

Office of the Associate Minister for the Environment

Chair, Cabinet Economic Development Committee

Priority products and guidelines for priority product stewardship

Proposal

1. This paper seeks approval to publicly release the consultation document *Proposed priority products and priority product stewardship scheme guidelines* (Appendix 1).

Executive summary

Product stewardship

2. New Zealanders are increasingly concerned about the environmental impacts of waste. Government's role is to set direction, provide leadership and put in place supporting regulations, incentives and investment.
3. Extending producer responsibility or stewardship is one tool available under the Waste Minimisation Act 2008 to help design waste out of our economy and shift responsibilities of minimising environmental harm, away from nature, councils and the wider community and onto product designers, producers and users.
4. Product stewardship, voluntary or regulated, means participants take responsibility for life-cycle impacts of products and reduce environmental harm. Participants include producers, brand owners, importers, retailers, consumers, collectors, and re-processors. A 'level playing field' and better incentives for diversion are required to achieve significant waste minimisation.

Challenges with the current approach to product stewardship and the impact on product management

5. Product stewardship has thus far been voluntary in nature; and while this produces some benefits, it does not create significant waste minimisation or reduction in the risk of harm from these products. Most voluntary product stewardship schemes, accredited or not, experience issues with participation, so only small volumes of product materials are recovered for reuse or collected for safe disposal.
6. Industry and community groups operating voluntary product stewardship schemes have regularly advised Government over the last decade that a 'level playing field' and better incentives for diversion of resources from landfill are required to achieve significant waste minimisation. There is strong industry support for the

Government to play a stronger role in product stewardship. For example, WasteMINZ has recently established a Product Stewardship Sector Group to advance mandatory schemes for tyres, e-waste, agrichemicals and farm plastics.

7. The people who design, sell and use products generally do not pay for the full disposal costs and environmental harm of their products when it becomes waste. These costs are largely borne by the wider community and future generations. While there are limitations with New Zealand's waste data, the data we do have indicates that our generation of municipal solid waste per capita is among the highest in the OECD¹. Additionally, our product recovery rates are much lower than in jurisdictions where these products are part of regulated schemes.

Priority products

8. Declaration of a priority product requires the development and accreditation of a product stewardship scheme for that product under section 10 of the Waste Minimisation Act 2008 (WMA). The consultation document proposes:
 - The declaration of six priority products under section 9 of the WMA:
 - packaging (beverage containers and plastic packaging)
 - tyres
 - electrical and electronic products
 - refrigerants and other synthetic greenhouse gases
 - agrichemicals and their containers
 - farm plastics.
 - Ministerial guidelines for product stewardship schemes for priority products under section 12 of the WMA. This will signal expected outcomes to co-design stakeholder groups and improve the quality of priority product stewardship scheme applications for accreditation.
9. The six proposed priority products have been selected as a starting point for the declaration of priority products. I consider these six products meet the requirements under the WMA for declaring a priority product.
10. Well designed guidelines, while not a statutory requirement, can significantly improve waste minimisation, harm reduction, resource efficiency, and improve incentives for more circular product design as we transition to a low emissions, circular economy. OECD recommendations, amongst others, on best practice have been considered in preparing the proposed section 12 guidelines.
11. The intent of the proposed approach is to signal to businesses and other stakeholders the direction of the Government and encourage co-designed product stewardship schemes for these products.
12. This proposal is stage one of a two stage process. Stage two would involve the co-design of schemes with stakeholders and Government consideration of any regulations that may be needed to implement the schemes. Co-design has begun for some proposed priority products (eg, tyres, agrichemicals, refrigerants, farm

¹ OECD, 2017. OECD environmental performance reviews: New Zealand 2017. OECD Publishing: Paris.

plastics) and under discussion for others (eg, e-waste and packaging).

13. Any proposed regulations would come to Cabinet for decision once this process and the regulatory impact assessment have been completed.
14. International experience is that regulated product stewardship schemes are typically managed by a not-for-profit entity (product stewardship organisation, or PSO) that represents all producers of that product group. The PSO manages funds, operates any funding and take-back system, and reports to government and stakeholders. A generic indicative design is shown in the attached consultation document (figure 3). The proposed Stage 2 would involve co-design of suitable schemes for New Zealand.
15. The full process aims to reduce the risk of environmental harm and create social and economic benefits from a circular approach to product design and management. This would support a longer-term goal of moving New Zealand to a productive, sustainable, inclusive, and net zero emissions economy.

Background

Challenges with the status quo

16. Since the passage of the WMA in 2008 the Government has encouraged and supported the development of voluntary product stewardship schemes accredited by the Minister for the Environment under the WMA. There are currently 14 voluntary schemes in operation. While these voluntary schemes lessen environmental harm and improve the reduction, reuse, recycling, recovery and treatment of the schemes' product groups, they do not operate on a level playing field. Nor do they achieve the full potential of recovery of materials for particular waste streams.
17. Most voluntary product stewardship schemes (whether accredited or not) experience problems with participation and product recovery rates. For example:
 - if a product stewardship scheme sets a voluntary fee for responsible end-of-life waste product management, this discourages participation by producers and consumers, leads to low rates of collection for recycling/treatment, and the total fee that can be collected is often not enough to cover a full service.
 - non-members of a voluntary scheme with a fee can charge less for their product and have a market advantage over participating brand owners.
 - if an accredited voluntary scheme deals with only one company's products (as do seven of the 14 accredited voluntary schemes) it can have excellent results but will not influence the majority of that product group.
18. Voluntary schemes often rely on the altruism of producers or market drivers that make resource recovery profitable. Therefore most voluntary schemes, accredited or not, experience issues with participation and product recovery rates.
19. Currently people who design and sell products do not generally pay for the disposal costs and environmental harm of their products when they become waste. Instead these costs are largely borne by the wider community and future generations.

Analysis

Why action is needed

- 20.** The current voluntary environment is not adequate to achieve Part 2 of the WMA which aims to “encourage (and, in certain circumstances, require) people and organisations involved in the life of a product to share responsibility for:
- ensuring there is effective reduction, reuse, recycling, or recovery of the product; and
 - managing any environmental harm arising from the product when it becomes waste”.
- 21.** Government has an opportunity through regulatory product stewardship to progress the transition towards a low emissions, circular economy and reduce waste to landfill. Product design and management is an essential step in protecting our finite resources for future generations. Regulated product stewardship will also support the Government’s wider work programme on resource recovery and waste, and support the outcomes in Part 2 of the WMA.
- 22.** Declaration of a priority product requires the development and accreditation of a product stewardship scheme for that product (WMA section 10). It also provides the option to prohibit the sale of a priority product except in accordance with an accredited product stewardship scheme (WMA section 22(1)(a)), making participation in the accredited scheme mandatory for producers of that priority product.
- 23.** A regulated scheme will need to be consistent with New Zealand’s trade policy settings and international obligations, including under the World Trade Organization. In addition, any hazardous substances will need to comply with the Environmental Protection Authority’s Disposal Notice.

Designing waste out of products: ‘Circular economy’ approach

- 24.** Expectations around responsibility for waste are changing. New Zealand has an opportunity to take new approaches; not only mitigating the environmental impacts of waste but also creating an economic shift. Many resources presently lost to landfill can be used to create new business opportunities and jobs. To ensure resources are available for future generations we need greater producer responsibility to design products and systems for circular use.
- 25.** The Government can play a stronger role in reversing the trend of increasing waste to landfill. Regulated product stewardship is one of the tools available under the WMA to assist in designing waste out of our economy. When regulated product stewardship schemes are effectively designed and implemented they can shift the costs of minimising harm from products away from councils, the wider community, and environment to product designers, producers and product users.
- 26.** This can help create market incentives to design products that have less environmental impacts, as well as ensuring that what does become waste is disposed of appropriately. Improved product design and management supports the move from a linear economy (take-make-dispose) to a circular economy

(make-use-return). This is a restorative and regenerative process that aims to keep products, components and materials at their highest utility and value.²

Proposed approach to working with producers and other stakeholders

27. I propose to take a co-design approach to establishing regulated product stewardship schemes for priority products. This means the Government can specify criteria for product stewardship, while allowing producers and other stakeholders to design cost-effective methods to deliver the outcomes set by Government. The benefits of this approach include:

- greater producer 'buy-in' where they are actively involved in the design as opposed to having regulations imposed on them
- businesses can bring deep understanding of supply chains, cost-efficiencies, product design, and customer expectations
- businesses tends to be more agile, innovative, and faster acting compared to government intervention
- stakeholders, particularly community recyclers, have a wealth of knowledge of practical efficiencies and opportunities for waste minimisation and a history of collaboration.

Previous proposals for priority products

28. Priority product declaration was considered by the previous Governments. The most recent consultation was in 2014. Tyres, electrical and electronic products, refrigerants and other synthetic greenhouse gases, agrichemicals and containers, and farm plastics were proposed, and had majority support from submitters. The previous Government chose not to progress this work further at the time, despite the support.

29. Due to the passage of time, and the proposed WMA section 12 guidelines which have not been previously considered, the Government must consult on the proposed priority products again.

Proposed priority products

30. I propose that six priority products are considered in this consultation round:

- packaging (beverage containers and plastic packaging)
- tyres
- electrical and electronic products
- refrigerants and other synthetic greenhouse gases
- agrichemicals and their containers
- farm plastics.

31. I have publically signalled that tyres, electrical and electronic products (particularly lithium batteries), refrigerants and other synthetic greenhouse gases, and

² Ellen MacArthur Foundation. 2013. Towards the circular economy Vol. 1: An economic and business rationale for an accelerated transition.

agrichemicals and their containers are the first four products to move into the second stage of the regulated product stewardship process. This is because producers and other stakeholders are already engaged in development of these schemes, with tyres the most advanced.

32. The products I consider meet the priority product declaration requirements are:

- **Packaging** (beverage and plastic packaging) has not previously been proposed by the Government as a priority product under the WMA. However, submitters on consultations in 2005, 2009 and 2014 commonly recommended it as a priority product and local authorities have advocated controls to reduce the waste management burden on communities. In recent years increased understanding of the global risks of marine plastics and microplastics in the food chain and ecosystems has strongly contributed to increased community demand for better controls.
- **Tyres** when dumped or stockpiled can impose risk from fire and toxic materials entering the air, soil, and water. Overseas regulated product stewardship schemes achieve much higher diversion rates than New Zealand's 30 percent, for example: over 80 percent in the United States of America, Europe and Japan, and 90 percent in Canada and South Korea.
- **Electrical and electronic products** can contain toxic substances posing risks to the environment and human health. These substances do not biodegrade and will eventually leach out of landfill creating future environmental impacts. These products also contain valuable materials including 'rare earth' metals, so there is significant benefit in recovery.
- **Refrigerants and other synthetic greenhouse gases** if poorly managed contribute to depletion of the ozone layer and climate change, as well as an increased risk of fire from the use of flammable hydrocarbon refrigerants instead of some ozone depleting gases. A voluntary scheme has been in operation in New Zealand since 1993 which collects a voluntary levy; the levy is paid by the six major importers of refrigerants although importers of smaller bulk amounts of refrigerants are not participating in the scheme. New Zealand has a recovery rate of 20 percent, while countries like Australia, Japan, and Europe with regulated recovery programmes are able to recover over 60 percent.
- **Agrichemicals and their containers** are toxic and pose a risk to the environment and human health. Farm waste surveys indicate that the majority of these wastes are disposed of into unlined farm dumps or landfill. The Government and regional councils co-funded the collection of legacy waste agrichemicals during 2003-2009 which cost taxpayers \$4 million for 640 tonnes. A voluntary scheme is in place though it experiences issues with free-riders and non-participation.
- **Farm plastics**, like packaging, contribute to microplastics leaking into the environment and food chain. Additionally, there is a risk of toxic chemicals entering the air and soils, leachates, and other health and safety issues if plastics are buried or burned. A voluntary scheme is in action; however an estimated 90 percent of bale wrap and nearly 100 percent of twine, feedbags and crop protection netting are not being collected for recycling.

33. Following this consultation, if Cabinet approves the declaration of the six proposed priority products and the priority product stewardship scheme guidelines, officials will work on stage two. This will involve working with industry groups and other stakeholders to develop appropriate scheme options and assess the regulatory impact.

34. The process is as follows:

- Priority products are declared by Gazette notice to signal to industry groups that the Government is looking to improve the management of these products at the end of their life.
- ‘As soon as practicable after a product is declared to be a priority product, -
(a) a product stewardship scheme for the product must be developed; and
(b) accreditation of the scheme must be obtained.’
- Government and stakeholders will co-design regulations that will best suit the product group (this will vary depending on product group and product type)³.
- Regulatory options for each product group will be proposed to Cabinet and public consultation undertaken.
- Once Cabinet has approved, regulations will come into effect and all participants in that product group must comply, with non-compliance resulting in a penalty.

35. The Ministry for the Environment’s initial estimates are that a regulated scheme for tyres can be put out for public consultation by the end of 2019/20, with work also started on an e-waste scheme. Further schemes will be developed and consulted on a rolling basis throughout 2020/21, with the exact timeframes for implementation subject to factors such as the complexity of the schemes and the levels of support from industry and other stakeholders.

Consultation

36. I have consulted the Department of the Prime Minister and Cabinet (DPMC), Treasury, Department of Conservation (DOC), Ministry for Primary Industries (MPI), Ministry of Foreign Affairs and Trade (MFAT), Ministry of Business, Innovation and Employment (MBIE), Department of Internal Affairs (DIA), Te Puni Kōkiri (TPK), the Commerce Commission, and the Environmental Protection Authority (EPA).

³ Regulations in relation to priority products and accredited schemes are outlined under section 22(1) of the WMA.

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

- (a) prohibiting the sale of a priority product, except in accordance with an accredited scheme;
- (b) prescribing the manner in which applications for accreditation of a product stewardship scheme must be made;
- (c) prescribing the information to be included in an application for accreditation;
- (d) prescribing the fee payable for an application for accreditation (which may include the reasonable costs in assessing and accrediting a scheme);
- (e) prescribing the charges payable to the Secretary for the monitoring of an accredited scheme.

37. Comments were received from the DPMC, Treasury, DOC, MPI, MFAT, MBIE, DIA, TPK, the Commerce Commission, EPA and have been incorporated within this paper and the attached consultation document.
38. TPK has advised that Māori have responsibility for the mauri and are the kaitiaki of the environment. In addition, TPK advise that Māori could play a more significant role in the selection of priority products as they are partners with the Crown on environmental management. The attached consultation document addresses this point on page 17.
39. The Minister for the Environment must obtain and consider the advice of the Waste Advisory Board⁴ before recommending the making of regulations under section 22(2) and section 23 of the WMA. I intend to ask for the Waste Advisory Board's advice concurrently with the public consultation round.
40. I have consulted with the Coalition partners on this paper, which now reflects their comments.
41. Further consultation with producers and other stakeholders of the proposed priority product groups will take place during the second stage of this process. There will also be additional opportunity during co-design for each group for agency and public consultation.

Financial implications

42. There are no immediate financial implications arising from this paper.
43. The Ministry for the Environment will provide further details of the potential economic costs, environmental benefits, and any proposed regulations in stage two when the details of each individual scheme is known.

Legislative implications

44. Priority product declarations and guidelines are made by Gazette notice and do not require legislative change. There are no regulatory implications arising from this paper, although regulations may be developed in the future should Cabinet approve the declaration of the six priority products.

Regulatory impact analysis

45. Regulatory impact analysis requirements do not apply to this paper.

Human rights

46. There are no human rights implications arising from this paper.

Gender implications

47. There are no gender implications arising from this paper.

⁴ Section 90 of the WMA outlines the function of the Board.

Disability perspective

48. A disability perspective will be considered in future when any regulations are being proposed.

Publicity

49. Should Cabinet approve this paper; the attached consultation document and an abbreviated version will be released on the Ministry for the Environment's website with a Ministerial media release. The Ministry for the Environment will also proactively contact stakeholder groups with an interest in this proposal. The consultation will run for six weeks.

Proactive Release

50. I intend to release this Cabinet paper in full and within the required 30 business days, following due diligence and consultation.

Recommendations

I recommend that the Committee:

1. **Note** more action is needed by Government in order to progress the transition towards a low emissions circular economy and reduce waste to landfill.
2. **Note** product design and management is a significant step in protecting our finite resources for future generations.
3. **Note** product stewardship has thus far been voluntary; and while this produces some benefits, it does not create significant waste minimisation or reduction in risk of harm. Most voluntary schemes, accredited or not, have participation issues, so only small volumes are recovered for reuse or collected for safe disposal.
4. **Note** that to level the playing field and create a significant shift to a circular economy approach to product design and management, I propose to consult on:
 - 4.1. the declaration of six priority products
 - 4.1.1. packaging (beverage containers and plastic packaging)
 - 4.1.2. tyres
 - 4.1.3. electrical and electronic products
 - 4.1.4. refrigerants and other synthetic greenhouse gases
 - 4.1.5. agrichemicals and their containers
 - 4.1.6. farm plastics
 - 4.2. Ministerial guidelines for priority product stewardship schemes.
5. **Approve** the public release of the consultation document *Proposed priority products and product stewardship guidelines* (Appendix 1).
6. **Note** I intend to release a media announcement to accompany the public consultation and its release on the Ministry for the Environment's website.
7. **Note** I will report back to Cabinet on the outcomes of the consultation.

8. **Note** that this consultation, if approved by Cabinet, will be the first stage of regulated product stewardship with the purpose of sending signals to business and ensuring adequate measures are in place to achieve high quality schemes.

Authorised for lodgement.

Hon Eugenie Sage

Associate Minister for the Environment

Proactive Release

Appendix 1.

Draft consultation document on *Proposed priority products and priority product stewardship scheme guidelines*

Proactive Release