of containers held by the MRF operator that were collected or received by the MRF operator prior to the date on which the MRF operator and the Coordinator entered into the material recovery agreement; and
  - (b) must (in the case of an MRF operator who is not a bottle crushing machine operator) and may (in the case of a bottle crushing machine operator) engage, at the cost of the MRF operator, an auditor to conduct an annual audit of the MRF operator's claims under the material recovery agreement and the evidence supporting those claims; and



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- (c) may engage, at the cost of the Coordinator if the audit does not reveal a material contravention by the MRF operator of the Act, these regulations or the material recovery agreement and otherwise at the cost of the MRF operator, an auditor to conduct additional audits of the MRF operator's claims under the material recovery agreement and the evidence supporting those claims.
- (3) The audit under subregulation (2)(a) must be conducted within 10 business days after the MRF operator and the Coordinator enter into the material recovery agreement.
- (4) The Coordinator must not engage a person as an auditor under subregulation (2) unless the Coordinator is satisfied that the person —
- (a) has qualifications and experience that are appropriate to the audit; and
  - (b) is independent of the Coordinator and the MRF operator and any business conducted by either of them; and
  - (c) is able to conduct the audit and prepare a report in accordance with the terms of the engagement.
- (5) An MRF operator must —
- (a) cooperate with the conduct of an audit under subregulation (2); and
  - (b) give access to the MRF operator's premises for the purposes of the audit; and
  - (c) provide any information and documents that the auditor requests in connection with the audit.

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**Subdivision 3 — Sharing payments with local governments**

**4ZM. Terms used**

- (1) In this Subdivision —
  - local government sharing protocol* has the meaning given in regulation 4ZN(1);
  - recovery amount payments*, received by an MRF operator in relation to particular containers, means the amounts paid to the MRF operator by the Coordinator for those containers under a material recovery agreement —
    - (a) less —
      - (i) any costs reasonably incurred by the MRF operator that are of a type specified in the local government sharing protocol; and
      - (ii) the amount of revenue that has been lost by the MRF operator that is of a type specified in the local government sharing protocol;
    - and
    - (b) adjusted for any other amounts specified in the local government sharing protocol.
- (2) In this Subdivision, a local government is a *relevant local government* in relation to an MRF operator if the MRF operator collects containers from, or receives containers collected from, kerbsides in the local government's district.
- (3) In this Subdivision, a person is a *third party operator* in relation to an MRF operator if the person has been contracted to collect containers from kerbsides in one or more local government districts and deliver them to the MRF operator.

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**4ZN. Local government sharing protocol**

- (1) The CEO may prepare, and amend or revoke at any time, a document that relates to MRF operators sharing payments with local governments (the *local government sharing protocol*).
- (2) The CEO must publish the local government sharing protocol on the Department's website.
- (3) If the CEO prepares a local government sharing protocol, the CEO —
  - (a) may review the document at any time the CEO considers it appropriate; and
  - (b) must review the document if the Coordinator, an MRF operator or a local government asks the CEO in writing to review the document.

**4ZO. MRF operators to share payments with local governments**

- (1) If, and to the extent that, an MRF operator, a third party operator (where relevant) and a relevant local government have not agreed otherwise —
  - (a) the MRF operator must —
    - (i) if the MRF operator does not collect containers from kerbsides in a local government's district itself, but receives them from a third party operator — pay to the third party operator 50% of all recovery amount payments received by the MRF operator in relation to containers received from the third party operator, and the third party operator must distribute those amounts to the local government or governments from whose districts the containers were

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collected from kerbsides, in proportion to the number of containers collected in each district; or

- (ii) in any other case — pay to the relevant local government 50% of all recovery amount payments received by the MRF operator in relation to containers collected from kerbsides in the relevant local government's district;

and

- (b) the MRF operator, the third party operator and the relevant local government must comply with the local government sharing protocol.
- (2) If an MRF operator is required to make payments under subregulation (1)(a)(i), the third party operator must, on request, provide to the MRF operator —
- (a) any information reasonably required by the MRF operator to enable the MRF operator to calculate the amounts to be paid under subregulation (1)(a)(i); and
  - (b) evidence that the third party operator has distributed the amounts to local governments under subregulation (1)(a)(i).
- (3) A local government may recover an amount payable to it under subregulation (1) in a court of competent jurisdiction as a debt due to the local government.

**4ZP. Audits of MRF operators and local governments**

- (1) An MRF operator, a third party operator or a relevant local government may engage, at its own cost, an auditor to conduct an audit of any amounts deducted or added in calculating the recovery amount payments received by the MRF operator in relation to containers collected by the MRF operator or the third party

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operator from kerbsides in the relevant local government's district.

- (2) A person must not engage a person (the *proposed auditor*) as an auditor under subregulation (1) unless the person is satisfied that the proposed auditor —
- (a) has qualifications and experience that are appropriate to the audit; and
  - (b) is independent of the MRF operator, the third party operator and the relevant local government, and any business conducted by any of them; and
  - (c) is able to conduct the audit and prepare a report in accordance with the terms of the engagement.
- (3) An MRF operator, a third party operator and a relevant local government must —
- (a) cooperate with the conduct of an audit under subregulation (1); and
  - (b) in the case of an MRF operator or third party operator — give access to their premises for the purposes of the audit; and
  - (c) provide any information and documents that the auditor requests in connection with the audit.

**10. Regulation 7 amended**

In regulation 7(2):

- (a) after paragraph (b) insert:
  - (ba) to ensure arrangements are in place for verifying the number of containers that have been returned to refund points;

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- (b) after paragraph (c) insert:
  - (ca) to receive applications under regulations 3I and 3O in relation to container approvals on behalf of the CEO and to advise the CEO in relation to the applications;
  - (cb) to publish guidelines to assist people in identifying the person that is the first responsible supplier under section 47D of the Act;

**11. Regulation 7A inserted**

After regulation 7 insert:

**7A. Performance of Coordinator's functions in relation to contracts**

- (1) In this regulation —  
*specified counterparty* means each of the following —
  - (a) a contractor of the Coordinator who is contracted to carry out work that relates to the statutory functions of the Coordinator;
  - (b) a subsidiary (as defined in the *Corporations Act 2001* (Commonwealth) section 9) of the Coordinator;
  - (c) a scheme participant;
  - (d) an entity involved in the collection, sorting, transporting or processing of containers.
- (2) In performing its functions under section 47Z of the Act, the Coordinator must ensure that each contract the Coordinator enters into with a specified counterparty requires the specified counterparty's compliance in all

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material respects with all applicable legislation including, without limitation, the *Occupational Safety and Health Act 1984*.

**12. Regulation 9 replaced**

Delete regulation 9 and insert:

**9. Performance of Coordinator's functions in relation to recycling**

- (1) In performing its functions under section 47Z(2)(g) of the Act in relation to ensuring arrangements are in place for recycling containers, the Coordinator must approve persons as persons to whom containers may be sold for recycling (each an ***approved recycler***).
- (2) The Coordinator may cancel the approval of a person as an approved recycler.
- (3) The Coordinator must determine, and publish on its website —
  - (a) the manner and form in which an application to be an approved recycler is to be made and the process for applying; and
  - (b) the criteria that must be met for a person to be approved as an approved recycler, and the grounds on which approval of a person as an approved recycler may be refused; and
  - (c) the grounds on which a person's approval as an approved recycler may be cancelled.
- (4) If the Coordinator refuses to approve a person as an approved recycler, or cancels a person's approval as an approved recycler, the Coordinator must provide the person with written reasons for the decision.

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- (5) The CEO may review any decision made by the Coordinator in relation to approved recyclers.

**9A. Performance of Coordinator's functions in relation to verification and recycling**

In performing its functions under section 47Z(2)(g) and (j) of the Act and regulation 7(2)(a), (b) and (ba), the Coordinator may establish an online platform on which parties can enter into arrangements to buy and sell containers for recycling (a *common transaction platform*).

**13. Regulation 12 amended**

- (1) In regulation 12(1) delete “(the *Minimum Network Standards Code*).” and insert:

(the *Minimum Network Standards*).

- (2) In regulation 12(2) delete “a Minimum Network Standards Code,” and insert:

Minimum Network Standards,

- (3) In regulation 12(3) delete “Minimum Network Standards Code.” and insert:

Minimum Network Standards.



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**14. Regulation 15 amended**

- (1) In regulation 15(2)(a) delete “3 months” and insert:

4 months

- (2) In regulation 15(5) delete “matter” (each occurrence) and insert:

information

**15. Regulation 16 amended**

- (1) In regulation 16(3)(a)(i) delete “6 weeks” and insert:

2 months

- (2) After regulation 16(4) insert:

(5) If the Coordinator is required to publish some or all of a quarterly report on its website, the Coordinator may request the Minister for permission to delete from the report information that is of a commercially sensitive nature and the Minister may, if the Minister is satisfied that the information is commercially sensitive, grant the permission.

(6) If any information has been deleted under subregulation (5), the publication of the report must contain a statement, at the place in the report where the information was deleted, detailing the reasons for the deletion.

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**16. Regulation 17 amended**

In regulation 17(1) delete “14 days” and insert:

20 business days

**17. Regulation 20 amended**

In regulation 20:

(a) in paragraph (a) delete “supply agreements;” and insert:

a scheme agreement;

(b) in paragraph (d) delete “Account.” and insert:

Account;

(c) after paragraph (d) insert:

(e) any amount that, as part of the transition from a person who is, or has been, the Coordinator or an Interim Coordinator to a person who subsequently is to, or has, become the Coordinator or an Interim Coordinator (the ***incoming Coordinator***), is transferred into the Scheme Account or otherwise received by the incoming Coordinator.

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**18. Regulation 24 amended**

After regulation 24(f) insert:

- (fa) the Coordinator has breached the terms of an agreement that the Coordinator has with the State; or
- (fb) the Coordinator has not complied with a condition attached to its appointment; or

**19. Regulation 27 amended**

After regulation 27(e) insert:

- (ea) the Coordinator has breached the terms of an agreement that the Coordinator has with the State; or

**20. Part 3 Division 7 inserted**

At the end of Part 3 insert:

**Division 7 — Transitional arrangements**

**32A. Compliance with transition out plan**

- (1) In this regulation —  
*transition out plan* means a plan that is required to be prepared under an agreement between the State and a person who is, or has been, the Coordinator or an Interim Coordinator, that includes arrangements for the transition and handover from that person to a person who subsequently is to, or has, become the Coordinator or an Interim Coordinator.

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- (2) If the Coordinator or a person who has previously been a Coordinator or an Interim Coordinator has prepared a transition out plan, they must comply with the latest version of that plan that has been approved by the State.

Civil penalty: \$25 000.

**32B. Transition costs**

- (1) This regulation applies if —
- (a) a company has been notified of its appointment to the office of Coordinator of the scheme under section 47X of the Act or a person has been appointed to perform the functions of the Coordinator under section 47ZT of the Act (each the *incoming Coordinator*); and
  - (b) the incoming Coordinator will be replacing an existing Coordinator or Interim Coordinator (the *outgoing Coordinator*).
- (2) Except to the extent that section 47ZU(3) of the Act requires otherwise, the incoming Coordinator is liable to pay the outgoing Coordinator the costs incurred by the outgoing Coordinator in relation to the transition and handover from the outgoing Coordinator to the incoming Coordinator.
- (3) The costs referred to in subregulation (2) are, for the purposes of section 47O of the Act, costs of administering the scheme.

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**21. Regulation 34 amended**

Delete regulation 34(1) and insert:

- (1) Each of the following provisions is a civil penalty provision —
- (a) regulation 4B(2);
  - (b) regulation 4F(2);
  - (c) regulation 4F(3);
  - (d) regulation 4G(3);
  - (e) regulation 4H(2);
  - (f) regulation 4H(3);
  - (g) regulation 4J(1);
  - (h) regulation 4K(1);
  - (i) regulation 4L(2);
  - (j) regulation 10(4);
  - (k) regulation 11;
  - (l) regulation 12(3);
  - (m) regulation 14;
  - (n) regulation 32A(2).

**22. Regulation 36 amended**

Delete regulation 36(4).

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**23. Part 4 Division 2 inserted**

At the end of Part 4 insert:

**Division 2 — Miscellaneous**

**39. Performance audit by CEO**

- (1) If an audit is carried out under section 47ZZE(1)(a) of the Act or pursuant to a direction under section 47ZZE(1)(b) of the Act, the Coordinator must grant to any person carrying out the audit entry to the Coordinator's premises for the purposes of carrying out the audit.
- (2) The Coordinator is liable for any expenses incurred by the CEO in carrying out an audit under section 47ZZE(1)(a) of the Act and the CEO may recover the expenses from the Coordinator in a court of competent jurisdiction as a debt due to the State.

**40. Disclosure of information by CEO**

- (1) The CEO may publish any of the following —
  - (a) any information, document or thing that the Reporting Code specifies may be published by the CEO;
  - (b) any information, document or thing that the Reporting Code specifies must be published by the Coordinator;
  - (c) any information, document or thing provided to the Minister in response to a direction given by the Minister under section 47ZP of the Act;
  - (d) any information, document or thing provided or produced to an authorised person under section 47ZZC(2) of the Act.

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- (2) If the CEO proposes to publish any information, document or thing referred to in subregulation (1)(c) or (d) (the *relevant matter*), the CEO must give the person who provided or produced the relevant matter written notice that —
- (a) states that the CEO proposes to publish the relevant matter; and
  - (b) invites the person to make written submissions to the CEO about why some or all of the relevant matter is confidential and should not be published; and
  - (c) states the period (which must be at least 20 business days after the notice is given to the person) within which written submissions may be made (the *submission period*).
- (3) The CEO may publish the relevant matter —
- (a) at any time after the person gives the CEO written notice that the person does not intend to make any submissions or any further submissions; or
  - (b) if the person does not give the notice referred to in paragraph (a) during the submission period — after the end of the submission period.
- (4) The CEO must consider any written submissions made by the person within the submission period.
- 41. Transition period for displaying refund mark on containers**
- (1) In this regulation —
- transition day* means the day that is 24 months after the appointed day for section 47E of the Act.

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- (2) Before the transition day, a person does not commit an offence against section 47E(2) of the Act by reason only that the container used for a beverage product does not bear a refund mark.

N. HAGLEY, Clerk of the Executive Council.

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