



Suitable Eligible Container Determination Instrument

Victorian Container Deposit Scheme

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RECYCLING VICTORIA

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Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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Suitable Eligible Container Determination Instrument

This instrument sets out the process by which the Head, Recycling Victoria determines whether an eligible container is a suitable eligible container for the purposes of Victoria's Container Deposit Scheme (CDS Vic).

This instrument is made under section 99(4) of the *Circular Economy (Waste Reduction and Recycling) Act 2021* (CE Act).

This instrument should be read together with *the Suitable Eligible Container Determination Instrument*, made under section 98(3) of the CE Act.

Legislative framework and context

Part 6 of the CE Act establishes Victoria's Container Deposit Scheme (CDS Vic).

Under the CE Act, the Head, Recycling Victoria has a range of functions in relation to CDS Vic including:

- to determine the process for deciding whether a person is the first supplier of an eligible container
- to determine the process for deciding whether an eligible container is a suitable eligible container
- to determine whether a person is a first supplier under section 98
- to determine applications for the approval of containers under section 99
- to publish guidelines under section 112.

The *Circular Economy (Waste Reduction and Recycling) (Container Deposit Scheme) Regulations 2022* (Regulations) provide further detail about administration and regulation of CDS Vic.

Under section 98(1) of the CE Act, anyone who supplies or intends to supply an eligible container in Victoria must notify the Head, Recycling Victoria.¹¹

On receiving the notification, the Head, Recycling Victoria must determine whether the person is or will be a first supplier of the eligible container in CDS Vic (see the *First Supplier Determination Instrument*).

Under section 99(1) of the CE Act, a first supplier may make an application to the Head, Recycling Victoria for the approval of an eligible container as a suitable eligible container.

¹¹ "Prescribed persons" are excluded from this requirement (section 98(1)). As of 1 August 2023, there are no prescribed persons in the Regulations.

On receiving the application, the Head, Recycling Victoria must determine whether the container is a suitable eligible container.

The Head, Recycling Victoria also has the power to vary or revoke these determinations (sections 98(5) and 99(6) of the CE Act.

Section 110(1)(b) of the CE Act makes it an offence for a person to supply a beverage in a container if it is not approved as a suitable eligible container.

The Head, Recycling Victoria may delegate these functions and powers. For the purposes of this instrument, the term Recycling Victoria is used to refer to actions and decisions of the Head, Recycling Victoria, or their delegate.

Submitting container applications

The Scheme Coordinator, VicReturn, is responsible for maintaining the Container Deposit Scheme Registry (CDS Registry), where prospective first suppliers can apply to join CDS Vic and, once determined to be eligible, submit applications for container approvals.

First suppliers seeking assistance as to how to access and complete CDS Registry requirements should contact VicReturn directly.

The CDS Registry includes a publicly available list of all approved suitable eligible containers and will be updated on a regular basis. First Suppliers can check the CDS Registry before making an application, and all currently approved containers will be visible to the public.

The CDS Registry can be accessed [here](#).

When is an application required?

The Regulations outline the criteria for an eligible container.

There can be multiple first suppliers for the same eligible container. For example, 2 or more distributors may have arrangements to import the same beverage type from an interstate or overseas manufacturer.

If a container is already approved, a first supplier does not need to apply to have the container approved, even if that first supplier did not make the original application. The CDS Registry will link multiple first suppliers (using a unique identifier) to each approved container that they seek to supply into the CDS Vic.

Applications

This section outlines the process by which Recycling Victoria will accept and determine an application from a first supplier for the approval of an eligible container as a suitable eligible container.

Container approval application

To make an application, a person must be a first supplier (that is, a person that Recycling Victoria has determined to be a first supplier under section 98 of the CE Act).

The first supplier must have also entered into a Supply Agreement with the Scheme Coordinator.

A first supplier will submit an application to have a container determined to be a suitable eligible container via the CDS Registry.

As a first supplier, an applicant will have a profile in the CDS Registry. An application will therefore automatically include information identifying the first supplier (such as a unique First Supplier identifier, business name, Australian Business Number and contact details).

Applicants are required to provide details about the following container attributes:

- Product group – the beverage being supplied.
- Material type – container composition.
- Barcode.
- Container colour.
- Label type, including the material composition of the label.
- Container lid material type.
- Container metrics.

A separate application must be made for an eligible container that has one or more container attributes that are different.

Applicants are also required to provide a declaration that:

- the person making the application is authorised to make the application
- the applicant will provide more information to Recycling Victoria if required
- the information provided is accurate and truthful.

Confirmation of receipt and completeness check

Once a container application is submitted, the applicant will receive an email from the CDS Registry confirming that the application has been submitted.

Recycling Victoria will also be notified that an application has been submitted for determination.

Recycling Victoria will review the application to confirm the application contains the required information.

If an application does not contain the required information, including the required confirmation and declarations, Recycling Victoria will advise the applicant and request that they provide more information.

Incomplete applications will not be considered until all required information is provided.

Assessment criteria

Recycling Victoria will apply the following criteria in considering applications:

- The application is made by a first supplier.
- Information about container attributes has been validated by the Scheme Coordinator (at point of application) and Recycling Victoria.
- Any prescribed factors.
- The potential contribution to the state's greenhouse gas emissions and potential impact of climate change; relevant to the proposed decision, under section 17 of the *Climate Change Act 2017* (CC Act).

Climate Change Act 2017 obligations on Recycling Victoria

This section outlines how Recycling Victoria will consider the potential impacts of climate change and greenhouse gas emissions when determining the approval of an eligible container as a suitable eligible container.

Section 17 of the CC Act requires the Head, Recycling Victoria to consider climate change when making decisions relating to the approval of suitable eligible containers.

Broadly, Recycling Victoria must consider:

- the potential impacts of climate change relevant to the proposed decision
- the potential contribution to the state's greenhouse gas emissions of the proposed decision

- any guidelines issued by the Minister under section 18 of the CC Act.

At the time of publication of this Instrument, no guidelines have been made under section 18 of the CC Act. If made, Recycling Victoria must have regard to such guidelines and will update this instrument as appropriate.

Guiding principles

CDS Vic supports reduced greenhouse gas emissions by promoting recycling of beverage containers.

Recycling Victoria must consider the potential impacts of climate change relevant to the decision of determining suitable eligible containers under the CE Act. This includes evaluating biophysical, economic, environmental, health, and social impacts, both short-term and long-term.

Recycling Victoria has identified the following principles that are relevant to climate change impacts associated with beverage containers:

- The impact of container, lid, and label material type selection on contribution to or mitigation of climate change impacts.
- Full lifecycle climate change impacts of container production, transport, and use.
- Reducing climate change impacts through reduced environmental impacts of containers, for example through avoidance of waste and pollution, reuse, and recycling.

How Recycling Victoria will apply these principles

When deciding whether a type of container is a suitable eligible container, Recycling Victoria will consider:

- whether the container and component parts are made of materials that are easily recyclable and have established recycling markets
- whether the container contains recycled content that mitigates the use of virgin material and reduces energy use
- whether the container contains hazardous materials or substances harmful to the environment or human health.

Determination

Application meets the criteria

If the application meets the criteria, the Head, Recycling Victoria will determine the container is a suitable eligible container for the purposes of CDS Vic.

First suppliers should note that container applications may be approved subject to any conditions that the Head, Recycling Victoria (or their delegate) considers appropriate to ensure that the objectives of CDS Vic, the CE Act and the CC Act are being met.

Recycling Victoria will consider each application on its merits and only consider imposing conditions on a case-by-case basis.

Recycling Victoria will advise first suppliers of any proposed conditions prior to finalising the approval.

Recycling Victoria will complete a decision record and the CDS Registry will be updated accordingly.

Application does not meet the criteria

If the application does not meet the criteria, Recycling Victoria will write to the applicant to advise that Recycling Victoria intends to determine that the container is not a suitable eligible container and will outline the reasons.

An applicant will have 10 business days to respond and provide any additional information for Recycling Victoria to consider before proceeding to make the decision.

If the application then meets the criteria, Recycling Victoria will determine that the container is a suitable eligible container and will issue a notice of the decision.

If after considering further information provided by the applicant the container still doesn't meet the criteria, Recycling Victoria will determine that the container is not a suitable eligible container and will outline the reasons.

Incomplete application

If an application does not contain all mandatory information, or the applicant doesn't provide further information as requested, the application will remain in a pending state in the CDS Registry.

Variation or revocation of suitable eligible container determinations

Under section 99(6) of the CE Act, Recycling Victoria may vary or revoke an approval of a suitable eligible container.

Recycling Victoria may vary the approval of a suitable eligible container on its own initiative or at the request of the first supplier, in the following circumstances:

- The characteristics of the suitable eligible container have changed, requiring a variation to the details of the container approval – for instance changes in the size, volume or a change in material composition.
- To add or remove a condition on the approval.

Applications to vary an approval can be submitted via the CDS Registry.

Recycling Victoria may consider a variation if it becomes aware of a material change to the characteristics of a suitable eligible container.

Recycling Victoria has the power under section 99(6) of the CE Act to review and, in certain circumstances, revoke previously approved containers for CDS Vic. These circumstances could include the following:

- Further updates to the legislative framework governing eligible containers regulatory requirements.
- The material is no longer suitable for CE Act objectives.
- Where other jurisdictions have banned the container as being unsuitable for container deposit schemes.
- Changes to other legislation including the CC Act that may impact the CE Act.

Recycling Victoria acknowledges that a decision to revoke an approval for a suitable eligible container may have significant impact on a first supplier's operations and envisages that such a decision would be rare.

If Recycling Victoria intends to revoke an approval for a suitable eligible container, all first suppliers who have previously indicated their intention in the CDS Registry to supply that container, or who have had approval for that class of container previously granted, will be contacted, and advised of the intention to revoke the approval and the rationale for the decision.

Affected first suppliers will be given 10 business to show cause why the container approval should not be revoked.

Recycling Victoria will consider those representations and then provide all affected first suppliers with confirmation of the Head, Recycling Victoria's decision.

Changes to suitable eligible containers

First suppliers must make a new application for any changes to a suitable eligible container in certain circumstances, including:

- when the label or barcode changes
- when the beverage being supplied changes
- when the container metrics – height, weight, or largest diameter – change
- when the container materials, including the container lid, are changed
- when the container colour changes.

First supplier right to external review of determination

Part 8 of the CE Act outlines the decisions that Recycling Victoria makes are subject to external review by the Victorian Civil and Administrative Tribunal (VCAT).

Where Recycling Victoria has made a determination to refuse, vary or revoke a container application, the first supplier has the right to seek a review by VCAT.

Further details of how to request a review by VCAT can be found [here](#).

Review of this instrument

Recycling Victoria may update this instrument from time to time to ensure that it continues to support the efficient operation of the CDS Vic and meets Recycling Victoria's regulatory objectives.

A review of this instrument will be undertaken after 12 months of the instrument's operation to consider any lessons learned through the CDS Vic operations or to respond to changes in the legislative framework.

