

Agreement to implement a Container Return Scheme

Date Submitted:	10 November 2022	Tracking #: BRF-2080	
Security Level	Policy and Privacy In-Confidence	MfE Priority:	Urgent

	Action sought:	Response by:
Hon David PARKER, Minister for the Environment	Review the attached draft Cabinet paper – <i>Seeking Cabinet agreement to implement a Container Return Scheme</i> and provide feedback to officials	15 November 2022

Actions for Minister's Office Staff	Return the signed report to MfE
Number of appendices and attachments: #4	<ol style="list-style-type: none"> 1: Draft Cabinet paper: Agreement to implement a New Zealand Container Return Scheme 2: Key design elements of a NZ CRS 3: Categories of containers and obligations 4: Summary of Submissions

Key contacts

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Agreement to implement a Container Return Scheme

Key Messages

1. This briefing provides you with a draft Cabinet paper titled *Agreement to implement a New Zealand Container Return Scheme* (CAB 173, attached at Appendix 1). Officials have drafted the Cabinet paper in line with:
 - a. previous advice setting out feedback received on the NZ CRS proposal following the *Transforming Recycling* consultation [BRF-1989]
 - b. your recent discussions with officials, in which you indicated agreement to key design elements of a NZ CRS, to the Cabinet paper also seeking agreement to relevant policy decisions to inform drafting of legislation, and to a minimum deposit level of 10 cents being included in legislative proposals for a CRS
 - c. recent discussions with your office about providing options for Cabinet to consider when announcing the scheme, in relation to the refundable deposit.
2. The attached Cabinet paper forms part of the suite of Cabinet papers seeking to repeal and replace the existing Waste Minimisation Act (WMA) 2008.
3. This Cabinet paper is in two parts. Part I seeks agreement to implement a NZ CRS. Key elements included are:
 - a. commentary about consultation feedback, including industry submissions
 - b. an update on the PwC financial modelling, including consideration of industry concerns around costs and updated GST advice from IRD, with a net reduction in scheme financial costs by \$44 million to \$509 million in year one relative to the consultation base case
 - c. an update on the Sapere cost benefit analysis for a NZ CRS, which has resulted in a revised provisional BCR of 1.47 and a broader range of 0.64 to 2.17
 - d. the proposal to implement a NZ CRS and its key design elements as set out at Appendix 2
 - e. options for Cabinet to consider when announcing the scheme, to signal a preference for a 10 cent deposit, or a 20 cent deposit, or to not signal a preference, noting that the decision will ultimately be set via regulation, pending new enabling waste legislation in 2025
 - f. provision for mandated return-to-retail, with details of the extent of retailer take back obligations to be set out in future regulations, following a return network study (underway, BRF-1989 refers).
4. Part II of the Cabinet paper sets out the policy decisions required to inform drafting of legislation to be progressed as part of the review of the Waste Minimisation Act 2008. Key elements of Part II include:

- a. a framework for classifying and dealing with the various types of beverage containers
 - b. a framework for the respective powers and obligations of the Minister for the Environment, the Ministry for the Environment¹ and the industry body responsible for managing the NZ CRS (the Product Stewardship Organisation (PSO)).
5. To inform detailed design elements of a NZ CRS, the Ministry has commissioned further research and analysis to inform regulation for the return network, eco-modulation of scheme fees, and for refillable beverage containers.
 6. Final decisions on how the legislation will deal with compliance, monitoring and enforcement (CME), governance of the CRS industry body, eco-modulation of scheme fees, and other technical matters will be provided in a subsequent Cabinet paper in the first quarter of 2023.
 7. We are seeking your feedback on the draft Cabinet paper, ahead of lodgement on 17 November for consideration at a Cabinet Environment, Energy and Climate Committee (ENV) meeting on 24 November 2022.
 8. The next steps are for your office to circulate the draft paper to Ministers and coalition partners for feedback. In parallel, officials will undertake a second round of agency consultation (noting that Part I of the draft paper has already been subject to consultation).
 9. As a part of the broader *Transforming Recycling* consultation package, a NZ CRS is complementary to the kerbside proposals. The companion paper [CAB 178] is also being lodged on 17 November. Specifically, a NZ CRS targets the away-from-home beverage container consumption and associated litter issues, and shifts costs away from Councils and rate payers onto the responsible supply chain.

Recommendations

We recommend that you:


- a. **Note** that the attached draft Cabinet paper is in two parts and seeks agreement to implement a NZ CRS and to policy decisions to inform drafting of legislation to implement a scheme (progressed as part of the wider review of the Waste Minimisation Act 2008)
- b. **Note** that policy decisions on compliance, monitoring and enforcement, governance of the CRS industry body and other technical matters will be dealt with in a subsequent Cabinet paper in the first quarter of next year.
- c. **Note** that to enable the paper to be lodged by 17 November 2022 for Cabinet Committee consideration on 24 November 2022, Ministerial consultation and a second round of agency consultation is required

¹ Anticipated to be the Government agency that will be responsible for monitoring the NZ CRS

- d. **Review** the draft Cabinet paper and provide feedback to officials by 15 November 2022.

Yes/No

Signature

Roderick Boys Director (Acting) Waste and Resource Efficiency	
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Hon David PARKER, Minister for the Environment	
Date:	

Purpose

1. This briefing provides you with a draft Cabinet paper titled *Agreement to implement a NZ CRS* [CAB-173 refers]. We are seeking your feedback on the draft Cabinet paper, ahead of lodgement on 17 November for consideration at the Cabinet Environment, Energy and Climate Committee (ENV) meeting on 24 November 2022.

Context

2. In February, Cabinet agreed to public consultation on proposals for a NZ CRS and invited you to report back on the development of options for a NZ CRS before the end of 2022 [ENV-22- MIN-0002].
3. Public consultation from March to May 2022 sought feedback on a comprehensive NZ CRS, in line with Cabinet direction [ENV-21-MIN-0049 and ENV-21-MIN-0048]. In August 2022, officials provided information and advice about feedback received on the NZ CRS proposal and outlined the next steps [BRF-1989].
4. In meetings with Ministry officials, you agreed to key design elements of a NZ CRS, agreed that the Cabinet paper should include a 'Part II' that would seek Cabinet agreement to relevant policy decisions to inform drafting of legislation, and to the insertion of a minimum deposit level of 10 cents in the legislation implementing a CRS.
5. Your office has also requested that the paper provides options for Cabinet to consider if Cabinet announces the implementation of a scheme. These options are an in-principle decision to a 10 cent deposit, or to a 20 cent deposit, or to not signal a preference, noting that the final deposit level will ultimately be set via regulation in 2025.
6. In line with BRF-1989 and subsequent discussions, a draft Cabinet paper is attached at Appendix 1. The following sections set out our approach in drafting the two parts of the paper.

Part I of the Cabinet paper –Agreement to implement a NZ CRS

7. Part I seeks agreement to implement a NZ CRS on the basis of consultation feedback received, the results of updated financial modelling and cost-benefit analysis.

Consultation feedback

8. Public consultation from March to May 2022 sought feedback on a NZ CRS. As detailed in BRF-1989, there was broad support for implementation of a NZ CRS. The scheme design elements, including a 20 cent deposit also received high levels of support.

Financial updates

9. Having considered industry feedback on the NZ CRS proposals and worked with the Inland Revenue Department to update advice on the treatment of GST in the context of a NZ CRS, the PwC financial modelling has been updated. Changes were made to reflect updated scheme fees, a 1 July 2025 start date, the 20 cent deposit as inclusive of GST, updated CPI and population forecasts, a 90- per cent return rate target (at the completion of year 5) and a number of sensitivity analyses responding to variables that are less certain.

10. The net result for the updated PwC model base case (based on a 20 cent deposit scenario) is a reduction in total financial costs of the scheme by \$44 million to \$509 million in year one relative to the consultation base case.
11. Scheme costs are expected to be largely passed on to consumers and the modelled cost reduction flows through to the average household participation costs, now estimated at \$1.08 per week or \$56 per year in year one (2025/26) relative to \$1.50 per week or \$78 per year from the consultation base case.
12. The Sapere Cost Benefit Analysis (CBA) has been updated to include new reference studies and assumptions, including litter and recycling benefits, which have increased the benefit-cost ratio (BCR) range. The provisional BCR is now at 1.47 (0.64 – 2.17). The Sapere CBA is currently undergoing quality assurance including an independent peer review, and will be finalised ahead of lodgement.
13. High level information is included in Part 1 of the attached draft Cabinet paper and in the Financial Implications section. Additional details will be included in the Regulatory Impact Statement.

Key design features

14. In line with your direction at a meeting with Officials on 12 September 2022, the draft Cabinet paper sets out key design features for a NZ CRS (Appendix 2). These are largely the same as what was proposed in the consultation document, except that we are now introducing a lower size limit of 100mL for containers to be included within a NZ CRS, and to review the treatment of fresh milk and refillables at the completion of the scheme's third year. The lower size limit has been included on the basis of industry feedback about the costs and practicalities of processing very small beverage containers.
15. As per recent discussions with you and your office, the paper proposes that:
 - a. the final deposit level will be set in regulations following new enabling waste legislation coming into force in 2025
 - b. there be a minimum deposit level set in legislation at 10 cents to ensure that a cash payment can be made (noting that the lowest legal tender amount for a cash refund in New Zealand is 10 cents)
 - c. Cabinet has options with respect to announcement of a NZ CRS, to signal its preference for a deposit level of 10 or 20 cents, or to not signal a preference.
16. The paper also seeks agreement to a mixed model return network with regulated take-back obligations for retailers that sell beverage containers in New Zealand, as well as a procurement-led 'voluntary' approach to establishing depots and other retail return points, such as over-the-counter sites.

Part II of the Cabinet paper - Policy decisions to inform drafting for a NZ CRS

17. Part II of the draft Cabinet paper seeks agreement to relevant policy decisions to inform drafting of legislation. Due to the technical nature of the scheme, new and cohesive legislation is needed, which will be progressed as part of the wider review of the Waste Minimisation Act 2008. Key elements are set out below.

Scope of containers

- a. To define the parameters of beverage products and producers or importers impacted by the implementation of a NZ CRS, the draft Cabinet paper proposes a framework that is intended to manage the risk of producers attempting to avoid participation in the NZ CRS by moving to hard to recycle or otherwise unsuitable container types.

18. It:

- a. provides for the overarching scheme scope of containers, including glass, in line with consultation feedback;
- b. provides a framework for categorising containers that are out of scope, in scope, and for those products in scope, approved to be in the scheme, exempt from the scheme, or excluded from the scheme;
- c. ensures that the Monitoring Agency has visibility of the broader beverage container market to inform consideration of any adjustments required to the regime as materials used, volumes placed onto the market, and to provide for new products and recycling technology.

19. Set out at Appendix 3 is a high-level diagram showing the various categories of containers and obligations imposed as a result. The diagram outlines that:

- a. to enable visibility of the overall beverage container market, producers of all beverage containers (whether within the CRS, exempt or excluded) will be required to provide reporting via a registration portal, to be operated by the Monitoring Agency.
- b. to discourage producers from transitioning to unsuitable beverage container materials and packaging, excluded containers² will be prohibited from sale, unless a temporary exemption from the prohibition is approved (to enable transition arrangements, via regulation, or in emergency or unforeseen circumstances outside of normal scheme operations, via gazette notice).

Checks and balances

20. Consultation feedback noted the importance of the NZ CRS being industry-led, which is consistent with international jurisdictions. However, the NZ CRS will impose costs on industry which industry will be strongly incentivised to minimise. Accordingly, appropriate

² Excluded containers are those not eligible for the CRS and not exempt, and will include containers made from materials or packaging formats that are more difficult to recycle and can end up as contamination in recycling streams, littered, or landfilled. This includes pouches, sachets, biodegradable plastic bottles, compostable packaging, and hard-to-recycle plastic types 3, 4, 6 and 7.

checks and balances are required to ensure critical components of the scheme are maintained.

21. In this context, the Cabinet paper proposes that the Minister for the Environment will make regulations addressing substantial decisions relating to the scope of the NZ CRS (including, for example, the refundable deposit amount and the types of containers to be included, excluded or exempt and the return network parameters). In addition, the Minister for the Environment will have powers to appoint, monitor and if appropriate, intervene, to ensure the performance of the CRS.
22. In addition, legislation will delegate certain, technical and administrative matters to the Secretary of the Ministry for the Environment. This includes the information to be provided to support compliance and performance monitoring, specification of CRS Design Standards, and if necessary, requirements for how the scheme fees will be set.
23. Legislation will also provide for obligations on key scheme participants, including first responsible suppliers (beverage producers and importers), retailers, return point operators and for Councils and their recyclers.
24. A table showing the respective powers and obligations of the Minister for the Environment, the Ministry for the Environment, and the industry-led Product Stewardship Organisation (PSO) appointed to manage the NZ CRS is set out in Appendix 4 of the draft Cabinet paper.

Financial Implications and Treaty of Waitangi

25. The Cabinet paper sets out the following additional matters:
 - a. Financial implications: subject to relevant approvals, the costs of implementing a NZ CRS will be met from a combination of Ministry baseline funding, the waste levy and cost recovery from the scheme itself. This includes the costs of setting up a registration portal for the scheme
 - b. Treaty of Waitangi implications: provision will be made to ensure equitable access for Māori to the benefits of the scheme (including convenient access to return points).

Additional Information

Procurement underway to inform regulations if a scheme proceeds

26. The Ministry has contracted for research and analysis to inform future regulations.
27. To assist with setting for the degree of mandated retail take-back and overall design, the Ministry has recently contracted PricewaterhouseCoopers (PwC) to carry out a return network study that models return network scenarios, based on a range of factors (eg types, locations and floor sizes of retail outlets, number of depots, potential exemptions, and the emissions profiles of the scenarios) (BRF-1989 refers). The project will engage key targeted stakeholders in order to ensure the outputs are well-informed, including Australian scheme stakeholders. Officials will update you (and, if appropriate, Cabinet) on the results of this study in the first quarter of 2023.
28. To inform regulation on the eco-modulation of scheme fees, the Ministry has procured research on the practical application and options for eco-modulation, which will consider

market opportunities for recycling materials (on shore and offshore). Further detail will be included in the next Cabinet paper, including the criteria for eco-modulation.

29. In addition, to inform detailed design features of the CRS network, the Ministry is in the process of procuring further research into how refillable beverage systems could be complementary to or integrated within the NZ CRS in the future. We anticipate that the outcomes of this research study will be tested with industry through targeted consultation.

Glass Packaging Forum alternative proposal

30. In September 2022, the Glass Packaging Forum (GPF) put forward an alternative to the NZ CRS proposal for glass containers, prepared by Grant Thornton. Officials have reviewed the proposal and consider that it does not adequately address key objectives of the NZ CRS, including away from home recycling and litter reduction.
31. Key assumptions also appear inconsistent as applied to the two proposals, which flows through to the relative benefits reported by the Grant Thornton report. For example, the proposal appears to assess the impacts of eco-modulation on scheme fees as highly favourable to the alternative glass scheme, and not also apply these benefits to the NZ CRS. It is noteworthy that the proposal to eco-modulate fees within the NZ CRS was well signalled and well supported through the Transforming Recycling consultation.

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Next steps

35. We are seeking your feedback on the draft Cabinet paper, ahead of lodgement on 17 November for consideration on at a Cabinet Environment, Energy and Climate Committee (ENV) meeting on 24 November 2022.
36. The next steps are for your office to circulate the draft paper to Ministers and coalition partners for feedback. In parallel, officials will undertake a second round of agency consultation (noting that Part I of the draft paper has already been subject to agency consultation).

37. We are updating the Regulatory Impact Statement (RIS) for lodgement with the Cabinet paper, noting that the RIS will still have an 'interim' status, to be finalised with the second Cabinet paper on the NZ CRS in the first quarter of 2023. . Subject to Cabinet approval, a finalised version³ of the Summary of Submissions attached in Appendix 4 will be released following policy announcements.

³ This will include editing and formatting, and removing reference to submitters who have indicated that they do not want their names published in the summary of submissions

Appendix 1: Draft Cabinet paper – Agreement to implement a New Zealand Container Return Scheme (attached)

Appendix 2: Key design elements of a NZ CRS

Key design element (as consulted on)	Additional details
including all single-use metal, plastic (PET, HDPE, PP, and recyclable bio-based PET and HDPE), glass (all colours) and liquid paperboard (LPB) beverage containers	the Ministry for the Environment and PSO to develop a clear process for considering additional beverage packaging types
container size 3 litres and smaller	lower limit of 100mL. Containers outside this scope will be subject to data and reporting
beverage container lids	the PSO is responsible for collecting and recycling beverage container lids
a mixed model network with regulated take back obligations for retailers that sell beverages	the degree of take back obligations to be established via regulation
exempt fresh milk in all packaging types	review the treatment of fresh milk at the completion of the scheme's third year
exempt beverage containers that are intended for refilling and have a producer established return and refill system in place	review the treatment of refillables at the completion of the scheme's third year
eco-modulation of the scheme fees	further detail such as the criteria for eco-modulation to be provided in the next paper
deposit financial model	consistent with international best practice, precludes the need for a Government loan
not-for-profit and industry-led	consistent with international best practice. Does not preclude broader representation on the scheme's Governance Board, or the ability of the Government to appoint representation
mandatory return targets of 85 per cent from year 3 and 90 per cent from year 5 onwards	consistent with international best practice

Appendix 3: Categories of containers and obligations

Out of scope

Does not meet *beverage* or *beverage container* definition

Will not be impacted by the NZ CRS proposals.
No registration in the Registration Portal required.

In scope

Meets “beverage” and “beverage container” definitions

First responsible suppliers are required to register their products in the Registration Portal and provide product information to the Ministry for the Environment (or authorised party). Sale (supply) is prohibited unless the product has met registration obligations for the ‘eligible’, ‘exempted’ and ‘prohibited’ categories below.

Eligible

Approved to be in the NZ CRS
Meets the packaging material, format, and size requirements of the scheme AND an exemption does not apply.
Subject to the refundable deposit.

Exempted

Not included in the NZ CRS;
can be sold to NZ market if registered in Portal
First exemptions:

- fresh white dairy milk
- containers intended for refilling
- containers >3L and <100ml in size.

Excluded

Out of NZ CRS, sale or supply prohibited *unless* temporarily exempt from the prohibition to enable transition arrangements, or in emergency or unforeseen circumstances outside of normal scheme operations

Appendix 4: Summary of Submissions [Attached]