

TASMANIA

**CONTAINER REFUND SCHEME REGULATIONS
2023**

STATUTORY RULES 2023, No. 93

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CONTAINER REFUND SCHEME REGULATIONS 2023

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Container Refund Scheme Act 2022*.

Dated 19 December 2023.

B. BAKER
Governor

By Her Excellency's Command,

R. C. JAENSCH
Minister for Environment and Climate Change

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the *Container Refund Scheme Regulations 2023*.

2. Commencement

- (1) Except as otherwise provided in this regulation, these regulations take effect on the day on which

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section 10 of the *Container Refund Scheme Act 2022* commences.

- (2) Regulation 5 takes effect 18 months after the day on which section 10 of the *Container Refund Scheme Act 2022* commences.

3. Interpretation

In these regulations –

Act means the *Container Refund Scheme Act 2022*.

PART 2 – CONTAINERS

4. Exempt containers

For the purposes of the definition of ***exempt container*** in section 3 of the Act, each of the following classes of containers is prescribed as a class of containers to which the Act does not apply:

- (a) containers that –
 - (i) are made of glass; and
 - (ii) are marketed as being able to be refilled, with a beverage or substance, by the person who first supplied the container, the beverage or the substance;
- (b) containers designed to hold less than 150 millilitres of liquid;
- (c) containers designed to hold more than 3 litres of liquid;
- (d) containers that have held one or more of the following beverages:
 - (i) animal milks that are unsweetened and unflavoured;
 - (ii) plant-based milk substitutes that are unsweetened and unflavoured;

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- (iii) concentrated juice, whether fruit juice or vegetable juice or a combination of both, that is intended to be diluted before consumption;
 - (iv) concentrated cordial, or similar concentrate, that is intended to be diluted before consumption;
- (e) containers that have held a beverage that –
 - (i) is included, as a tonic or supplement, on the Australian Register of Therapeutic Goods within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth; and
 - (ii) is supplied with a label, or accompanying document, that specifies –
 - (A) a recommended maximum dose for the beverage; and
 - (B) a statement that the beverage is for medicinal or therapeutic purposes;
- (f) containers that have held one litre or more of –
 - (i) flavoured milk; or

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-
- (ii) flavoured plant-based milk substitutes; or
 - (iii) a beverage that is comprised of at least 90% fruit juice or vegetable juice, or a combination of both;
 - (g) containers that –
 - (i) are made of cardboard; and
 - (ii) have an interior lined with plastic or foil, or both; and
 - (iii) have held one litre or more of –
 - (A) wine; or
 - (B) a beverage that contains wine and has an alcohol by volume content of less than 10%; or
 - (C) water, including mineral water and spring water;
 - (h) containers that –
 - (i) are made of plastic or foil, or both; and
 - (ii) have held 250 millilitres or more of wine;
 - (i) containers that –
 - (i) are made of glass; and

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- (ii) are sold while containing only the following beverages:
 - (A) wine;
 - (B) liquor;
 - (C) an alcoholic beverage produced by distillation.

5. Prescribed marks for containers

- (1) In this regulation –

GS1 Standard means the *GS1 General Specifications* standard published, from time to time, by the not-for-profit international organization known as GS1 AISBL, registered in Belgium on 13 July 2012 with the Enterprise Number 419.640.608;

GTIN barcode means a product barcode that –

- (a) contains a Global Trade Item Number (*GTIN*) encoding; and
 - (b) complies with the GS1 Standard.
- (2) For the purposes of the definition of ***prescribed marks*** in section 3 of the Act, an approved container is required to display at least one of the following barcodes on the exterior of the container:
- (a) a GTIN barcode that is unique to the class of approved containers, being a

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class of approved containers that contain a specific volume of a specific beverage, of which the approved container is a member;

(b) a product barcode that –

(i) is unique to the class of approved containers of which the approved container is a member; and

(ii) complies with the EAN/UPC symbology specifications for EAN-13, EAN-8, UPC-A or UPC-E barcodes, as set out in the GS1 Standard; and

(iii) complies with the dimensional specifications and symbol placement guidelines that apply to the class of data carriers to which the barcode belongs, as set out in the GS1 Standard; and

(iv) does not duplicate a GTIN barcode or another product barcode; and

(v) is not less than 8, but not more than 14, numbers in length.

(3) In addition to a barcode prescribed under subregulation (2), for the purposes of the definition of ***prescribed marks*** in section 3 of the Act, an approved container is required to display the following information, on the exterior of the container, in a manner that is clear and legible:

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10c refund at collection depots/points in
participating State/Territory of purchase

6. Refund amount for containers

For the purposes of section 7 of the Act, the refund amount prescribed for a single approved container is 10 cents.

7. Applications for approval of containers

For the purposes of section 12(1) of the Act, an application is made in the prescribed manner if –

- (a) the application is made to the Secretary in an approved form; and
- (b) the application contains information on each of the following:
 - (i) details of the unique barcode for the container;
 - (ii) the physical external dimensions of the container;
 - (iii) the type of beverage for which the container is, or is to be, used;
 - (iv) details of each material used in the container and each colour of those materials, if relevant;
 - (v) the lid and opening mechanism of the container;

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- (vi) any other information specified on the application as being required.

8. Applications to transfer container approvals

- (1) If a person who holds the approval of an eligible container, under section 12 of the Act, ceases to be the first responsible supplier for the container, the person may apply to the Secretary for the approval, of the container, to be transferred to a person specified in the application.
- (2) An application under subregulation (1) must be –
 - (a) in an approved form; and
 - (b) signed by –
 - (i) the person who holds the approval to be transferred; and
 - (ii) the person who will hold the approval if the transfer is granted.
- (3) After receiving an application under subregulation (1), the Secretary may request further information from the applicant before making a decision on the application.
- (4) After receiving an application under subregulation (1) in respect of the transfer of the approval of a container, the Secretary may –
 - (a) grant the transfer of the approval; or

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- (b) refuse to grant the transfer of the approval.
- (5) If the Secretary grants the transfer of the approval of a container under subregulation (4) –
 - (a) the Secretary must notify the applicant for the transfer and the person to whom the approval is to be transferred –
 - (i) that the transfer has been granted; and
 - (ii) the date on which the transfer takes effect; and
 - (iii) the conditions that apply to the approval to which the transfer relates; and
 - (b) if necessary, the Secretary must ensure that the list of approved containers, kept under section 12(3) of the Act, is updated to correctly reflect the information relating to the container.
- (6) If the Secretary refuses to grant the transfer of the approval of a container under subregulation (4), the Secretary must notify, in writing, the applicant for the transfer and the person to whom the approval was proposed to be transferred –
 - (a) that the Secretary has refused to grant the transfer; and
 - (b) the reasons for the refusal; and

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(c) that section 40 of the Act applies to the refusal to grant the transfer.

- (7) If the Secretary refuses to grant the transfer of the approval of a container, the approval for that container is revoked unless otherwise specified by the Secretary in the written notification given under subregulation (6) in respect of the refusal.

9. Prescribed maximum amount of containers

For the purposes of section 30(1)(b)(i) of the Act, the prescribed maximum amount of containers, to be deposited by one person at a single time, is 1 500 containers.

10. Refunds not payable for containers in certain circumstances

- (1) For the purposes of section 31(1)(f) of the Act, a refund amount is not payable in respect of an approved container if –
- (a) the container has held, or is or has been wholly or partially covered in, a substance that has the potential to cause harm to persons, property or the environment because of one or more of the following:
 - (i) the chemical properties of the substance;
 - (ii) the physical properties of the substance;

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- (iii) the biological properties of the substance; or
 - (b) the container is broken; or
 - (c) the container is missing a part of the container that is not intended, by its manufacturer, to be removed from the container.
- (2) For the purposes of section 31(1)(f) of the Act, a refund amount is not payable in respect of an approved container at a container refund point if the person depositing the container –
- (a) is depositing a number of approved containers, that includes the container, in an amount that exceeds the maximum amount of containers prescribed under regulation 9; and
 - (b) intends to claim an amount, in substitution of the refund amount, that is not calculated on the specific number of approved containers deposited.

PART 3 – SCHEME PARTICIPANTS

11. First responsible supplier

- (1) For the purposes of section 5(1)(b) of the Act, persons specified in agreements as the first responsible supplier for a container are a class of persons prescribed as the first responsible suppliers in respect of the containers if –
 - (a) the agreement complies with this regulation; and
 - (b) the agreement has been approved, in writing, by the scheme coordinator before the agreement comes into force.
- (2) An agreement referred to in subregulation (1) complies with this regulation in respect of an eligible container if –
 - (a) the agreement is only between –
 - (i) the person who first supplies, or is intending to first supply, the container in the State; and
 - (ii) the person specified in the agreement as the first responsible supplier for the container; and
 - (b) the person specified in the agreement as the first responsible supplier for the container is also employed, or engaged, in relation to the manufacturing, bottling or distribution of the container; and

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- (c) the agreement specifies –
 - (i) the date on which the agreement is to come into force, being a date that is after the approval of the agreement by the scheme coordinator as required under subregulation (1)(b); and
 - (ii) each eligible container to which the agreement relates; and
 - (iii) the date on which the agreement ceases to have effect, if the agreement is not sooner terminated; and
- (d) the agreement complies with any relevant guidelines published by the Minister under regulation 15 in respect of the form and content of such an agreement; and
- (e) the agreement includes a statement that the person specified in the agreement as the first responsible supplier for an eligible container understands and agrees that, on the date on which the agreement comes into force, the person –
 - (i) is the first responsible supplier under the Act for the container while the agreement is in force; and
 - (ii) must have in place a supply agreement, with the scheme

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coordinator, in respect of the
container.

- (3) The scheme coordinator may refuse to approve an agreement referred to in subregulation (1) if the scheme coordinator is satisfied, on reasonable grounds, that –
- (a) the agreement does not meet the requirements of subregulation (2); or
 - (b) the person specified in the agreement as the first responsible supplier is unlikely to meet the financial obligations required as first responsible supplier.
- (4) As soon as is practicable after an agreement that meets the requirements of this regulation has come into force, the person specified in the agreement as the first responsible supplier for an eligible container is to provide a copy of the agreement, that is signed by all the parties to the agreement, to the scheme coordinator.
- (5) For the avoidance of doubt, the person specified in the agreement under this regulation as the first responsible supplier for an eligible container is taken, on the date on which the agreement comes into force, to be the first responsible supplier under the Act for the container.
- (6) For the avoidance of doubt, a person who first supplies an eligible container in the State is prescribed, under section 5(2)(c) of the Act, as not the first responsible supplier for the container while an agreement under this regulation is in force in respect of the container.

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12. Reporting requirement

For the purposes of section 21(d) and section 22(e) of the Act, it is a condition of each agreement to be a scheme coordinator or a network operator that the relevant scheme coordinator or network operator must provide regular reports –

- (a) as specified in the terms of the agreement; and
- (b) in accordance with the guidelines published by the Minister under regulation 15.

13. Circumstances where material recovery facility operator may send container to landfill

For the purposes of section 26(4), an approved container, for which a material recovery facility operator has received a refund under the scheme, may enter landfill if the material recovery facility operator has proven, to the satisfaction of the Secretary, that –

- (a) the container has become unsuitable to recycle in circumstances that were unforeseen by, or out of the control of, the material recovery facility operator; and
- (b) all reasonable steps were taken by the material recovery facility operator to prevent, or reduce the effect of, those circumstances on the containers; and

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- (c) after those circumstances occurred –
 - (i) the container cannot be made suitable for recycling; or
 - (ii) it is impracticable for the container to be made suitable for recycling.

14. Refund point operator may request proof of identity

For the purposes of section 30(2) of the Act, the prescribed circumstances where a refund point operator may require a person to provide proof of the person's identity include where the refund point operator believes, on reasonable grounds, that the person is not who the person claims to be when requesting the refund.

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Part 4 – Miscellaneous

PART 4 – MISCELLANEOUS

15. Guidelines

The Minister may publish such guidelines as the Minister considers necessary for one or more of the following reasons:

- (a) to provide technical guidance to scheme participants as to how to ensure compliance with the Act and the scheme;
- (b) to identify the roles or functions of scheme participants under the Act and the scheme;
- (c) to inform the public on the details of the scheme and the roles or functions of each scheme participant;
- (d) for such other reason that the Minister considers necessary in respect of the Act or the scheme.

16. Transitional arrangements

- (1) For the avoidance of doubt, the scheme does not apply to an approved container that is held at a material recovery facility, or another facility operated by a material recovery facility operator, immediately before the commencement of section 10 of the Act.
- (2) For the purposes of determining the number of approved containers held at a material recovery facility, or another facility, operated by a

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material recovery facility operator immediately before the commencement of section 10 of the Act, the scheme coordinator –

(a) may appoint a person –

(i) to undertake an audit of each material recovery facility, or other facility, operated by the material recovery facility operator; and

(ii) to provide the scheme coordinator with a report, within 10 days after this regulation commences, on the results of that audit; and

(b) is to pay the reasonable costs of a person appointed under paragraph (a) incurred in performing an audit, or preparing a report, under that paragraph.

(3) A scheme coordinator may only appoint a person under subregulation (2)(a) if the scheme coordinator is satisfied that the person –

(a) has the appropriate skills, and qualifications, to undertake an audit of a material recovery facility or other facility; and

(b) does not have a direct, indirect or perceived conflict of interest in relation to undertaking an audit, or preparing a report, in respect of a material recovery

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Part 4 – Miscellaneous

facility or material recovery facility operator.

- (4) A material recovery facility operator must comply with any reasonable request of a person appointed under subregulation (2)(a) in respect of a material recovery facility, or other facility, operated by the operator.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 50 penalty units.

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 27 December 2023.

These regulations are administered in the Department of Natural Resources and Environment Tasmania.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations provide for the following matters, in respect of the container refund scheme, for the purposes of the *Container Refund Scheme Act 2022*:

- (a) prescribing certain containers as being exempt from the scheme;
- (b) specifying who is the first responsible supplier under the scheme;
- (c) specifying the circumstances in which a refund is not payable under the scheme;
- (d) prescribing –
 - (i) the refund amount payable under the scheme in respect of a container; and
 - (ii) the marks required to be displayed on a container for a refund to be payable under the scheme; and

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- (iii) the maximum number of containers that may be deposited under the scheme at any one time;
- (e) prescribing certain requirements for scheme participants;
- (f) providing for guidelines to be published in respect of that Act and the scheme.