

# NSW FIRST SUPPLY APPROACH

## **Introduction**

### **NSW Container Deposit Scheme**

The NSW Government's Container Deposit Scheme will commence on 1 December 2017. The Scheme will be the largest litter reduction initiative introduced by the State, and will help meet the Premier's goal of reducing the volume of litter in NSW by 40 per cent by 2020. Beverage container litter currently makes up around 44 per cent of all litter in the State. A network of Collection Points will open across NSW to receive the eligible containers and provide the refund amount to consumers. Under the Scheme, empty 150 millilitre to 3 litre beverage containers will be eligible for a 10 cent refund when presented to an approved Collection Point in NSW. Container materials that may be eligible for a refund include:

- PET
- HDPE
- glass
- aluminium
- steel
- liquid paperboard.

### **Supplier obligations for first supplies**

Under the *Waste Avoidance and Resource Recovery Act 2001* (as amended by the *Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016*) ('the Act'), a supplier must not supply, or offer to supply, a beverage in a container to any person unless the following conditions are satisfied:

- a Supply Arrangement is in force between the supplier and the Scheme Coordinator. in respect of a class of containers to which the container belongs; and
- a container approval is in force in respect of that class of containers.

This prohibition is limited in its application to the first supply in NSW of a beverage in a container.

'Supply' includes supply by sale or otherwise in the course of carrying on a business. So, a business giving away beverages in containers as part of a promotion will also be taken to be supplying beverages in a container for the purposes of the Scheme.

### **Container approvals**

Beverage suppliers may apply to the EPA for the necessary container approvals in a form approved by the EPA and an application fee will apply. The EPA may determine an application for a container approval by granting the container approval to the supplier. The EPA may also refuse to grant a container approval for the reasons contained in the Act or on any grounds prescribed by the regulations. A supplier who makes the first supply of beverages in a container only needs to ensure that a container approval is in force that applies to the relevant container. The required approval can be held by the supplier or by another supplier.

### **Supply Arrangements**

The Scheme Coordinator will enter into, and give effect to, a standard form Supply Arrangement with each supplier (who undertakes the first supply in NSW of a beverage in a container) requiring the supplier to:

- report on the volume of its own first supplies of beverages in containers in NSW, by material type; and
- pay contributions towards the cost of the management, administration and operation of the Scheme, based on the volume of the supplier's first supplies as a proportion of the total volume of all eligible containers first supplied in NSW.

Existing suppliers will need to enter into Supply Arrangements by 1 October 2017 to meet the November invoicing deadlines.

### Supplier obligations for all supplies

Suppliers will also be prohibited from supplying beverages in containers that do not bear appropriate refund marking. This prohibition applies to all supplies, not just the first supply, of beverages in containers in NSW and will come into effect 24 months after the refund marking is published in the Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017 ('the Regulation'). The refund marking is expected to be published in late 2017.

### Approach to First Supply

For the purposes of applying the requirements of the Act, "first supply in the State" is an expression that is used in the Act. The EPA takes the interpretation that the supply of a container occurs in the location where the recipient of the supply receives the container. This may depend upon the particular arrangements in place between suppliers and recipients. Where the recipient collects containers from the supplier's premises, the supply will have occurred at the supplier's premises. Where the supplier delivers (or organises the delivery of) the containers to the recipient's premises, the supply will take place at the recipient's premises. Accordingly, the first supply in NSW will occur the first time a recipient receives a container in NSW. If any stock subsequently moves out of NSW, the reported supplied volumes would need to be adjusted by the first supplier.

### Entities captured under this approach

It is anticipated that the following types of entities could be captured under the First Supply arrangements:

- Manufacturers within NSW who supply to distributors, retailers or consumers in NSW
- Any entity within NSW that supplies into NSW or any entity outside NSW that exports to NSW. This may encompass:
  - manufacturers
  - distributors
  - wholesalers
  - retailers.

Logistics and transport companies that physically move a container into or within NSW on behalf of a manufacturer or importer (and do not own the container) do not undertake the supply of the container under this approach.

The following section provides examples of how the first supply approach will be interpreted under various scenarios.

### Examples to demonstrate the first supply approach

The following illustrative scenarios demonstrate the First Supply approach. The scenarios provided are not intended to be exhaustive.

The First Supply approach is intended to apply consistently to the physical product regardless of the manufacturing arrangements such as brand owner, private label or contract manufacturing, or contract packing arrangements.

Category	Scenario	First supply point	First Supplier
Manufactured in NSW	Manufactured* in NSW, supplied to a distributor/retailer** in NSW	Supply from manufacturer to distributor/retailer	Manufacturer
	Manufactured/bottled in NSW, supplied by delivery to a distributor/retailer outside NSW	None (as no supply in NSW)	None (as no supply in NSW)
	Manufactured/bottled in NSW, supplied to an airline or cruise ship catering in NSW	Supply from manufacturer to distributor/retailer	Manufacturer

<b>Manufactured outside NSW</b>	Manufactured outside NSW, supplied by delivery to a distributor/retailer in NSW	Supply from manufacturer to distributor / retailer	Manufacturer
	Manufactured outside NSW, supplied to a distributor outside NSW, distributor supplies by delivery to retailer in NSW	Supply from distributor to retailer	Distributor
	Manufactured/bottled outside NSW, supplied to a retailer outside NSW, retailer transports containers to NSW and sells them in NSW	Supply from retailer to consumer	Retailer
	Manufactured outside NSW, sold to retailer outside of NSW, retailer sells to consumer in NSW (via online, etc.)	Supply from retailer to consumer	Retailer

\* Manufacturing includes bottling or any other beverage production

\*\* Retailer also may include community groups, not-for-profits or organisations running promotions