

Australian Capital Territory

# **Waste Management and Resource Recovery (Container Deposit Scheme) Amendment Regulation 2018 (No 1)**

**Subordinate law SL2018–9**

made under the

**Waste Management and Resource Recovery Act 2016**

## **EXPLANATORY STATEMENT**

---

### **Outline**

To combat the littering of empty beverage containers and increase opportunities for their recovery and recycling, the Territory is introducing a container deposit scheme where the community and beverage consumers can get a 10 cent refund for each used beverage container returned through a network of collection points to be located throughout the ACT. Beverage suppliers will be required to make financial contributions to fund the scheme.

This explanatory statement relates to the *Waste Management and Resource Recovery (Container Deposit Scheme) Amendment Regulation 2018 (No 1)* (Regulation). It is made under the *Waste Management and Resource Recovery Act 2016* (Act). It has been prepared to assist the reader and to help inform debate. It does not form part of the Regulation and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Regulation. It is not intended to be a comprehensive description of the Regulation. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the courts.

## **Overview of the regulation**

The purpose of the Regulation is to provide detail on the arrangements for a container deposit scheme which will start in the Territory on 30 June 2018 under the *Waste Management and Resource Recovery Amendment Act 2017*.

Section 128 of the *Waste Management and Resource Recovery Act 2016* provides a general regulation-making power to the Executive including that a regulation may:

- (a) exclude people or activities from the application of the provisions of the Act and,
- (b) create offences for contraventions of the regulations and fix penalties of not more than 40 penalty units for the offences.

The Regulation provides clear regulatory requirements to participants in the container deposit scheme. These requirements include indicating to the beverage industry:

- i) The types of containers and beverages which are, and are not, included in the container deposit scheme;
- ii) The refund marking which will be required to be printed on eligible beverage containers to indicate they are part of the scheme, and
- iii) The requirement to enter into an arrangement to make contributions to fund the scheme.

The regulation also provides requirements about the establishment of the scheme and container collection network including:

- i) The process to apply for, and be granted approvals for collection network arrangements and collection point arrangements;
- ii) The suitability requirements for the organisations appointed to run the scheme; and
- iii) The offences for failing to ensure collected containers are recycled.

The regulation ensures the community has access to the scheme including setting requirements for:

- i) Collection points to be in convenient and accessible locations and able to accept containers and provide refunds in an efficient way;
- ii) A ramp-up over time of the minimum number of collection points, and the minimum opening hours and days to ensure they are accessible to the community;
- iii) Involvement of charities and employment opportunities for people with disabilities in delivering the scheme; and
- iv) The refund amount being set at 10 cents per eligible container.



## **Section 24G**                      **Network arrangement**

This provision specifies matters which must form part of a network arrangement between the scheme coordinator and the network operator, the two key participants which operate the scheme.

### **Division 4A.2**

## **Sections 24H to 24M**            **Application and approval of network arrangements**

These sections detail the regulatory processes and considerations under which the Waste Manager, who is the authority administering the Act and Regulation, can receive, assess, approve or refuse an application for approval of network arrangements. It also provides regulatory requirements if the Waste Manager wishes to amend, suspend or revoke such an approval. All of the decision powers available to the Waste Manager are reviewable decisions listed in Schedule 2 of the Regulation.

### **Division 4A.3**

## **Sections 24N to 24P**            **Performance targets**

These sections set performance requirements for the network operator in deploying a network of convenient, efficient and accessible container collection points throughout the Territory. The requirements include the number of collection points, their locations across the various residential and industrial catchments in the Territory, their opening hours, and their accessibility to mobility impaired persons.

### **Division 4A.4**

## **Sections 24Q to 24V**            **Application and approval of collection point arrangements**

These sections detail the regulatory processes and considerations under which the Waste Manager, who is the authority administering the Act and Regulation, can receive, assess, approve or refuse an application for approval of collection point arrangements. It also provides regulatory requirements if the Waste Manager wishes to amend, suspend or revoke such an approval. All of the decision powers available to the Waste Manager are reviewable decisions listed in Schedule 2 of the Regulation.

## **Division 4A.5**

### **Section 24W                      Disposal of containers**

This provision creates offences where a material recovery facility operator claims a refund for a container processed at its facility, and then disposes of the container to landfill. One of the key objectives of the scheme is to increase the recycling of beverage containers, so creating offences for disposing of containers to landfill where a refund is claimed is an important function of the Regulation. The offence under section 24W(1) is a strict liability offence and its human rights implication are discussed in detail in the Regulatory Impact Statement.

### **Section 24X                      Information on public register**

This provision requires the scheme coordinator to provide an indication to the public in real time, whether or not a collection point is available to receive containers and pay a refund.

### **Section 24Y                      Reports by scheme coordinator**

This provision prescribes specific matters for which the scheme coordinator is required to report upon to the Minister each financial year. These reports will assist the Minister to assess the performance of the scheme against its objectives.

## **Division 4A.6**

### **Sections 24Z, 24ZA              Acceptance of containers and payment of refunds**

These provisions give collection point operators a defence against failing to provide a refund for returned containers in circumstances where the containers are contaminated, unrecognisable or pose a safety risk to collection point operators. It also allows for refunds to be donated to a charity of the claimant's choice, or paid within two business days instead of instantaneously (eg. via electronic funds transfer).

### **Sections 24ZB to 24ZD      Refund declarations**

These provisions require collection point operators to collect certain records where people present large numbers of containers for refund. The provisions require collection point operators to collect information about the identity of the person, the number of containers claimed for refund, the date and time of the claim(s), and information about the source and ownership of the containers. This information is contained in a Refund Declaration.

The collection and storage of a person's identity in a refund declaration engages the right to privacy protected under section 12 of the *Human Rights Act 2004* so that a person has right to protection of personal information. The requirement to provide proof of identity and a refund declaration is likely to be an infrequent occurrence, as the threshold number of containers to trigger this requirement is 500 containers initially rising to 1500 containers after 30 June 2019 (section 29ZB).

This requirement is designed to guard against fraudulent claims for large refund amounts. Potential fraudulent claimants will be less likely to engage in fraud given the requirement to provide this information means they will be accountable and identifiable for any fraudulent activity. Such personal information will also assist the investigation of any alleged fraudulent refund claims.

#### Privacy protection

To ensure such personal information is collected, stored and, when appropriate, destroyed so as to protect the right to privacy, it will be handled by collection point operators in accordance with the Territory Privacy Principles in the *Information Privacy Act 2014*.

To ensure this occurs, section 24T requires the Waste Manager, when deciding on whether to approve a collection point, to consider if the collection point arrangement requires each party, the network operator and the collection point operator, to comply with the Territory Privacy Principles.

This oversight function by the Territory's Waste Manager will ensure the protection of personal information by collection point operators accords with the requirements of the Territory Privacy Principles.

## **Part 5A**

### **Sections 26A to 26C      Reviewable decisions**

These sections create new reviewable decisions in Schedule 2 of the Regulation to ensure that any decision powers in the Regulation are able to be reviewed by the party impacted by the decision in the ACT Civil and Administrative Tribunal.