



Western Australia

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

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Defined terms

Waste Avoidance and Resource Recovery Act 2007

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

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) 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 — when the *Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019* section 6 comes into operation.

3. Terms used

- (1) In these regulations —

business plan has the meaning given in section 47ZH(1) of the Act;

collection network means the infrastructure and arrangements for returning and processing containers under the scheme, including —

- (a) the network of refund points within the State; and
- (b) the arrangements for the transport of containers from refund points; and

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- (c) the processing facilities that prepare containers for recycling;

container recovery rate, for a period, means the proportion of containers returned or collected during the period, expressed as a percentage, worked out using the formula —

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

where —

- R is the container recovery rate for the period;
- C is the number of containers returned to a refund point during the period;
- M is the number of containers collected or received by an MRF operator during the period (other than containers returned to a refund point);
- S is the number of containers used for beverage products that were first supplied in the State during the period;
- E is the number of scheme containers (as defined in section 47P(1) of the Act) used for beverage products that were exported (as set out in section 47P(2) of the Act) by a person during the period;

executive officer has the meaning given in section 47U(1) of the Act;

minor beverage supplier has the meaning given in section 47U(1) of the Act and subregulation (3);

performance target means each of the requirements in the following regulations —

- (a) regulation 10(4);
- (b) regulation 11;
- (c) regulation 12(3);

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Reporting Code means a document prepared by the CEO, as amended from time to time, setting out the information that the Coordinator is required to include on its website or in a report under Part 3 Division 3;

scheme participant has the meaning given in section 47S(1) of the Act.

- (2) For the purposes of the definition of **corresponding law** in section 47C(1) of the Act, each of the following laws is prescribed to be a law corresponding to the Act —
- (a) the *Environment Protection Act 1993* (South Australia) and any regulations made under that Act;
 - (b) the *Environment Protection (Beverage Containers and Plastic Bags) Act 2011* (Northern Territory) and any regulations made under that Act;
 - (c) the *Waste Avoidance and Resource Recovery Act 2001* (New South Wales) and any regulations made under that Act;
 - (d) the *Waste Management and Resource Recovery Act 2016* (Australian Capital Territory) and any regulations made under that Act;
 - (e) the *Waste Reduction and Recycling Act 2011* (Queensland) and any regulations made under that Act.
- (3) For the purposes of the definition of **minor beverage supplier** in section 47U(1) of the Act, a beverage supplier who is likely to supply less than 300 000 beverage products in a financial year (including, for the avoidance of doubt, beverage products that are not supplied in the State), is prescribed to be a minor beverage supplier for that financial year.
- (4) If a term has a meaning in section 47C of the Act, it has the same meaning in these regulations.

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Part 2 — Return of containers

4. Eligibility criteria for refund point operators

- (1) The Coordinator must not enter into a refund point agreement with a person unless —
 - (a) the person is an eligible individual or, in the case of a company, each director of the company is an eligible individual; and
 - (b) the Coordinator is satisfied that the person is a fit and proper person to operate a refund point.
- (2) In determining whether a person is a fit and proper person to operate a refund point, the Coordinator must have regard to the following factors —
 - (a) whether the person has previously been required to stop operating a refund point;
 - (b) whether the person has breached a term of a refund point agreement and if so, the seriousness of that breach;
 - (c) whether the person has contravened a provision of the Act;
 - (d) whether something equivalent to paragraphs (a) to (c) has occurred under a corresponding law.
- (3) Nothing in subregulation (2) limits the circumstances in which a person may be considered not to be a fit and proper person to operate a refund point.

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Part 3 — Coordinator of the scheme

Division 1 — Appointment of Coordinator of the scheme

5. Approval of board members

The Minister may refuse to approve a person under section 47V(3)(a)(iv) or (e)(iv) of the Act only if the Minister is satisfied that —

- (a) the person is not a fit and proper person to be a director of the Coordinator; or
- (b) the person is biased or could be perceived to be biased in favour of or against any scheme participant; or
- (c) the person does not have adequate relevant experience to be a director and, in the case of an approval under section 47V(3)(a)(iv) of the Act, the chair of the Coordinator; or
- (d) the appointment of the person would not support the achievement of the objects of Part 5A of the Act.

6. Conditions of appointment of Coordinator

- (1) For the purposes of sections 47Y(1) and 47ZQ(1)(a) of the Act, the Minister may attach a condition to an appointment under section 47X(1) of the Act, or amend a condition that applies to the appointment, only if the Minister is satisfied that the content of the condition or the condition as amended relates to the achievement of 1 or more of the objects of Part 5A of the Act.
- (2) If the Minister attaches a condition to an appointment or amends a condition, the Coordinator must publish a copy of the condition or the condition as amended on its website.

7. Functions of Coordinator

- (1) In carrying out any of its functions the Coordinator must endeavour to achieve the objects of Part 5A of the Act.

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- (2) For the purposes of section 47Z(3)(a) of the Act, the Coordinator has the following additional functions —
- (a) to ensure arrangements are in place for verifying that all collected containers and returned containers (as those terms are defined in section 47M of the Act) are reused or recycled;
 - (b) to ensure arrangements are in place for verifying the number of containers that have been collected through the kerbside collection of waste that has been separated for the purpose of recycling;
 - (c) to ensure arrangements are in place to verify the eligibility of any first responsible supplier of a beverage product claiming to be a minor beverage supplier;
 - (d) to identify and report to the CEO on persons suspected of committing an offence under section 47E(2) of the Act, and to attempt to ensure that the persons comply with the requirements of that section.
- (3) The engagement of a person on contract, or the use of a subsidiary, by the Coordinator to perform certain tasks for the Coordinator does not affect any function or obligation of the Coordinator under the Act or these regulations (including, without limitation, an obligation on the Coordinator to provide, publish or report information).

8. Performance of Coordinator's functions in relation to refund points

- (1) In performing its functions under section 47Z(2)(d) and (e) of the Act, the Coordinator must have regard to the following —
- (a) the economic viability of each proposed refund point, including (without limitation) the impact of the refund point on the collection network including the proximity of any existing refund points;
 - (b) whether the network of refund points in a community is appropriate for that community.

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- (2) If the Coordinator refuses to enter into a refund point agreement with a person, the Coordinator must provide the person and the CEO with written reasons for the refusal.

9. Performance of Coordinator's function in relation to supply agreements

In performing its function under section 47Z(2)(a) of the Act, the Coordinator must not enter into a supply agreement in relation to a beverage product unless the Coordinator is satisfied that ongoing, effective and appropriate arrangements are available for the container used for the beverage product to be collected, sorted and recycled.

Division 2 — Coordinator performance targets

10. Container recovery rate: preliminary years

- (1) In this regulation —
preliminary year means each of the following periods —
- (a) the period starting on the appointed day for section 47E of the Act and ending on 30 June 2020;
 - (b) the financial year starting on 1 July 2020;
 - (c) the financial year starting on 1 July 2021.
- (2) The Coordinator must, for each preliminary year, decide a percentage it proposes to achieve as the container recovery rate for the preliminary year.
- (3) The Coordinator must publish on its website the percentage decided under subregulation (2) for each preliminary year on or before —
- (a) for the preliminary year starting on the appointed day for section 47E of the Act — a time directed by the CEO; and
 - (b) for the preliminary year starting on 1 July 2020 — 1 June 2020; and

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(c) for the preliminary year starting on 1 July 2021 —
1 June 2021.

- (4) For each preliminary year, the Coordinator must achieve a container recovery rate of at least the percentage published under subregulation (3) for the preliminary year.

Civil penalty: \$25 000.

11. Container recovery rate: other years

The Coordinator must achieve a container recovery rate of at least 85% for —

- (a) the financial year starting on 1 July 2022; and
(b) each later financial year.

Civil penalty: \$25 000.

12. Accessibility and coverage of refund points

- (1) The CEO may prepare, and amend from time to time, a document that sets out the minimum standards for refund point locations and hours of operation (the *Minimum Network Standards Code*).

- (2) If the CEO prepares a Minimum Network Standards Code, the CEO must review the document to ensure the minimum standards in the document are adequate —

- (a) as soon as practicable after the 6 month anniversary of the appointed day for section 47E of the Act; and
(b) after that, at intervals of not more than 6 months for the first 3 years after the appointed day for section 47E of the Act; and
(c) after that, at intervals of not more than 1 year.

- (3) The Coordinator must comply with each requirement contained in the Minimum Network Standards Code.

Civil penalty: \$25 000.

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the Coordinator) and ending on the following 30 June;
and

- (b) each subsequent financial year; and
 - (c) if the Coordinator ceases occupying the office of Coordinator of the scheme (or, in the case of an Interim Coordinator, ceases performing the functions of the Coordinator) on a day other than 30 June, the period ending on that day that has not been covered by a previous annual report.
- (2) The annual report must —
- (a) be given to the Minister within 3 months after the end of the period the report covers; and
 - (b) be given to the Minister in a manner approved by the Minister; and
 - (c) include the information that the Reporting Code specifies must be included in an annual report; and
 - (d) be signed by the chief executive officer (however described) and the chair of the Coordinator.
- (3) The Minister may cause a copy of an annual report given to the Minister to be laid before each House of Parliament.
- (4) The Coordinator may request the Minister to delete from a copy of an annual report to be laid before a House of Parliament information that is of a commercially sensitive nature and the Minister may, if the Minister is satisfied that the information is commercially sensitive, comply with the request.
- (5) A copy of an annual report from which any matter has been deleted under subregulation (4) must contain a statement, at the place in the report where the matter was deleted, detailing the reasons for the deletion.

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- (ii) if another period after the end of the period the report covers is agreed between the Coordinator and the Minister — within the agreed period;
 - and
 - (b) be given to the Minister in a manner approved by the Minister; and
 - (c) include the information that the Reporting Code specifies must be included in a quarterly report; and
 - (d) be signed by the chief executive officer (however described) of the Coordinator.
- (4) The Minister may, by notice in writing, require the Coordinator to publish some or all of the quarterly report on its website.

17. Monthly report

- (1) The Coordinator must, within 14 days after the end of each month, give the Minister a report about its operations for that month (a *monthly report*).
- (2) The monthly report must —
 - (a) be given to the Minister in a manner approved by the Minister; and
 - (b) include the information that the Reporting Code specifies must be included in a monthly report; and
 - (c) be signed by the chief executive officer (however described) of the Coordinator.

18. Website reporting

- (1) The Coordinator must publish on its website a report (a *website annual report*) about its operations for —
 - (a) the period beginning on the day on which the Coordinator commences occupying the office of Coordinator of the scheme (or, in the case of an Interim Coordinator, commences performing the functions of

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- (b) any amount paid or loaned to the Coordinator by the State on the condition that it be placed in the Scheme Account or that the amount is scheme funds;
- (c) in respect of the sale of containers by the Coordinator or any of its subsidiaries to a person for the purpose of the containers being recycled, any amount retained by the Coordinator or its subsidiaries at the conclusion of the sale process;
- (d) any interest earned on money in the Scheme Account.

Division 5 — Ministerial directions

21. Term used: direction

In this Division —

direction means a direction given to the Coordinator under section 47ZP(1) of the Act.

22. Content of direction

- (1) The Minister may give a direction requiring the Coordinator to —
 - (a) take a specified action; or
 - (b) cease a specified activity; or
 - (c) provide a report or plan to the Minister addressing the matters specified in the direction.
- (2) The Minister may amend a direction only if the amendment —
 - (a) extends the time by which the direction must be complied with; or
 - (b) is, in the opinion of the Minister, necessary to correct a clerical mistake, an unintentional error or omission or a misdescription of any person, thing or matter referred to in the direction; or
 - (c) is, in the opinion of the Minister, a minor amendment that does not materially change the direction.

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25. Process for giving direction

- (1) This regulation applies if —
 - (a) the Minister proposes to give a direction; and
 - (b) regulation 26 does not apply.
- (2) The Minister must give the Coordinator a written notice about the proposed direction that —
 - (a) states the proposed direction; and
 - (b) states the grounds for the proposed direction; and
 - (c) states the facts and circumstances that form the basis for the grounds; and
 - (d) invites the Coordinator to make written submissions to the Minister about why the proposed direction should not be given; and
 - (e) states the period (which must be at least 14 days after the notice is given to the Coordinator unless a shorter period is agreed by the Minister and the Coordinator) within which written submissions may be made (the *submission period*).
- (3) The Minister may give the proposed direction —
 - (a) at any time after the Coordinator gives the Minister written notice that the Coordinator does not intend to make any submissions or any further submissions; or
 - (b) if the Coordinator does not give the notice referred to in paragraph (a) during the submission period, after the end of the submission period.
- (4) The Minister —
 - (a) must consider any written submissions made by the Coordinator within the submission period; and
 - (b) may consider any other information the Minister considers relevant.

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- (5) The Minister must give the Coordinator written notice if the Minister decides not to give the proposed direction.

26. Urgent direction may be given immediately

- (1) This regulation applies if —
- (a) the Minister proposes to give a direction; and
 - (b) the Minister is satisfied that the circumstances warrant the immediate giving of the direction to ensure —
 - (i) the safety of persons; or
 - (ii) that the efficiency or functionality of the collection network is not materially adversely affected; or
 - (iii) that the public confidence in the scheme is not adversely affected.
- (2) The Minister may give the proposed direction immediately.

Division 6 — Amendment, administration and revocation

27. Grounds for appointing administrator or revoking appointment of Coordinator

Unless requested by the Coordinator under regulation 28(1), the Minister may appoint an administrator under section 47ZQ(1)(b) of the Act or revoke the appointment of the Coordinator under section 47ZQ(1)(c) of the Act only if the Minister is satisfied that —

- (a) the Coordinator is not, or is no longer, an eligible company; or
- (b) an executive officer of the Coordinator is not, or is no longer, an eligible individual; or
- (c) the Coordinator is not, or is no longer, suitable to occupy the office of Coordinator of the scheme; or
- (d) the Coordinator has not complied with a condition attached to its appointment; or

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- (e) the Coordinator has failed to comply with a direction given by the Minister under section 47ZP(1) of the Act; or
- (f) the Coordinator has not achieved, or is unlikely to achieve, a performance target; or
- (g) any information given or statement made by the Coordinator to the CEO, Minister, public or any scheme participant, either before or after the Coordinator's appointment was false or misleading; or
- (h) the Coordinator has misused scheme funds (as defined in section 47ZL of the Act); or
- (i) the Coordinator has committed an offence under the Act or the *Environmental Protection Act 1986* or under any regulations made under either Act.

28. Process for amendment, administration or revocation by request

- (1) The Coordinator may request the Minister to, by taking the action stated in the request, exercise a power under section 47ZQ(1) of the Act (the *requested action*).
- (2) If the requested action is to amend the conditions that apply to the appointment of the Coordinator or attach new conditions, the request must state the proposed amendment or proposed new conditions.
- (3) The request must —
 - (a) be in writing; and
 - (b) state the reasons for the request.
- (4) The Minister may ask the CEO to assess the Coordinator's request and prepare a report about the request.
- (5) The Minister must give the Coordinator written notice —
 - (a) that the Minister has taken the requested action; or

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(b) that the Minister has decided not to take the requested action.

(6) A written notice under subregulation (5)(a) must specify the day the requested action takes effect.

29. Process for amendment, administration or revocation by Minister's initiative

(1) This regulation applies if —

(a) the Minister proposes, of the Minister's own initiative, to exercise a power under section 47ZQ(1) of the Act (the **proposed action**), other than the power to revoke the conditions that apply to the appointment of the Coordinator or the power to remove an administrator; and

(b) regulation 30 does not apply.

(2) The Minister must give the Coordinator a written notice about the proposed action that —

(a) states the proposed action and, if the proposed action is to amend the conditions that apply to the appointment of the Coordinator or attach new conditions, states the proposed amendment or proposed new conditions; and

(b) states the grounds for the proposed action; and

(c) states the facts and circumstances that form the basis for the grounds; and

(d) invites the Coordinator to make written submissions to the Minister about why the proposed action should not be taken; and

(e) states the period (which must be at least 14 days after the notice is given to the Coordinator unless a shorter period is agreed by the Minister and the Coordinator) within which written submissions may be made (the **submission period**).

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- (3) The Minister may ask the CEO to prepare a report about the submissions made by the Coordinator during the submission period.
- (4) The Minister may take the proposed action or, if the proposed action is to revoke the appointment of the Coordinator, appoint an administrator to the Coordinator (the *alternative action*) —
 - (a) at any time after the Coordinator gives the Minister written notice that the Coordinator does not intend to make any submissions or any further submissions; or
 - (b) if the Coordinator does not give the notice referred to in paragraph (a) during the submission period, after the end of the submission period.
- (5) The Minister —
 - (a) must consider any written submissions made by the Coordinator within the submission period; and
 - (b) must consider any report prepared by the CEO under subregulation (3); and
 - (c) must consider the objects of Part 5A of the Act and whether the proposed action or the alternative action would assist in the achievement of those objects; and
 - (d) may consider any other information the Minister considers relevant.
- (6) The Minister must give the Coordinator written notice —
 - (a) that the Minister has taken the proposed action or the alternative action; or
 - (b) that the Minister has decided not to take the proposed action.
- (7) A written notice under subregulation (6)(a) must specify the day the proposed action or the alternative action takes effect.

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30. Immediate appointment of administrator

- (1) This regulation applies if —
 - (a) the Minister proposes, of the Minister's own initiative, to appoint an administrator under section 47ZQ(1)(b) of the Act; and
 - (b) the Minister is satisfied that the circumstances warrant the immediate appointment of the administrator to ensure —
 - (i) the safety of persons; or
 - (ii) that the public confidence in the scheme is not adversely affected.
- (2) The Minister may appoint an administrator under section 47ZQ(1)(b) of the Act immediately.
- (3) The appointment of the administrator has effect until the Minister removes the administrator or the administrator's appointment otherwise ends.
- (4) The Minister must give the Coordinator a written notice at the time of the appointment of the administrator that —
 - (a) states that an administrator has been appointed; and
 - (b) states the grounds for the appointment; and
 - (c) states the facts and circumstances that form the basis for the grounds; and
 - (d) states the reasons for the immediate appointment; and
 - (e) invites the Coordinator to make written submissions to the Minister about why the administrator should not have been appointed or why the administrator should be removed; and
 - (f) states the period (which must be at least 14 days after the notice is given to the Coordinator unless a shorter period is agreed by the Minister and the Coordinator) within which written submissions may be made (the *submission period*).

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- (5) The Minister may ask the CEO to prepare a report about the submissions made by the Coordinator during the submission period.
- (6) Within 28 days after the end of the submission period, the Minister must decide whether to —
 - (a) retain the administrator; or
 - (b) remove the administrator and, if the administrator is removed, whether to appoint a different administrator.
- (7) The Minister —
 - (a) must consider any written submissions made by the Coordinator within the submission period; and
 - (b) must consider any report prepared by the CEO under subregulation (5); and
 - (c) must consider the objects of Part 5A of the Act and whether the decision the Minister proposes to make would assist in the achievement of those objects; and
 - (d) may consider any other information the Minister considers relevant.
- (8) The Minister must give the Coordinator written notice of the Minister's decision.

31. Publication of amendment, administration or revocation

If the Minister exercises a power under section 47ZQ(1) of the Act —

- (a) the Coordinator must publish a copy of the written notice of the exercise of the power on the Coordinator's website; and
- (b) the CEO may publish a copy of the written notice of the exercise of the power on the Department's website.

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32. Interim Coordinator and Scheme Account

- (1) If an Interim Coordinator is appointed, section 47ZN(2) of the Act is modified so that a Scheme Account must be established by the Interim Coordinator before the Interim Coordinator commences performing the functions of the Coordinator.
- (2) If an Interim Coordinator is appointed, section 47ZN(3) of the Act is modified so that the Interim Coordinator is required to maintain the Scheme Account in accordance with the Act and the governance plan most recently approved by the CEO under section 47ZM(4) of the Act, as amended by any amendments that have effect under section 47ZM of the Act and with any modifications determined by the CEO.

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Part 4 — Miscellaneous

Division 1 — Civil penalty provisions

33. Terms used

In this Division —

civil penalty has the meaning given in section 47ZZ(1) of the Act;

civil penalty order means an order under regulation 35(2);

civil penalty provision has the meaning given in section 47ZZ(1) of the Act;

court means —

- (a) for a civil penalty provision other than sections 47ZP(3) and 47ZZE(6) of the Act, the Magistrates Court; or
- (b) for sections 47ZP(3) and 47ZZE(6) of the Act, the District Court.

34. Civil penalty provisions prescribed

- (1) Each of the following provisions is a civil penalty provision —
 - (a) regulation 10(4);
 - (b) regulation 11;
 - (c) regulation 12(3);
 - (d) regulation 14.
- (2) The amount that may be demanded from or imposed on a person who contravenes a provision referred to in subregulation (1) is the amount following the expression “Civil penalty:” below that provision.

35. Court may make orders if person has contravened civil penalty provision

- (1) The CEO may apply to the court for an order under subregulation (2).

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- (2) If the court is satisfied that a person has contravened a civil penalty provision, the court may make any orders as it thinks appropriate against or in relation to the person, including either or both of the following —
 - (a) an order that the person pay to the CEO an amount not exceeding the civil penalty for that civil penalty provision;
 - (b) an order against the person for the purpose of preventing any further contravention of the civil penalty provision.
- (3) An order under subregulation (2)(b) —
 - (a) may be subject to any terms and conditions the court thinks appropriate; and
 - (b) may be revoked at any time.
- (4) An interim order may be made under subregulation (2)(b) pending final determination of the application.

36. Warning notice in respect of application for civil penalty order

- (1) The CEO cannot make an application for a civil penalty order against or in relation to a person unless —
 - (a) the CEO has given a warning notice to the person; and
 - (b) the time period specified in the notice within which the alleged contravention must be rectified has expired; and
 - (c) the person has not rectified the alleged contravention to the satisfaction of the CEO.
- (2) A warning notice must —
 - (a) identify the civil penalty provision that the CEO believes has been, or is being, contravened; and
 - (b) describe the conduct that comprises the alleged contravention; and
 - (c) request an explanation for the alleged contravention; and
 - (d) request that the alleged contravention be rectified and specify the time period within which it must be rectified.

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Division 1 Civil penalty provisions

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- (3) The time period referred to in subregulation (2)(d) must be reasonable having regard to the seriousness of the alleged contravention and the risk of adverse impacts on the environment or on the public confidence in the scheme.
- (4) An application for a civil penalty order may be made no later than 6 years after the alleged contravention.

37. Proceedings for civil penalty order

- (1) The Coordinator may intervene in an application for a civil penalty order against or in relation to a person other than the Coordinator.
- (2) The standard of proof to be applied in determining whether there has been a contravention of a civil penalty provision is the standard observed in civil proceedings.
- (3) The court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

38. Enforcement of civil penalty order

- (1) A person must comply with a civil penalty order made against or in relation to the person.
Penalty for this subregulation: a fine of \$10 000.
- (2) The CEO may enforce a civil penalty order under regulation 35(2)(a) as if it were an order made in civil proceedings against the person to recover a debt due from the person.
- (3) The debt arising from the order is taken to be a judgment debt.
- (4) An amount received by the CEO from the enforcement of a civil penalty order must be credited to the WARR Account.

M. INGLIS, Clerk of the Executive Council.

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Defined terms

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
business plan	3(1)
collection network.....	3(1)
container recovery rate.....	3(1)
executive officer	3(1)
minor beverage supplier.....	3(1)
performance target	3(1)
Reporting Code	3(1)
scheme participant	3(1)
preliminary year	10(1)
Minimum Network Standards Code	12(1)
annual report	15(1)
initial period.....	16(1)
quarter	16(1)
quarterly report	16(2)
monthly report.....	17(1)
website annual report	18(1)
direction	21
submission period	25(2), 29(2), 30(4)
requested action	28(1)
proposed action	29(1)
alternative action.....	29(4)
civil penalty.....	33
civil penalty order	33
civil penalty provision.....	33
court	33