



First Supplier 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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First Supplier Determination Instrument

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

This instrument is made under section 98(3) 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 99(4) of the CE Act.

It is an offence under section 110 of the CE Act to supply or offer to supply a beverage in a container into Victoria without a supply arrangement in place with the Scheme Coordinator and the container having been approved as a suitable eligible container.

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.

On receiving the notification, Recycling Victoria must determine whether the person is or will be a first supplier of the eligible container in CDS Vic.

Under the CE Act, the Head, Recycling Victoria can also make a determination about whether a container is a suitable eligible container (see *Suitable Eligible Container Determination Instrument*, made under section 99(4) of the CE Act).

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

The Head, Recycling Victoria may delegate these functions and powers.

For the purposes of this instrument, the term Recycling Victoria refers to actions and decisions of the Head, Recycling Victoria, or their delegate.

Who is a first supplier?

A first supplier is the entity that brings a beverage in an eligible container into the jurisdiction and supplies it for the first time.

The CE Act defines 'supply' as "supply in the course of business, whether by offer of sale or otherwise."

For the purposes of determining whether a person is a first supplier, the first supply of a beverage in an eligible container occurs in the location where the supplier makes the beverage available to a recipient in Victoria.

As such, the following types of entities could be a first supplier:

- Manufacturers, distributors, wholesalers, and retailers within Victoria who supply to distributors, retailers, or consumers in Victoria.
- Manufacturers, distributors, wholesalers, and retailers outside Victoria (including interstate or overseas) that exports into Victoria.

Multiple separate companies within corporate groups may each be first suppliers in their own right. For example, a supply by one company within a corporate group to another company within the same corporate group will be a supplier for the purposes of the legislation and could be a first supplier for the purposes of the CE Act.

However, a manufacturer that transfers containers between divisions within its company would generally not be considered a first supplier unless the containers are then supplied to another business within Victoria.

The following scenarios provide guidance about who is a first supplier.

Category	Scenario	First supply point	First supplier
Manufactured in Victoria	Manufactured* in Victoria, supplied to a distributor / retailer / exporter** in Victoria	Supply from manufacturer to distributor / retailer / exporter	Manufacturer
	Manufactured/bottled in Victoria, supplied by delivery to a distributor / retailer / exporter outside Victoria	None (as no supply in Victoria)	None (as no supply in Victoria)
	Manufactured/bottled in Victoria, supplied to an airline or cruise ship catering in Victoria	Supply from manufacturer to distributor / retailer / importer	Manufacturer
Manufactured outside Victoria	Manufactured outside Victoria, supplied by delivery to a distributor / retailer / importer in Victoria	Supply from manufacturer to distributor / retailer / importer	Manufacturer
	Manufactured outside Victoria, supplied by delivery to a distributor / retailer outside of Victoria, subsequently supplied into Victoria by that distributor / retailer	Supply by distributor / retailer	Distributor / retailer
	Manufactured outside Victoria, collected by distributor / retailer / importer outside of Victoria, and brought into Victoria.	None at this stage.	None. Likely that the entity will be the first supplier if the product is then on-sold and delivered to a distributor
	Manufactured outside Victoria, delivered to manufacturer's warehouse or store in Victoria by the manufacturer.	None at this stage.	None. Likely that the manufacturer will be the first supplier if the product is then sold and delivered to a distributor / retailer / consumer in Victoria.
Transport or logistics	Victorian based transport or logistics company engaged by a distributor / retailer to	None (as no supply in Victoria)	None (as no supply in Victoria)

company within Victoria	transport containers within the state		
Transport or logistics company outside of Victoria	Transport or logistics company outside of Victoria engaged by a distributor / retailer within Victoria to transport containers into the state and transport company does not take legal title to the products under the transport arrangement	None (as no supply in Victoria)	None (as no supply in Victoria)

*Manufacturing includes bottling or any other beverage production

**Retailer includes community groups, not-for-profits or organisations running promotions

Overseas manufacturers

An overseas manufacturer that exports to Victoria will be considered a first supplier for the purposes of the CE Act.

An overseas manufacturer may structure its commercial arrangements with its Australian distributors so that the supply to the distributors takes place outside of Victoria. In that case the distributors will be considered first suppliers.

Logistics and transport companies

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

In themselves, these entities will not be considered first suppliers and do not need to notify Recycling Victoria.

Contract bottlers

Thresholds and criteria for determining that a contract bottler is or is not a first supplier are under consideration. Recycling Victoria will update this instrument after further consultation. Contract bottlers who are supplying their own products direct to market will be assessed case by case.

Notification and assessment

This section outlines the process by which Recycling Victoria will accept and determine a notification from a person who supplies or intend to supply an eligible container as a first supplier.

First supplier notifications

A person must notify the Head, Recycling Victoria if they supply or intend to supply an eligible container in Victoria as a first supplier.

That notification is made to Recycling Victoria via the CDS Registry.

A person must provide the following information in their notification (required information):

- Applicant entity name and contact details, for example, registered business address and website of the applicant.
- Business name and Australian Business Number (ABN) of the entity making the application.
- Name and contact details of the key contact for the application, that is, the person submitting the notification on behalf of the applicant entity.
- Information about the applicant's business structure, including whether they are a sole trader, partnership, joint venture, or a trust. If an applicant is applying on behalf of a trust, further information including the full legal name of the business, the trustees' names and a copy of Trust Deed Schedule must be provided.
- Declarations that:
 - the person making the application is authorised to make the application
 - the applicant intends to supply a container into Victoria
 - the applicant will provide further information to Recycling Victoria as required
 - the information provided is accurate and truthful.
- An acknowledgement following determination that they are a first supplier. They must enter into a supply arrangement with the Scheme Coordinator.¹

Assessment criteria

Provided all required information has been provided and validated, Recycling Victoria will assess and determine first supplier notifications usually within 15 business days.

Recycling Victoria will determine that a person is a first supplier if the following criteria are met:

- All required information has been provided.
- All required information has been validated.

- The applicant has declared that they currently supply or intend to supply an eligible container into Victoria.
- The applicant acknowledges that, following determination by Recycling Victoria that they are a first supplier, they must enter into a supply arrangement with the Scheme Coordinator.²

¹ A supply arrangement with the Scheme Coordinator must be in place before a first supplier supplies or offers to supply a beverage in a container to any person (section 110 – it is an offence to supply or offer to supply without such an arrangement in force). The supply arrangement is a matter between the first supplier and the Scheme Coordinator.

² A supply arrangement with the Scheme Coordinator must be in place before a first supplier supplies or offers to supply a beverage in a container a container to any person (section 110 – it is an offence to supply or offer to supply without such an arrangement in force). The supply arrangement is a matter between the first supplier and the Scheme Coordinator.

Determination

Notification meets the criteria

If the notification meets the criteria, the Head, Recycling Victoria will determine the person is a first supplier for the purposes of CDS Vic.

Recycling Victoria will complete a decision record and issue a notice of the decision.

Notification does not meet the criteria

If the notification does not meet the criteria:

- Recycling Victoria will advise the applicant in writing that they intend to make a determination that they are not a first supplier and the reasons. An applicant will have 10 business days to show cause why the determination should not be made.
- After 10 business days, Recycling Victoria will consider the response (if any) and proceed to make a determination.

If the requirements to be a first supplier are met, Recycling Victoria will determine that the person is a first supplier. The Head, Recycling Victoria will issue a notice of the decision.

If the requirements to be a first supplier are still not met, Recycling Victoria will make a determination that the applicant is not a first supplier. Recycling Victoria will complete a decision record and issue a notice of the decision.

Variation or revocation of first supplier determinations

Under section 98(5) of the CE Act, Recycling Victoria may vary or revoke a determination that a person is a first supplier.

Recycling Victoria may vary the determination that a person is a first supplier on its own initiative, or at the request of the first supplier if the first supplier's name has changed - the name of the company or business has changed, but the entity remains the same.

Recycling Victoria may revoke the determination that a person is a first supplier on its own initiative, or at the request of the first supplier, in the following circumstances:

- The first supplier entity has merged with another entity or has restructured its operations resulting in a new entity name and/or ABN.
- Insolvency – the person is insolvent under administration, or the entity is subject to external administration within the meaning of section 5-5 of Schedule 2 to the *Corporations Act 2001*, or the entity has been dissolved and no longer exists, as a consequence of insolvency.
- The first supplier has ceased, or intends to cease supplying eligible containers and may have advised it wishes to exit CDS Vic.

Applications to vary or revoke a person's approval as a first supplier can be submitted following consultation with Recycling Victoria.

Review of revocations or variations

Where a revocation is proposed, as a matter of fairness, Recycling Victoria will provide written notice of the intention to revoke the approval and the reasons and provide the first supplier with an opportunity to show cause as to why the determination should not be revoked.

The Head, Recycling Victoria will consider any additional information provided by the first supplier and make a decision on the revocation of the determination that the person is a first supplier.

Recycling Victoria will not offer the same opportunity for variations, as they will be minor in nature.

Exit from CDS Vic

First suppliers may wish to exit CDS Vic where they have ceased supplying eligible containers or have sold their business to another company.

To exit CDS Vic, first suppliers can declare their intention to exit CDS Vic by emailing Recycling Victoria at cds.determinations@delwp.vic.gov.au.

The company director or primary contact person for the first supplier must make the application to exit the CDS Vic. If the Head, Recycling Victoria is satisfied that the first supplier has ceased supplying eligible containers and has acquitted all of their responsibilities under the Scheme, they will revoke their approval as a first supplier and send written notification of their exit from CDS Vic.

Record keeping

Recycling Victoria will make and keep records of actions relating to this Instrument.

