



# Cabinet Economic Development Committee

## Minute of Decision

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### Legislative Framework for Extended Producer Responsibility

Portfolio Environment

On 10 May 2023, the Cabinet Economic Development Committee:

#### Background

- 1 **noted** that the paper under DEV-23-SUB-0080 is the fifth of five papers containing policy proposals for new waste legislation (new legislation) to replace the Waste Minimisation Act 2008 (WMA) and the Litter Act 1979, with the other papers under ENV-23-MIN-0002, ENV-23-MIN-0004, ENV-23-MIN-0005, and ENV-23-MIN-0006;
- 2 **noted** that Cabinet agreed to the accompanying four waste legislation papers in March 2023 [CAB-23-MIN-0089];
- 3 **noted** that the proposals in the paper under DEV-23-SUB-0080 relate to the government **priorities** set out in the paper *Waste Legislation 1: Overview and overarching provisions* [ENV-23-MIN-0002];
- 4 **noted** that the proposals in the paper under DEV-23-SUB-0080 for regulating products are complementary to those contained in *Waste Legislation 2: Regulating products and materials to promote circularity* and in line with compliance, monitoring, and enforcement proposals in *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime*) [ENV-23-MIN-0004, ENV-23-MIN-0006];

#### Extended Producer Responsibility

- 5 **noted** that current provisions in the WMA for product stewardship are not fit-for-purpose, and that it is proposed to replace them in the new legislation with an extended producer responsibility (EPR) framework;
- 6 **noted** that a framework is needed in the new waste legislation to establish provisions for regulating a wide range of products through various EPR schemes (including deposit return schemes);
- 7 **agreed** that the existing provisions for product stewardship in the WMA will be replaced with the proposed provisions for EPR in the new legislation;
- 8 **noted** that replacing existing product stewardship provisions will include discontinuing a role for the government in accrediting voluntary product stewardship schemes, but that companies could still develop voluntary schemes if they so wish;

- 9 **noted** that in November 2022, Cabinet agreed to an EPR framework for a New Zealand container return scheme (CRS) [CAB-22-MIN-0539.01], but that the government has subsequently deferred further work on this [CAB-23-MIN-0080];
- 10 **noted** that proposals for the legislative framework set out in the November 2022 Cabinet paper and agreed to by Cabinet are relevant for EPR schemes more broadly;
- 11 **confirmed** the decisions agreed to by Cabinet in November 2022 [CAB-22-MIN-0539.01] to make the best use of the extensive work that has already been undertaken and enable a legislative EPR framework that can be used for a wide range of products;
- 12 **noted** that while the EPR framework would allow for the use of deposit return schemes as one of its tools, should the government decide to proceed with work on a CRS at a later date, a Cabinet decision and development of necessary regulations would be required;
- 13 **agreed** to apply the provisions agreed by Cabinet [CAB-22-MIN-0539.01] to EPR *mutatis mutandis* (i.e. with any necessary changes) in the new legislation, namely to:
- 13.1 determine the product/s of interest, including products to be excluded;
  - 13.2 identify and place obligations on parties subject to requirements (such as ‘first responsible suppliers’);
  - 13.3 identify roles, responsibilities, and obligations for the Minister for the Environment (the Minister), Secretary for the Environment (the Secretary), the Ministry for the Environment (MfE), the Environmental Protection Authority (EPA) as regulator, the relevant producer responsibility organisation (PRO), and others;
  - 13.4 enable key financial controls (such as scheme charges) to be set and adjusted by the PRO, or in regulation (such as refundable deposits);
  - 13.5 enable parameters to be set by the Secretary for how the scheme is established and operates (such as Design Standards, Input Methodologies, and Information Disclosure Requirements);
  - 13.6 set targets for performance of the scheme (such as target recycling return rates), and consequences for lack of performance;
  - 13.7 establish an appropriate compliance monitoring and enforcement framework;
  - 13.8 ensure appropriate transparency in order to assess performance and hold parties accountable;
  - 13.9 manage commercial sensitivities of information shared through the scheme;
- 14 **agreed** to establish in the new legislation additional provisions needed for the regulation of EPR schemes:
- 14.1 that this primary legislation establish the purpose for which EPR tools can be used;
  - 14.2 that the Minister’s powers of intervention laid out in paragraphs 101 – 107 of CAB- 22-MIN-0539.01 also include the situation in which no suitable PRO application is received by the Minister;

- 14.3 that the primary legislation continue the provision of powers in the WMA to empower the Minister to make regulations allowing for a range of EPR tools to be implemented by a PRO, either separately or in conjunction with each other, including:
- 14.3.1 a deposit return approach, such as reflected in existing waste legislation and CRS proposals;
  - 14.3.2 take-back obligations (also in existing legislation);
  - 14.3.3 setting and collecting charges;
- 14.4 that the primary legislation include a requirement for all EPR participants to comply with conditions detailed in EPR Design Standards and Information Disclosure Requirements issued by the Secretary, and a regulation-making power for the Minister to identify 'EPR participants' for a given EPR scheme;
- 14.5 to widen the matters that Design Standards, Input Methodologies, and Information Disclosure Requirements made by the Secretary can cover, so that EPR design matters can be accommodated;
- 15 **noted** that matters covered by Design Standards, Input Methodologies, and Information Disclosure Requirements for EPR could include:
- 15.1 ensuring the appropriate management of potentially hazardous products;
  - 15.2 allowing for scheme charges to include an advance stewardship fee (i.e. an upfront payment by the consumer designed to cover the costs of collection and treatment of the product at its end of life);
  - 15.3 provisions for the management of take-back arrangements, such as requiring that services are offered to the public free of charge;
  - 15.4 steps being taken to manage excessive stockpiling of products;
- 16 **noted** that a non-statutory process is proposed for identifying potential products for EPR, identifying appropriate scope and targets for the scheme, and suitable EPR tools, alongside other potential product regulation tools;
- 17 **noted** that it is proposed that the process of EPR scheme development involve industry, Māori, and wider public interests;
- 18 **noted** that any future decisions to introduce EPR schemes for any product/material (including a CRS) would require further Cabinet policy decisions and a subsequent regulation-making process;

#### **Transitional arrangements for existing priority products**

- 19 **noted** that six product groups were declared 'priority products' under the WMA, triggering a requirement for regulated product stewardship which the Ministry for the Environment (MfE) will work on with stakeholders over the next four to five years;
- 20 **noted** that, in most cases, regulations will be made under the WMA to support the product stewardship workstream before the new legislation is in place;

- 21 **noted** that for the remaining priority products, while policy development is expected to continue over the next few years, regulations to support the scheme could be made under the new legislation rather than the WMA;
- 22 **noted** that it would be desirable for regulations made under sections 22 and 23 of the WMA (covering regulation of products, materials and waste) to transition to management under the new legislation, which will have a wider range of suitable tools;
- 23 **noted** that different transitional arrangements may be required for different products;
- 24 **authorised** the Minister to make policy decisions during drafting of the new legislation on how product stewardship schemes regulated under the WMA should transition to management under the new legislation, in line with the approach outlined in *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime* [ENV-23-MIN-0006];

### EPR governance

- 25 **agreed** that the PRO should take the form of a not-for-profit, private entity, and that the specific form will be considered as part of the application process;
- 26 **noted** that the PRO will set the remuneration levels for members, which will be paid for by scheme charges derived from scheme participants, which needs appropriate oversight in the approval and review processes by the Crown;
- 27 **agreed** that Input Methodologies and cost caps agreed to by Cabinet in November 2022 [CAB-22-MIN-0539.01] may be used to offset any incentives to over-remunerate PRO board members;
- 28 **agreed** that applicants will need to demonstrate in their application how they intend the organisation will be governed, in particular how they will:
- 28.1 ensure diversity on the Board, including Māori and community representation;
- 28.2 ensure decision-making is not dominated by a particular individual or sector or group of individuals or sectors;
- 29 **noted** that provisions are needed to ensure continuity of operation and management of critical assets if the PRO changes;
- 30 **agreed** that the applicants will need to propose how scheme-critical assets will be transferred to ensure the scheme may continue in operation should the PRO change;
- 31 **noted** that assessment criteria for PRO applications will be developed by the Secretary;
- 32 **noted** that an EPR scheme will generally become responsible for orphan/legacy products (i.e. products where the responsible supplier is no longer around to pay the end of life costs);
- 33 **agreed** that the Input Methodology published by the Secretary may identify circumstances in which an EPR scheme does not have to accept responsibility for orphan/legacy products (for example where a deposit refund approach is being used);
- 34 **agreed** that the applicant must demonstrate how they intend to fund the costs associated with managing orphan/legacy products in a manner that also manages equity risks and achieves overall objectives;
- 35 **noted** that further work is required regarding the desirability of a tax exemption for PROs;

- 36 **authorised** the Minister of Finance, the Minister of Revenue, and the Minister to make decisions regarding the tax status of PROs;
- 37 **noted** that the PRO needs to be held accountable for undertakings it makes in its application;
- 38 **agreed** that the PRO and the Minister will enter into an agreement covering key matters put forward by the PRO in its application;
- 39 **noted** that in November 2022, Cabinet agreed to several measures to enable the PRO to set scheme charges with appropriate checks and balances [CAB-22-MIN-0539.01];
- 40 **agreed** to strengthen transparency and accountability by requiring scheme charges to be published on the PRO website and gazetted once set;

### Eco-modulation

- 41 **noted** that eco-modulation refers to variable fee pricing to set higher charges for products/materials that detract from meeting overall scheme outcomes;
- 42 **agreed** that primary legislation outline the purpose which eco-modulation is designed to achieve, and in broad terms the circumstances in which eco-modulation should be considered by PROs;
- 43 **agreed** that further guidance will be provided in relation to specific products subject to EPR through the Design Standards and/or Input Methodologies issued by the Secretary;
- 44 **agreed** that for EPR, the Input Methodology for eco-modulation will include:
- 44.1 differential charges for each primary material based on the costs to recycle the recovered material into similar products (where possible);
  - 44.2 material and the market price of the recycled product;
  - 44.3 differential charges based on an amount of recycled content in a product (i.e. a lower charge for more than a certain percentage of recycled material in a product and a higher charge for products made from virgin materials);
  - 44.4 anything else the Secretary specifies in Input Methodologies;

### Scheme charges and revenue management

- 45 **agreed** that the new legislation should provide guidance regarding key considerations for the Secretary in developing Information Disclosure Requirements, Input Methodologies and Design Standards, including that:
- 45.1 these tools must be developed to give effect to the attainment of scheme outcomes;
  - 45.2 in developing these tools, the Secretary must have regard to possible compliance costs that may be imposed on scheme participants;
- 46 **noted** that, should revenue generated by compulsory charges required by regulation remain in the ownership of the PRO, there is a risk that private entities (i.e. PRO shareholders) may benefit;
- 47 **agreed** that the framework in the National Animal Identification and Tracing Act 2012 be used as a basis for balancing the need for effective checks on the PRO's statutory monopoly, while also enabling the PRO to be effectively operated by industry;



- 48 **noted** that for some products a review of charges every year may be too frequent and could lead to unnecessary churn for scheme participants;
- 49 **noted** that the standard timeframe for reviewing charges is no later than three years after they were last set;
- 50 **agreed** that the new legislation provide that charges must be reviewed by the PRO no later than three years after they were last set;

### Compliance monitoring and enforcement

- 51 **noted** that the compliance monitoring and enforcement of EPR schemes is important to ensure that participants meet their obligations under a scheme, and that the scheme can achieve its desired outcomes;
- 52 **noted** that EPR schemes have comparable compliance monitoring and enforcement requirements, but that the specific circumstances of individual products and industries subject to EPR will lead to different incentives and risks for different EPR schemes;
- 53 **noted** that there are both statutory and non-statutory oversight considerations for ensuring an EPR scheme performs, and prescribed roles for the Minister, MfE, the EPA as regulator, and the PRO, in respect of ensuring obligations are met;
- 54 **agreed** that the compliance monitoring and enforcement framework for EPR schemes sets clear obligations for the PRO and scheme participants, providing the PRO with flexibility on how to meet the scheme obligations and attain scheme outcomes, with a strong regulatory backstop to make sure those outcomes are achieved;
- 55 **noted** that the PRO may use written/contractual agreements with scheme participants to manage day-to-day running of the scheme including managing participant obligations;
- 56 **agreed** that the Minister and MfE would be responsible for monitoring overall scheme performance (e.g. that the scheme is meeting the proposed return rate and recovery/recycling/disposal outcomes), and that regulated obligations would be subject to compliance monitoring and enforcement by the EPA;
- 57 **noted** that in November 2022, Cabinet agreed that the Minister would have powers to intervene in the PRO's running of a scheme in certain circumstances (in line with the approach in Part 5, Sub-Part 2 and 3 of the Water Services Entities Act 2022) [CAB-22-MIN-0539.01];
- 58 **agreed** that the Minister's powers of intervention as agreed in CAB-22-MIN-0539.01 apply to EPR schemes more widely;
- 59 **agreed** that the EPA will have statutory powers to enforce legislative obligations for EPR schemes in line with those outlined in *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime* [ENV-23-MIN-0006] and outlined in Appendix 4 of the paper under DEV-23-SUB-0080;
- 60 **noted** that the PRO will undertake general monitoring of scheme participants to ensure they meet any obligations which may be set out in written/contractual agreements, and to manage the day-to-day running of the scheme;
- 61 **noted** that the EPA will monitor the behaviour of parties as set out in any underlying regulations and undertake the enforcement role;

- 62 **noted** that Cabinet has previously agreed to the use of Information Disclosure Requirements for a CRS to support compliance monitoring and enforcement by ensuring that MfE and the EPA receive information from participants directly, and that the same approach is proposed for EPR more widely;
- 63 **noted** that auditors' powers of entry for EPR schemes will be captured by proposals for amendments to the WMA more broadly;
- 64 **noted** that the PRO will be required to report to MfE on the performance of the scheme and what is being done to achieve scheme outcomes in line with Information Disclosure Requirements;
- 65 **noted** that the Minister does not propose to specify an exhaustive list in primary legislation for when a review of a scheme may be warranted as it may not foresee future eventualities;
- 66 **agreed** that regulations made in respect of a specific product will specify when a review is to be conducted and any specific matters that must form part of the review;

### Information requirements to support compliance monitoring and enforcement

- 67 **noted** that the proposed approach to monitoring compliance with EPR schemes is in line with the approach for general power of entry and information gathering in *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime* [ENV-23-MIN-0006];
- 68 **noted** that it is desirable that where required, identifiable information will be shared between the EPA as regulator and the PRO to assist both to perform their roles;
- 69 **agreed** that a statutory obligation be placed on the EPA and the PRO to notify each other of any actual or potential breaches of EPR obligations they identify in the course of their activities and share information relevant to the breach;
- 70 **noted** that the PRO will be required to develop internal policies and procedures to manage commercially sensitive information;

### Regulator approval of applications

- 71 **noted** that the first responsible supplier of a product to the New Zealand market, of a product regulated by an EPR scheme, will be required to register and input product information into a Registration Portal;
- 72 **noted** that the EPA will be required to assess applications to determine whether a product is eligible, exempt or excluded from a scheme, and in turn whether it is approved for sale;
- 73 **agreed** that retailers should also be required to register in a Registration Portal where there are regulated retail take back obligations for products, and provide evidence of a return point onsite, or make an exemption request supporting why they are not required to provide a return point;
- 74 **agreed** that unless otherwise obligated, certain categories of retailers, such as those below a certain shop floor size (e.g. dairies) may have a blanket exemption to the registration requirement in order to reduce administrative burden;
- 75 **agreed** that the criteria that will guide the exemption of categories of retailers will be set out in regulations;

## Funding the Regulator

- 76 **noted** that the EPA's functions as regulator will be to:
- 76.1 register first responsible suppliers;
  - 76.2 register containers against regulated categories;
  - 76.3 undertake compliance monitoring and enforcement;
- 77 **noted** that in line with a 'producer pays' approach, it is appropriate that the costs of registrations and monitoring the compliance of an EPR scheme are covered by participants in a scheme;
- 78 **agreed** that the Secretary can include provision for costs incurred or likely to be incurred by the EPA in monitoring scheme compliance in the Input Methodology (thereby requiring that scheme charges made by the PRO include these costs);
- 79 **agreed** that the PRO be required to pay the monitoring costs identified in paragraph 78 above to the EPA;
- 80 **noted** that the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act) and Hazardous Substances and New Organisms Act 1996 provide statutory frameworks with the appropriate balance of prescription and flexibility;
- 81 **agreed** that sections 143-147 of the EEZ Act, excluding section 146, and sections 21(1) and (6) of the Hazardous Substances and New Organisms Act 1996 are used as the basis for drafting;
- 82 **noted** that any costs incurred by the EPA that cannot be recovered will need to be Crown funded, which includes:
- 82.1 prosecutions;
  - 82.2 non-recoverable staff time (e.g. leave, attendance at training, attendance at organisational meetings etc);
  - 82.3 provision of policy advice (e.g. assessing the attainment of scheme outcomes or reviewing the operation of the Act);
- 83 **noted** that due to the variability associated with regulating individual products, it is not possible to give a cost estimate associated with the above functions at this time;

## Dispute resolution

- 84 **noted** that the dispute resolution process for issues that may arise between parties in EPR schemes will be largely industry-led;
- 85 **agreed** that the new legislation will provide for dispute resolution processes modelled on provisions in section 46 of the Fuel Industry Act 2020, to enable parties that are unable to resolve a dispute to refer the dispute to mediation and, failing that, arbitration following a process set out in regulations;

## Provisions for Māori interests

- 86 **agreed** that PRO applicants will be required to demonstrate how the scheme and its outcomes will be equitable for Māori;



- 87 **agreed** that Design Standards will require the PRO to:
- 87.1 seek advice from Māori in order to demonstrate how the PRO will best ensure equitable access for Māori where Māori indicate an intention to be involved (including, but not limited to, ensuring scheme accessibility to return points for Māori in rural and urban areas, where appropriate);
  - 87.2 where appropriate, provide for a social procurement model in order to provide opportunities for Māori participation in the return network (i.e. through establishing return points via a procurement process);
  - 87.3 set out its proposal for representing Māori (in addition to NGO, community groups, etc) within the PRO board structure and/or in other decision-making processes;
- 88 **agreed** that, at regular intervals, the PRO will provide reporting in relation to equitable outcomes for Māori related to the scheme's network convenience, accessibility, and social procurement approach;
- 89 **agreed** that MfE (or authorised third party) will commission nationwide demographic surveys of scheme participation to demonstrate whether a return network is fit for purpose, including impacts for rural and urban Māori (with detail set out in Information Disclosure Requirements);

### Consideration of costs, benefits and impacts

- 90 **agreed** that before recommending regulations for EPR, the Minister must consider:
- 90.1 the impacts, costs and benefits of the proposed regulation;
  - 90.2 advice from the Waste Advisory Board;
  - 90.3 consult with persons or organisations who may be significantly affected; and
  - 90.4 consistency with New Zealand's international obligations;

### Legislative implications

- 91 s 9(2)(h)
- [REDACTED]
- [REDACTED]
- [REDACTED]

### Next steps

- 92 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office based on the decisions under DEV-23-MIN-0080 and CAB-22-MIN-0539.01;
- 93 **authorised** the Minister to further clarify policy decisions relating to the decisions in the paper under DEV-23-SUB-0080 during drafting;
- 94 **noted** that the Minister for the Environment has been invited to report back by 30 June 2023 on the financial and economic implications of the waste legislation papers [ENV-23-MIN-0002];

- 95 **agreed** that, as part of the 30 June 2023 report referred to above, an estimate of government administration costs associated with EPR schemes be provided, including the distribution of these costs between the Crown and industry.

Janine Harvey  
Committee Secretary

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**Present:**

Hon Grant Robertson (Chair)  
Hon Dr Ayesha Verrall  
Hon Willie Jackson  
Hon David Parker  
Hon Priyanca Radhakrishnan  
Hon Kieran McAnulty  
Hon Ginny Andersen  
Hon Barbara Edmonds  
Hon Dr Duncan Webb  
Hon Rino Tirikatene  
Hon Dr Deborah Russell  
Hon Rachel Brooking

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV

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