



# Cabinet Environment, Energy and Climate Committee

## Minute of Decision

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### Waste Legislation 2: Regulating Products and Materials to Promote Circularity

Portfolio Environment

On 16 March 2023, the Cabinet Environment, Energy and Climate Committee (ENV):

#### Background

- 1 **noted** that the paper under ENV-23-SUB-0004 is the second of four papers containing policy proposals for new waste legislation;
- 2 **noted** that the proposals in the paper under ENV-23-SUB-0004 relate to the government priorities identified in *Waste Legislation 1: Overview and Overarching Provisions* [ENV-23-SUB-0002];
- 3 **noted** that setting requirements for products and materials can:
  - 3.1 internalise the costs of environmental harm, placing greater responsibility on industry for stewardship of products across a product's life cycle;
  - 3.2 drive action up the waste hierarchy to design waste out where possible and maintain products for as long as possible at their highest value;
  - 3.3 improve information to empower consumers and businesses and support better decision-making;

#### Authority to make regulations

- 4 **agreed** that the new waste legislation include empowering provisions to make regulations to provide a flexible choice of powers to achieve the purpose of the Act;
- 5 **agreed** that the authority to make regulations should sit with the Governor-General in Council, on the recommendation of the Minister responsible for the legislation (the Minister);

#### General provisions for controls on products and materials

- 6 **agreed** that action and investment plans will be the primary avenue for signalling government's priorities on products and materials;

- 7 **agreed** that as a complementary measure, new legislation should set out that the Minister may publish a work plan on products and materials identified for regulatory action across the full suite of regulatory tools;
- 8 **agreed** that new legislation should require that in making regulations for any products and materials, the Minister must be satisfied that:
- 8.1 the regulation will achieve the purpose of the new legislation;
  - 8.2 there has been adequate consultation with persons or organisations significantly affected by the regulation;
  - 8.3 adequate lead-in time is provided to meet the requirements of the regulation;
- 9 **agreed** that new legislation should require that in making regulations for any products and materials the Minister must have regard to:
- 9.1 the principles of the Act;
  - 9.2 the impacts, costs and benefits of a proposal;
  - 9.3 relevant international obligations;
  - 9.4 the Biosecurity Act 1993; and
  - 9.5 the market structure of the sector;
- 10 **agreed** that new legislation should confirm that regulation-making powers can apply to all products and materials in the economy, at any stage of their life cycle and across their entire life cycle, and including raw, biological (organic) and technical materials and products, commercial materials and products, secondary materials and by-products, and including packaging;
- 11 **agreed** that new legislation should require that when making regulations, the product or materials being regulated may be defined by any combination of matters including, but not limited to:
- 11.1 attributes (including composition and whether composed of a substance or chemical);
  - 11.2 processes (such as manufacturing processes);
  - 11.3 function (for example, packaging or food containment); and
  - 11.4 situational context (for example, eat-in services);
- 12 **agreed** that a general provision in legislation should clarify that powers can be phased in over time, be of general or specific application, and allow for exceptions or exclusions;
- 13 **noted** that officials are still working through to what extent, if any, controls should apply to second-hand goods and markets and how to provide for this in legislation;
- 14 **authorised** the Minister to make policy decisions and issue drafting instructions on how any controls on products and materials should apply to second-hand goods and markets;
- 15 **noted** that further complementary controls on product regulation relating to extended producer responsibility will be covered in a subsequent Cabinet paper;

**Product bans**

- 16 **noted** that a regulation-making power to control or prohibit the import, supply, sale and manufacture of products and materials will avoid harm to nature and people, reduce waste in New Zealand's natural environment and landfill, and prevent the contamination of recycling and disposal systems;
- 17 **agreed** that the new waste legislation should include a regulation-making power to control or prohibit the import, supply, sale, and manufacture of specified products and materials;
- 18 **agreed** that the new waste legislation should set out the following matters the Minister must have regard to, before recommending regulations for product bans:
- 18.1 the availability of an alternative product or material to the extent that an alternative is required;
- 18.2 the risk of a regulated product or material being substituted with an undesirable alternative;

**Prohibiting or prescribing actions for disposal or recycling**

- 19 **noted** that regulation-making powers to prescribe or prohibit actions for disposal and/or recycling of products and materials (including waste) will increase the circularity of resources, improve resource recovery rates, and support key actions in the emissions reduction plan and waste strategy;
- 20 **agreed** that the new waste legislation should include regulation-making powers to prohibit and prescribe actions for disposal and recycling of products and materials (including waste);
- 21 **agreed** that the new waste legislation should include provisions to constrain the powers in paragraph 17 above, as follows:
- 21.1 the Minister must be satisfied there is adequate infrastructure and facilities in place to provide for specified actions for regulated products and materials, or a reasonable time to put these in place;
- 21.2 the Minister must have regard to end markets, for example, the viability of markets, their potential volatility, and the risk of supporting markets of low or negative value;

**Prescribing environmental performance requirements**

- 22 **noted** that a regulation-making power to prescribe environmental performance requirements is a potentially powerful mechanism that could be used across the full life cycle of products and materials, including to:
- 22.1 establish minimum requirements for environmental performance that products and materials must meet before being supplied or sold in the New Zealand market;
- 22.2 drive action at the top of the waste hierarchy, for example, through requirements that extend products' life, such as durability and repairability requirements, or that require a proportion of recycled content in certain products;
- 23 **noted** that a regulation-making power could prescribe environmental performance requirements by reference to standards developed domestically, through trans-Tasman arrangements, or internationally with or without adaptations for the New Zealand context;

- 24 **agreed** that the new waste legislation should include a regulation-making power to prescribe environmental performance requirements that can apply at any stage, or across, the full life cycle of certain products and materials;
- 25 **noted** that the requirements can apply to all products and materials, as set out in the general parameters set out in paragraphs 8 and 11 above, and that for clarity this includes:
- 25.1 all technical and biological (e.g., compost) products and materials, including imported goods;
  - 25.2 materials from which the product is manufactured, techniques used in manufacture, and by-products of the manufacturing process;
  - 25.3 packaging and labelling, and the substance used to fix a label;
  - 25.4 all and any combination of life cycle stages of a product or material such as design, raw material acquisition and pre-processing, manufacturing, distribution, use stage, and at end of life;
- 26 **agreed** that the broad parameters of environmental performance requirements should be included in primary legislation, as follows:
- 26.1 extend and improve product and material life;
  - 26.2 improve quality to reduce negative environmental impacts or enhance positive impacts;
  - 26.3 improve recovery of materials;
  - 26.4 require the use of recycled materials and/or reduce the use of virgin materials;
  - 26.5 design out pollution, effluents, emissions and waste across the full life cycle;
  - 26.6 minimal use of natural resources;
- 27 **agreed** that the new waste legislation should set out the following matters that the Minister must have regard to, before recommending regulations for environmental performance requirements:
- 27.1 the impact on the functionality and safety of the product;
  - 27.2 the impact on other environmental objectives not covered by the standard;

### Requiring information on environmental performance

- 28 **noted** that a regulation-making power to prescribe requirements for information on environmental performance, including by labelling, will enable consumers to make accurate choices that minimise their individual impact and send market signals to drive businesses to adopt circular business models;
- 29 **noted** that a regulation-making power as described in paragraph 28 above could place requirements on importers, suppliers, retailers and traders by reference to standards, or existing labelling schemes, for example, the Australasian Recycling Label;

- 30 **agreed** that the new waste legislation should provide a regulation-making power to prescribe consumer information on environmental performance requirements for specified products and materials, including:
- 30.1 the type of information;
  - 30.2 how that information must be made available;
  - 30.3 any specific standards and/or scheme that must be adhered to;
  - 30.4 requirements or conditions that must be met in order to make certain environmental claims;
- 31 **agreed** that before recommending regulations, the Minister must have regard to requirements for consumer information in other statutes and the benefits to the customer of streamlined, accessible information;
- 32 **noted** that officials are still considering how the proposed regime for environmental performance requirements and labelling should best sit alongside the existing regime for energy efficiency standards and labelling, and that solutions may be legislative and/or operational;
- 33 **authorised** the Minister and the Minister of Energy and Resources to make policy decisions required for drafting purposes that remediate the relationship between the two regimes referred to above, and to issue drafting instructions as required;

### Implementation

9(2)(h)

- [REDACTED]
- [REDACTED]

### Roles and responsibilities

- 36 **noted** that the Minister will consider options for the regulator of the environmental performance standards and provision of information regime, and will report back to ENV later in 2023;

### Border control and compliance

- 37 **noted** that officials will work with Customs and other relevant agencies on policy decisions requiring enforcement at the border and the practical implementation of any new controls, including how requirements can be enforced for online sales on market-based platforms outside New Zealand;
- 38 **authorised** the Minister for the Environment and the Minister of Customs to make decisions on matters relating to the border and the role of Customs, and to issue drafting instructions as appropriate;

**Legislative implications**

- 39 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs, as part of the Responsibility for Reducing Waste Bill;
- 40 **authorised** the Minister to further clarify and develop matters relating to proposals in the paper under ENV-23-SUB-0004, in a manner consistent with the agreed policy decisions, and to develop commencement, transitional and any other provisions with Parliamentary Counsel Office, through the drafting process;
- 41 **authorised** the Parliamentary Counsel Office to make technical or drafting changes that arise during the drafting of the legislation.

Rebecca Davies  
Committee Secretary

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**Present:**

Hon Kelvin Davis  
Hon Dr Megan Woods (part of item)  
Hon Michael Wood (part of item)  
Hon Willie Jackson  
Hon Damien O'Connor  
Hon David Parker (Chair)  
Hon Kieran McAnulty (part of item)  
Hon Willow-Jean Prime  
Jo Luxton, MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for ENV