



First Responsible Supplier Guidelines

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Powers of Coordinator

WA Return Recycle Renew Limited (**WARRRL**) has been appointed to the position of Coordinator of the Western Australian container deposit scheme established pursuant to Part 5A of the *Waste Avoidance and Resource Recovery Act 2007 (Act)*.

Pursuant to **section 47Z(3)(a)** of the Act and regulation 7(2)(cb) of the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulations 2019 (Regulations)*, one of the functions of the Coordinator is to publish guidelines to assist people in identifying the person that is the first responsible supplier under section 47D of the Act. These are those guidelines.

First responsible supplier approach

Obligations of first responsible suppliers

Several sections of the Act relate to 'first responsible suppliers' and they are referenced hereunder.

The combination of these sections mean suppliers must:

- a) enter into a supply agreement with the Coordinator (WARRRL) in order to continue to supply beverages (as defined in the Act) into Western Australia (WA);
- b) only supply beverages in containers that have been approved in accordance with the Act and bear required refund marks and barcodes; and
- c) contribute their proportionate share of the costs of the scheme in accordance with the supply agreement.

Section 47B(b) states “if a beverage is to be supplied in a container, various conditions must be met, including a supply agreement being in force that requires a contribution to the costs of the scheme (including the costs of refund amounts paid under the scheme)”.

The template supply agreement will be prepared by the Coordinator (WARRRL) and is subject to approval by the State. The supply agreement will be consistent for every beverage supplier.

Section 47D(1) of the Act provides that, unless the regulations state otherwise, the **first responsible supplier** of a beverage product is

- a) the person who first supplies the beverage product in the State; or
- b) the person who, under the regulations, is taken to be the first responsible supplier of the beverage product.

Section 47C of the Act defines **supply** as:

- a) to supply, by way of sale or otherwise, in the course of carrying on a business; or
- b) to supply free of charge for a commercial or promotional purpose,

but does not include a transaction or class of transactions prescribed by the regulations not to be a supply;

Subject to the regulations, a supply of a beverage product is **in the State** if:

- a) the beverage product is received in the State (whether or not the supplier is located in the State); or
- b) under the regulations, it is taken to be in the State.

Section 47E(2) of the Act states a person who is the first responsible supplier of a beverage product commits an offence when the beverage product is first supplied in the State unless, at that time –

- a) a supply agreement is in force between the person and the Coordinator in relation to the beverage product; and
- b) a container approval that applies to the beverage product is in force (whether or not it is held by the person); and

- c) the container used for the beverage product bears a refund mark and a barcode that complies with the requirements prescribed by the regulations.

Container approval

The material types of containers that are the subject of the scheme include plastic and glass bottles, paper-board cartons, and steel and aluminium cans between 150 millilitres and three litres. A detailed list of covered and excluded beverage containers is available on the website of the Department of Water and Environmental Regulation (DWER).

A first responsible supplier of beverage products in WA that are subject to the scheme may apply to the Chief Executive Officer of DWER (CEO) for the necessary container approvals by lodging a container approval application, including product specifications, with WARRRL through the online business portal.

Under regulation 3J of the Regulations, the CEO may grant a container approval that applies to a beverage product only if satisfied that:

- a) the type of container used for the beverage product is capable of being recycled or re-used; and
- b) the labelling, and the proposed way of displaying the refund mark, on the type of container used for the beverage product does not affect the capability of the type of container to be recycled and will not contaminate the recycling stream; and
- c) a barcode that complies with the requirements prescribed for the purposes of section 47E(2)(c) of the Act (other than the requirement in regulation 3H(5)) has been allocated for the beverage product.

Under regulation 3K, the CEO may refuse to grant a container approval that applies to a beverage product if –

- a) an application for an equivalent approval has been refused, or an equivalent approval has been suspended or cancelled; or
- b) the type of container used for the beverage product is, while capable of being recycled or re-used, not suitable for recycling or re-use; or
- c) ongoing, effective and appropriate arrangements are not available for the type of container used for the beverage product to be collected, sorted and recycled or re-used.

A supplier who makes the first supply of beverages of a container in WA 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. A supplier can rely on the registration held by another party.

Refund mark

Regulation 3G provides that the refund mark must contain the words “10c refund at collection depots/points in participating State/Territory of purchase” in clear and legible characters.

However, pursuant to **Regulation 40**:

- a) before the **transition day**, a person does not commit an offence against section 47E(2) of the Act by reason only that the container used for a beverage product does not bear a refund mark; and
- b) the **transition day** is the day that is 24 months after the appointed day for section 47E of the Act..

Supply arrangement

WARRRL will enter into, and give effect to, a supply agreement with each first responsible supplier, requiring the first responsible supplier to:

- a) report on the volume of its own first responsible supplies of beverages in containers in WA, by material type; and
- b) pay contributions toward the cost of the management, administration and operation of the scheme, based

on the volume of the supplier's first supply as a proportion of the total volume of all eligible containers first supplied in WA.

Approach to first responsible supply

WARRRL has adopted a functional approach to the determination of where the first supply of eligible beverage products takes place in WA and considers that the supply of a container occurs in the location where the supplier makes the container available to the recipient. This may depend upon the arrangements in place between suppliers and recipients. Where the recipient collects containers from the supplier's premises, the supply will occur 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.

Entities captured under this approach

It is anticipated that the following types of entities will be first responsible suppliers and therefore be required to enter into supply agreements:

- Manufacturers within WA who supply to distributors, retailers or consumers within WA;
- Any entity outside of WA that supplies or exports into WA . This may encompass:
 - Manufacturers;
 - Distributors;
 - Wholesalers;
 - Importers; and
 - Retailers.

Section 47D(3) of the Act states unless the regulations provide otherwise, if a person (the transporter) only transports a beverage product between the supplier of the beverage product and the recipient of the beverage product, each of the following is not a supply of the beverage product —

- a) the transfer of the beverage product from the supplier to the transporter; or
- b) the transfer of the beverage product from the transporter to the recipient.

Therefore, logistics and transport companies that physically move a container into or within WA on behalf of a manufacturer or importer (and do not own the container) do not undertake the supply of the container.

The legislation does not treat corporate groups as a single entity. Accordingly, each separate company within a corporate group may potentially be a first responsible supplier under the Act and will need to have a separate supply agreement with WARRRL. This also means that a supply by one company within a corporate group to another company within the same corporate group will be a supply for the purposes of the legislation and the company making the supply could potentially be a first responsible supplier. However internal deliveries within the same company (for example a delivery from the manufacturing division to the distribution division) will not be supplies.

If a location in WA is used as a cross docking site for a supplier, then this supplier is unlikely to be a first responsible supplier.

Examples to demonstrate first responsible supply approach

The following illustrative scenarios demonstrate the first responsible supply approach. The scenarios provided are not intended to be exhaustive.

The first responsible 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 WA	Manufactured in WA, supplied to a distributor/ retailer/ importer in WA	Supply from manufacturer to distributor/ retailer/ importer	Manufacturer
	Manufactured in WA, supplied by delivery to a distributor/ retailer/ importer outside WA	None (as no supply in WA)	None (as no supply in WA)
	Manufactured/bottled in WA, supplied to an airline or cruise ship catering in WA	Supply from manufacturer to distributor/ retailer/ importer	Manufacturer

Category	Scenario	First supply point	First supplier
Manufactured outside WA	Manufactured outside WA, supplied by delivery to a customer in WA	Supply from manufacturer to customer	Manufacturer
	Manufactured outside WA, supplied to a distributor outside WA, distributor/ retailer/ importer supplies by delivery to customer in WA	Supply from distributor/ retailer/ importer to customer	Distributor/ retailer/ importer
	Manufactured outside WA, supplied to a distributor/ retailer/ importer outside WA, distributor/ retailer/ importer transports containers to WA and sells them to customer in WA	Supply from distributor/ retailer/ importer to customer	Distributor/ retailer/ importer
	Manufactured outside WA, sold to distributor/ retailer/ importer outside of WA, distributor/ retailer/ importer sells to consumer in WA (via online, etc.)	Supply from distributor/ retailer/ importer to consumer	Distributor/ retailer/ importer

Incoterms

By reference to the Incoterms published by the International Chamber of Commerce to the first responsible supplier approach gives the outcomes set out in the following table. In each case, if the supply point indicated in the third column is in WA, the supplier:

- has made a supply in WA, and
- will have made a first supply in WA if that supply is first in the supply chain that occurs in WA.

The table below represents where in general the delivery of the goods by the overseas supplier does not take place until the goods physically arrives in WA and therefore the first responsible supplier is not the WA importer.

Category	Description	Supply point
CPT	Supplier pays for carriage but risk transfers to the buyer upon handing the goods over to the first carrier.	Point at which goods are handed over to the first carrier
CIP	Supplier pays for carriage and insurance to named destination point but risk passes when the goods are handed over to the first carrier.	Point at which goods are handed over to the first carrier

DPU	Supplier pays for carriage and costs of the goods to the named destination, and unloads the goods. Risk passes when the goods have been unloaded. The supplier is not responsible for costs after unloading..	Place unloaded
DAP	Supplier pays for carriage to the named place except for costs related to import clearance and assumes all risks prior to the point that the goods are ready for unloading by the buyer.	Named place
DDP	Supplier is responsible for delivering the goods to the named place in the country of the buyer and pays all costs in bringing the goods to the destination including import duties and taxes.	Named place in the country of the buyer.

Similarly, the table below represents the circumstances where in general the delivery of the goods to the WA buyer takes place outside of WA and therefore the first responsible supplier is the WA importer.

Category	Description	Supply point
EXW	Supplier makes goods available for collection at its premises and buyer pays all transportation costs and bears the risks of bringing the goods to their final destination.	Supplier's premises.
FCA	Supplier hands over the goods into the disposal of the first carrier at the named place. Supplier pays for carriage to the named point of delivery and risk passes when the goods are handed over to the first carrier.	Named place.
FOB	Supplier delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards.	The vessel to which the goods are delivered. The location of the supply is the location of the vessel when the goods are delivered to it. It is irrelevant that the Supplier may pay for the freight.
CFR	Supplier delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The supplier must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.	The vessel to which the goods are delivered. The location of the supply is the location of the vessel when the goods are delivered to it.
CIF	Supplier delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The supplier must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. The supplier also contracts for insurance cover against the buyer's risk of loss of or damage to the goods during the carriage.	The vessel to which the goods are delivered. The location of the supply is the location of the vessel when the goods are delivered to it. It is irrelevant that the supplier pays for the freight and insurance because the risk has passed to the buyer and hence the buyer in effect has possession and the goods have been supplied to the buyer.
FAS	Supplier delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment. The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all costs from that moment onwards.	Alongside the vessel (wherever that is).

Contract bottler

A contract bottler is ordinarily not a first responsible supplier where they solely supply that product to one person.

Section 47D(4) of the Act states unless the regulations provide otherwise, if a person (the **contract bottler**) is engaged under a contract to make a beverage product or fill containers with a beverage for another person (the **contract counterparty**), in circumstances where the beverage product is manufactured solely for the contract counterparty, the transfer of the beverage product from the contract bottler to the contract counterparty following completion of the manufacturing process is **not** a supply.

Under **section 47D(5)** of the Act, the regulations may provide for circumstances in which a person is taken to be, or not to be a first responsible supplier. **Section 47D(6)** states that these circumstances may include where a person has entered into an agreement with another person as to who is to be the first responsible supplier of a beverage product.

Regulation 3E of the Regulations provides that the contract bottler and the contract counterparty can enter into an agreement where the contract bottler agrees to take on the responsibility of first responsible supplier, but only if the contract bottler and the contract counterparty do not expect that the contract bottler will make more than 300 000 beverage products (or fill more than 300 000 containers) for the contract counterparty in a financial year. In the absence of agreement the contract counterparty remains the first responsible supplier.

By **regulation 3E(3)**, and subject to a copy of the first responsible supply agreement being provided to the Coordinator (WARRRL), in relation to the first 300,000 beverage products the contract bottler makes (or the first 300,000 beverage products consisting of containers the contract bottler fills) for the contract counterparty, in each financial year, the contract bottler is taken to be the first responsible supplier.

This table gives examples of how this will operate in practice.

#	Scenario	Is the contract bottler the first supplier?
1.	Contract bottler transfers to the customer in WA a beverage product with the customer's labelling/branding that the bottler has manufactured and bottled. The total annual order is for 500,000 containers.	No. The contract bottler has manufactured a beverage in a bottle exclusively for that customer and the annual order is greater than 300,000 containers per annum.
2.	Contract bottler is contracted by the customer to bottle a beverage the bottler has manufactured in containers supplied by the customer according to the customer's specifications. Customer takes delivery of the finished product in WA. The total annual order is for 350,000 containers.	No. The contract bottler has manufactured a beverage in a bottle exclusively for that customer and the annual order is greater than 300,000 containers per annum.
3.	Contract bottler is contracted by the customer to manufacture a beverage according to customer's formula and to bottle the beverage in containers provided by the bottler according to the customer's specifications. It is a one off job lot of 10,000 containers and the contract bottler has entered into an agreement with the contract counterparty to be the first responsible supplier. Customer takes delivery of the finished product in WA.	Yes. The contract bottler has manufactured a beverage in a bottle exclusively for that customer but there is an agreement that the contract bottler be the first responsible supplier and the one

#	Scenario	Is the contract bottler the first supplier?
		off order is less than 300,000 containers per annum.
4.	Contract bottler supplies to several customers in WA a beverage product with the bottler's own labelling/branding that the bottler has manufactured and bottled.	Yes. The contract bottler has not supplied exclusively for a specific customer and the bottler owns the brand.

Provision 3E(5) of the Regulations provides that the contract bottler must notify the Coordinator if a first supplier agreement to which the contract bottler is a party ceases to be in force.