

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry and Science

Trans-Tasman Mutual Recognition Act 1997

Trans-Tasman Mutual Recognition Legislation Amendment (Tasmanian Container Deposit Scheme) Regulations 2023

Purpose and Operation

The *Trans-Tasman Mutual Recognition Act 1997* (the Act) gives effect to the mutual recognition principles adopted by the Commonwealth, State and Territory Governments of Australia and New Zealand relating to the sale of goods and the registration of occupations. By way of example, with respect to goods, the mutual recognition principles apply such that a good that can be sold legally in New Zealand may be imported and sold legally in Tasmania despite the regulatory standards that would otherwise apply to the good in Tasmania.

The Act enshrines the principle that goods legally sold in one jurisdiction can be legally sold in the others, without having to meet further requirements imposed by individual jurisdictions (where they differ in regulatory requirements). The Act also provides for exceptions to the mutual recognition principle, as well as provisions for permanent and temporary exemptions from the Act so that goods can be exempt from the Act. Schedule 2 of the Act lists laws relating to goods that are permanently exempt from the operation of the Act.

The *Trans-Tasman Mutual Recognition Legislation Amendment (Tasmanian Container Deposit Scheme) Regulations 2023* (the Regulations) amend Schedule 2 of the Act to permanently exempt the *Container Refund Scheme Act 2022* (Tas.) (the Container Refund Act), which establishes the Tasmanian Container Deposit Scheme (the Scheme) and any regulations or other instruments made under it, to the extent that they relate to the Scheme established by Part 2, from the operation of the Act.

The Container Refund Act received Royal Assent on 29 March 2022. The Container Refund Act will commence on a date to be proclaimed by the Governor which is expected to be in late 2023. The Scheme will play an important role in supporting the reduction of waste, boosting of recycling towards a ‘circular economy’ and improvement to the health of the environment in Tasmania.

Under the Scheme, eligible containers for sale in Tasmania need to display the prescribed details and be approved by the scheme coordinator. Each approved beverage container can be exchanged for a 10-cent refund at various container refund points throughout Tasmania as an incentive for consumers to return them. Approved containers would then be sent to a material recovery facility to be sorted and prepared for recycling. All eligible containers subject to a refund must be recycled and cannot be directed to landfill, with a penalty imposed for breaching this.

The Scheme is a split-responsibility governance model with a scheme coordinator, responsible for the administration and financial management of the Scheme, and a network operator, responsible for managing the network of refund points.

Amendment to the Act means that beverage containers imported into Tasmania from other States and Territories will have to comply with the Scheme when it commences in late 2023.

Further details of the Regulations are outlined in [Attachment A](#).

Authority

Subsection 45(3) of the Act provides that the Governor-General may make regulations amending Schedule 2. In accordance with subsection 45(4), a regulation may not be made for the purposes of section 45 unless each of the participating jurisdictions have endorsed the regulation. Subsection 43(1) provides that a jurisdiction endorses a regulation if the designated person for the jurisdiction publishes a notice in the official gazette of the jurisdiction setting out and endorsing the terms of the regulation before it is made. This condition has been met in respect to these Regulations as at 24 November 2023, with all participating jurisdictions endorsing the Regulations and publishing an official notice to that effect in their gazettes.

Consultation

The Regulations implement the decision of all jurisdictions to permanently exempt the Scheme from the operation of the Act.

The Department of Industry, Science and Resources consulted closely with the Tasmanian Government, the Commonwealth Department of the Prime Minister and Cabinet and with all jurisdictions on the gazettal of the Regulations.

Regulatory Impact

As part of this process, the Tasmanian Government developed a Regulatory Impact Statement (2021) which has been approved by the Office of Impact Analysis. The Regulatory Impact Statement (Office of Best Practice Regulation ID 44706) is included at the end of this Explanatory Statement.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is set out in [Attachment B](#).

Details of the *Trans-Tasman Mutual Recognition Legislation Amendment (Tasmanian Container Deposit Scheme) Regulations 2023*

Section 1 – Name of Instrument

This section provides that the title of the Regulations is the *Trans-Tasman Mutual Recognition Legislation Amendment (Tasmanian Container Deposit Scheme) Regulations 2023*.

Section 2 – Commencement

This section provides that the Regulations commence on the later of:

- (a) the start of the day after the Instrument is registered; and
- (b) immediately after the commencement of Part 2 of the *Container Refund Scheme Act 2022* (Tas.).

However, the provisions in Schedule 1 do not commence at all if the event mentioned in paragraph (b) does not occur.

Section 3 – Authority

This section provides that the Regulations are made under section 45 of the Act.

Section 4 – Repeal of this Instrument

This section provides that the Instrument is repealed on the day after Schedule 1 commences.

Section 5 – Schedules

This section provides a machinery clause that enables Schedule 1 to amend the Act and to operate according to its terms.

Schedule 1 – Amendments

Item 1 – Clause 9 of Schedule 2

Item 1 of Schedule 1 amends clause 9 of Schedule 2 of the Act to permanently exempt the Scheme from the Act by inserting the following:

Container deposit scheme

The following laws:

- (a) the *Container Refund Scheme Act 2022*;
- (b) regulations or other instruments made under that Act, to the extent that they relate to the container deposit scheme established by Part 2 of that Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Trans-Tasman Mutual Recognition Legislation Amendment (Tasmanian Container Deposit Scheme) Regulations 2023

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Trans-Tasman Mutual Recognition Legislation Amendment (Tasmanian Container Deposit Scheme) Regulations 2023* (the Regulations) is to permanently exempt the *Container Refund Scheme Act 2022* (Tas.), which establishes the Tasmanian Container Deposit Scheme (the Scheme) and any regulations or other instruments made under it, to the extent that they relate to the Scheme established by Part 2, from the operation of the *Trans-Tasman Mutual Recognition Act 1997*.

The purpose of the Scheme is to reduce waste, incentivise recycling and improve the environment in Tasmania. The Scheme prescribes that all containers subject to a refund must be recycled and cannot be directed to landfill, with a penalty applied for breaching this. This means that in order to obtain approval to supply a beverage in Tasmania, the relevant container is required to bear the approved refund marking after the transition date. Consumers will get a 10-cent refund when they take an empty eligible container to designated refund points.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Ed Husic MP

Minister for Industry and Science