

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Environment, Energy and Climate Committee

Legislative framework for Extended Producer Responsibility

Proposal

- 1 This is paper five in a series seeking policy decisions on the content of proposed new waste legislation. Papers one to four were considered at Cabinet Environment, Energy and Climate Committee (ENV) on 16 March 2023 [ENV-23-MIN-0002, ENV-23-MIN-0004, ENV-23-MIN-0005, ENV-23-MIN-0006].
- 2 This paper includes proposals for “extended producer responsibility”, as a replacement for the product stewardship provisions in the current Waste Minimisation Act 2008.
- 3 The link with government priorities is explained in the Cabinet paper *Waste Legislation 1: Overview and overarching provisions* [ENV-23-MIN-0002].

Executive summary

- 4 This is paper five in a series seeking policy decisions on the content of proposed new waste legislation (new legislation) to support delivery of the new waste strategy, improvements to kerbside recycling, and waste components of the Emissions Reduction Plan. In March 2023 Cabinet agreed to the recommendations in papers one to four that set up a new legislative framework to reduce and manage waste [ENV-23-MIN-0002, ENV-23-MIN-0004, ENV-23-MIN-0005, ENV-23-MIN-0006].
- 5 Building on the previous papers, this paper outlines an approach for managing products and their waste and proposes a legislative framework for ‘extended producer responsibility’ (EPR).
- 6 EPR is an environmental policy approach in which a producer’s responsibility for a product is extended to the post-consumer stage of a product’s life cycle. EPR can include tools such as product stewardship schemes and deposit return models, such as a container return scheme (CRS). Internationally countries are moving away from traditional product stewardship and implementing EPR.
- 7 The Waste Minimisation Act 2008 (WMA) contains voluntary and regulatory product stewardship tools (which include some deposit and return provisions). In practice, these have limitations for implementing product stewardship. A modern EPR framework is required to replace the current product stewardship provisions, ensuring that the new legislation has the right tools and options available so that in the future the Government has an opportunity to introduce different types of EPR schemes for a range of products.
- 8 In November 2022 Cabinet agreed to decisions to help build an EPR framework in the context of a CRS. While Cabinet has since deferred further work on a CRS, the EPR framework agreed at the time can be used to provide the legislative settings for EPR schemes more broadly and I recommend that this framework is used to replace the current tools in the WMA for product stewardship.

- 9 The framework I am seeking to introduce for EPR schemes would enable deposit return schemes (such as a CRS) to be progressed in the future, subject to further Cabinet decisions and a further regulation-making process, under the new legislative framework for waste.
- 10 I am requesting approval to issue drafting instructions to the Parliamentary Counsel Office based on the decisions presented in this paper and CAB-22-MIN-0539.01.

Background

More effective tools are required to make producers responsible for the products they produce throughout the product's lifecycle

- 11 The paper *Waste Legislation 1: Overview and overarching provisions* provides a background to the wider legislative reform [ENV-23-MIN-0002].
- 12 This paper proposes regulation-making powers that will help to move the responsibility and costs of end-of-life product management from ratepayers, councils, communities and the environment to the responsible supply chain (producers, importers, retailers and consumers), through a framework called “extended producer responsibility” (EPR).
- 13 While the terms “product stewardship” and “EPR” are sometimes used interchangeably, I propose EPR is used for the new legislation because it more clearly emphasises placing additional responsibilities on producers.
- 14 EPR reflects the ‘polluter pays’ principle by extending producer responsibility beyond placing products on the market, to include responsibility for managing and reducing negative environmental effects from their products. Product stewardship and deposit return schemes (such as a CRS) are types of EPR.
- 15 Most of the 400+ EPR schemes overseas extend producer responsibility to the post-consumer stage and require producer-run schemes to meet collection and processing targets. This has moved significant costs of end-of-life product management from local authorities and the environment to producers and consumers, as well as delivering significant waste minimisation and economic benefit through increased recycling.
- 16 Producer responsibility may also be extended up the supply chain to product design, given that the majority of product-related environmental impacts are determined at the design stage.¹ Our trading partners (Australia and European Union nations) are also moving in this direction (e.g. rules on toxins in electronic products² and “right to repair”). As such, EPR can be complementary to the proposals for product regulation outlined in *Waste Legislation 2: Regulating products and materials to promote circularity* [ENV-23-MIN-0004].
- 17 The WMA contains a range of voluntary and regulatory product stewardship tools. As outlined at paragraphs 24 to 34, these provisions are not fit-for-purpose and I propose they be replaced in the new legislation with an EPR framework, based on the EPR provisions Cabinet agreed at the time for a CRS [CAB-22-MIN-0539.01 refers] (now deferred), as well as the additional provisions outlined in this paper.

¹ 80 per cent is a widely claimed estimate (e.g. EU Commission, Sustainable Product Policy. <https://joint-research-centre.ec.europa.eu>).

² RoHS – Restriction on Hazardous Substances ([RoHS Directive \(europa.eu\)](#)).

Leveraging previous Cabinet decisions to establish a broader EPR framework

- 18 As outlined above, there is a need for a modernised framework for product stewardship, to enable EPR models for a range of product types.³ An EPR framework would enable models like deposit return schemes [CAB-22-MIN-0539.01].⁴
- 19 Much of the EPR framework agreed to by Cabinet in November 2022 to enable a CRS can be used to establish a broader, consistent and cost-effective EPR regulatory framework for many different product groups. Building on the November 2022 Cabinet decisions will make best use of the extensive analysis that has already been undertaken for the CRS.
- 20 Any future decisions to introduce EPR schemes for any product/material (including a CRS for beverage containers) would require further Cabinet policy decisions and a subsequent regulation-making process. In this paper I include proposals for the regulation-making process for EPR schemes to be set out in the new legislation.
- 21 I propose the EPR framework will include roles, responsibilities and obligations for the Minister for the Environment (the Minister), Secretary for the Environment (the Secretary), Ministry for the Environment (MfE), the Environmental Protection Authority (EPA) as regulator, the relevant producer responsibility organisation (PRO), and others.⁵

Additional aspects of the EPR framework not covered by previous decisions

- 22 In November 2022, Cabinet had requested that I report back with further detail on governance of the PRO, eco-modulation of scheme charges, and compliance monitoring and enforcement [CAB-22-MIN-0539.01 refers].
- 23 I am now seeking policy decisions on these and other matters to inform the development of a regulatory framework for EPR.

Problem definition – the Waste Minimisation Act (WMA) 2008 does not adequately allow for Extended Producer Responsibility (EPR)

- 24 Regulated product stewardship under the WMA commenced in 2020 with the declaration of six priority product groups [ENV-20-MIN-0024 refers].⁶ As regulation and schemes for these product groups were developed, it became clear that key WMA provisions are not fit for purpose.
- 25 The WMA requires a scheme to be developed and accredited “as soon as practicable” for a declared priority product, but lacks detail on means to effectively design, establish, or fund such schemes, or monitor and enforce obligations.
- 26 The WMA allows the Minister to declare by Gazette notice that a product is a “priority product”. This allows mandatory product stewardship through use of a regulation prohibiting sale of that product except in accordance with an accredited scheme.

³ For example, tyres, e-waste, plastic packaging.

⁴ Cabinet agreed to adopt a CRS for New Zealand [CAB-22-MIN-0539.01 refers], commencing in 2026, or later. Subsequently, decisions have been made to defer further decisions on a CRS.

⁵ In line with decisions in ENV-23-MIN-0004, it is my intention that MfE would be responsible for policy stewardship, including oversight of EPR scheme performance (where there are no regulatory obligations), and the EPA would be responsible for monitoring and enforcing compliance with underlying regulations for EPR schemes.

⁶ This followed an earlier period of policy development and consultation in 2012 to 2014, which did not result in any priority product declarations.

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- 27 The current legislation does not provide clarity on what “acting in accordance” means, nor who is liable to do so. This poses risk of confusion and difficulty in monitoring and enforcement.
- 28 The existing process entails three consultation steps: whether to declare priority products, to co-design an appropriate scheme, and then consultation on regulations to support effective operation of that scheme. However, the process makes it difficult for government to ensure transparency and accountability:
- 28.1 If a scheme meets the statutory criteria and guidelines, the Minister is required to accredit, with limited scope to require improvements;
- 28.2 Schemes will be handling large amounts of funds and appropriate checks and balances are essential. Priority product scheme guidelines include financial reporting, independent auditing, and not-for-profit status but these are not enforceable. Due diligence on the organisation that will operate an accredited scheme is not among the specified criteria for accreditation;
- 28.3 Once the scheme is accredited the only remedy for poor performance is to revoke accreditation. For regulated schemes this would have unintended consequences, including the lack of a PRO to deliver services for which charges had already been collected.
- 29 The fee-setting provisions create barriers to implementation. Under the current provisions the fee must be set by the government in regulation (meaning it is not easily adjusted as market situations change; the scheme lacks flexibility to determine its own charges; and some aspects of scheme implementation such as float, legacy and orphan products, contingency funding and ability to sponsor new infrastructure and product development may be out of scope).⁷ Further, some products that could be made subject to EPR are in use for extended periods of time, making actual future costs at end-of-life difficult to predict.
- 30 Overall, the current model creates fiscal and legal risk to government and financial and reputational risk to the scheme. Treasury advice for the first proposed fee regulations (for tyres) is that the Crown should collect the fee to reduce financial risks associated with possible fraud. The government will collect product stewardship fees for tyres, for example, then transfer the money to the accredited scheme.⁸ Regular fee regulation reviews will be required, creating an ongoing administrative burden for officials and Cabinet and reducing the flexibility for scheme participants.
- 31 The WMA also contains provisions for voluntary product stewardship schemes. New Zealand currently has 11 voluntary accredited product stewardship schemes in place, of which four are on track to become regulated schemes in due course for declared priority products. Under the WMA, the Minister is required to accredit schemes if criteria have been met. These criteria do not relate to delivery of significant environmental benefit.
- 32 I propose to discontinue the statutory role for government in accrediting voluntary schemes. Voluntary schemes have had mixed success, with limited participation and coverage. Given the limited outcomes, the administrative costs of accrediting and monitoring voluntary schemes are not justified, for either government or participants.

⁷ Legislative Design and Advisory Committee advice is that a regulatory ‘fee’ can only be used to pay for specified services clearly linked to those that pay the fee.

⁸ As outlined in the Cabinet paper *Proposals to Regulate Product Stewardship for Tyres and Update on Large Batteries Stewardship Scheme*, considered by the Cabinet Economic Development Committee on 7 December 2022 [DEV-22-MIN-0302 refers].

- 33 Instead, I propose the new regime focuses on supporting regulated EPR schemes only, which will create a level playing field across the market for identified products.
- 34 Industry would remain free to continue existing or develop new voluntary schemes for products not identified for a mandatory EPR approach. Companies or industries may choose to do so to meet customer expectations or as part of their corporate sustainability initiatives.

A new regulatory framework for EPR schemes

- 35 The limitations with the existing provisions for voluntary and regulated product stewardship are outlined at paragraphs 24 to 34 above. I propose that this regulatory framework be replaced with a framework to account for a wider range of products that may be subject to EPR in the future, and the wider range of forms that EPR can take. The proposals in this paper build on the EPR approach agreed in November 2022 (with changes as required to reflect the new broadened context) [CAB-22-MIN-0539.01].
- 36 Typical EPR mechanisms require producers to cover the cost of collecting and appropriately managing end-of-life products (e.g. recycling, safely disposing). Retailers may be required to take back products and/or packaging, charge a refundable deposit, or collect an advance stewardship fee.⁹
- 37 These requirements can be used together (for example, a scheme may involve member producers participating in a take back programme and paying an advance stewardship fee to cover associated costs).
- 38 Key features of the framework include provisions to:
- 38.1 determine the product/s of interest, including products to be excluded;
 - 38.2 identify and place obligations on parties subject to requirements (such as “first responsible suppliers”);
 - 38.3 identify roles and responsibilities for the Minister, the Secretary, the regulator, the PRO and others;
 - 38.4 enable key financial controls (such as scheme charges) to be set and adjusted by the PRO or in regulation (such as refundable deposits);
 - 38.5 enable parameters to be set for how the scheme is established and operates (such as Design Standards, Input Methodologies and Information Disclosure Requirements);¹⁰

⁹ An advance stewardship fee is levied on producers and/or importers of certain products based on estimated costs of collection and management at the end of the product’s lifetime. Charges are used to finance post-consumer recycling or treatment of designated products, may be collected by public or private entities, and may or may not be transparent to consumers at point of purchase. The term ‘advance disposal fee’ is commonly used in EPR literature, but ‘advance stewardship fee’ is preferred as it recognises that best practise end-of-life product management method varies by product group (e.g. reuse, recycling, treatment, energy recovery, disposal). In pursuit of a circular economy, ‘disposal’ of resources is least preferred.

¹⁰ In *Waste Legislation 2: Regulating products and materials to promote circularity* I proposed a regulation-making power to prescribe environmental performance requirements for products and materials across, or at any stage of their life cycle. These powers to regulate products and materials would be complementary to the controls proposed here, which relate to more detailed elements of how a scheme should operate (for example, they may cover such matters as user accessibility and health and safety aspects of product return points) [ENV-23-MIN-0004].

- 38.6 set targets for performance of the scheme (such as target recycling return rates), and consequences for lack of performance;
 - 38.7 establish an appropriate compliance monitoring and enforcement framework;
 - 38.8 ensure appropriate transparency in order to assess performance and hold parties accountable;
 - 38.9 manage commercial sensitivities of information shared through the scheme.
- 39 In some cases, I am proposing regulation-making powers rather than specifying matters in primary legislation (e.g. to identify the range of products that are in scope for a particular EPR scheme, as this will vary for different product types).
- 40 Building on the November 2022 Cabinet decisions, Appendix 1 summarises the regulatory components which I propose to be applied to EPR within the new legislation.

Additional provisions needed for an EPR framework

- 41 Processes are required to identify candidate products for EPR.¹¹
- 41.1 I propose that the new legislation establish the purpose for which EPR tools can be used;
 - 41.2 I propose to use a transparent priority-setting tool for identifying potential products for EPR. Options include identifying priority products through an Action and Investment Plan or similar MfE workplan, or a more formal method such as that used in Australia.¹² This process could also identify products of interest with an initial assessment of what EPR tools (and other product management tools within the new legislation) might be most suitable, scope of coverage (e.g. how legacy products should be dealt with), as well as initial thinking on suitable scheme targets. I do not propose this step be outlined in the primary legislation;
 - 41.3 A non-statutory process would also be followed to develop further details of how a successful scheme may operate (including which components would need regulatory backing). For example, this could be achieved through an open procurement process, with requirements to ensure industry, Māori, and public interests were represented;
 - 41.4 The Minister would then invite applications to be the PRO (analogous to decisions in paragraphs 77-79 of CAB-22-MIN-0539.01). The Secretary would review applications and provide advice to the Minister, who will decide which PRO to appoint.¹³ The Minister would also use regulation-making powers to establish key scheme parameters including scope of regulated products and to identify obligated parties.

¹¹ Common subjects of EPR requirements internationally include small consumer electronics, packaging, tyres, end-of-life vehicles, lead-acid batteries and a range of other products. Most but not all of these product groups are already priority products.

¹² Product stewardship priority-setting in Australia allows for tabling in the House of the Minister's priority list and annual updates of what action the Government has taken.

¹³ In a scenario where there is more than one suitable applicant to form the PRO, the Secretary will need to consider and provide advice to the Minister on which applicant is preferred, whether more than one scheme may operate as complementary schemes in the same market, or whether a single national scheme/PRO is best suited to the regulated product type.

- 42 If no suitable application to become a PRO is received for a particular product group, additional interim mechanisms will be required. This may arise where the industry for that product is uncoordinated or dispersed, with no clear existing structures for cooperating.
- 42.1 In such an instance, I propose that the Minister may direct the Secretary to appoint a Crown manager until such time as an industry-led PRO can be established;
- 42.2 The Crown manager would be independent of other roles fulfilled by MfE, and the EPA as regulator (such as scheme performance and compliance monitoring);
- 42.3 This is analogous to the powers Cabinet agreed to in November, in the situation of a review having identified performance problems with a PRO (decisions 103-104 of CAB-22-MIN-0539.01).
- 43 I propose primary legislation empower the Minister to make regulations allowing for a range of EPR tools including:
- 43.1 a deposit return approach;
- 43.2 take-back obligations (i.e. a requirement to provide for return of products at end-of-life). This could be a return to seller model (where consumers can drop or send used products and/or packaging back to retailer/store), or a collection model (e.g. packaging is collected from the consumer at the same time that an item such as a new piece of whiteware is delivered);
- 43.3 allowing the Minister to identify “EPR participants” for a given EPR scheme and require them to comply will conditions detailed in EPR Design Standards and Information Disclosure Requirements issued by the Secretary;
- 43.4 charges needed to effectively operate the scheme.¹⁴
- 44 I propose to widen the matters that Design Standards, Input Methodologies and Information Disclosure Requirements can cover, so that EPR design matters can be accommodated. This could include:
- 44.1 ensuring the appropriate management of potentially hazardous products;
- 44.2 provisions for management of take-back arrangements (e.g. that such services are offered to the public free of charge);
- 44.3 steps being taken to manage excessive stockpiling of products;
- 44.4 allowing for scheme charges to cover additional matters relevant to EPR schemes.

Transitional arrangements for priority products

- 45 I propose that existing priority product declarations and the associated obligations that arise from those declarations will remain in force. This means MfE and stakeholders will continue to develop regulated product stewardship frameworks for the six priority products.

¹⁴ Charges could include an advance stewardship fee and other charges needed for successful scheme operation. Charging could be on a per-product basis or some other agreed approach such as based on market share. Depending on the product, charges may cover recycling of the product, or else safe disposal in a way that limits harm (for example, safe destruction of refrigerant gases contained in air conditioning units).

- 46 In some cases, regulations will be made under the WMA to support this workstream. For example, I recently received Cabinet approval for regulations to support product stewardship for tyres [DEV-22-MIN-0302 refers].
- 47 For other priority products such as plastic packaging where policy development is likely to continue over the next few years, regulations to support the scheme could be made under the new legislation.
- 48 I propose delegated authority to be able to make policy decisions on how product stewardship schemes regulated under the WMA should transition to management under the new legislation, in line with the proposals put forward in *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime* [ENV-23-MIN-0006].

Ensuring effective operation of EPR schemes in the establishment phase

- 49 I propose that an EPR PRO will be a not-for-profit such as a company, incorporated society or charity as this form is best placed to support strong industry leadership, and that the applicants will be responsible for proposing the actual legal form of the entity. This is in line with Cabinet decisions on governance in November [CAB-22-MIN-0539.01].

Risks to attainment of desired outcomes and risks to the Crown

- 50 Inappropriate scheme design or charges – Industry is typically incentivised to reduce costs, which may make schemes less effective. For example, industry involved in EPR schemes may favour a return point model that is inconvenient/inaccessible for consumers, resulting in lower return rates, which reduces scheme costs.
- 51 Unreasonable remuneration – Under the proposed structure, the PRO would determine remuneration for its board members. Unlike a publicly listed company, director remuneration will not be subject to shareholders' scrutiny.
- 52 I propose that Design Standards and Input Methodologies be used to mitigate these risks, by specifying matters the applicant must take into account when setting charges. I propose the applicant will put forward director remuneration levels and a process for remuneration review in their application. Considerations should include the public good nature of the scheme and the need to keep scheme charges at a reasonable level.
- 53 I further propose that Input Methodologies and cost caps (tools agreed to by Cabinet in November 2022), may be used to address any incentives to over-remunerate.
- 54 Lack of Board diversity – Ensuring the PRO has the necessary skills (e.g. legal, financial, industry knowledge) and a diverse range of perspectives (e.g. consumers, Māori, local authorities, recyclers, sustainability NGOs) will be critical to enabling the PRO to govern strategically in the best interests of the public at large. It is usual for legislation to explicitly state the skills and perspectives a board or similar administrative body must collectively hold.
- 55 Instead of placing the onus on the Minister to ensure governance is effective, I propose to place responsibility on applicants. For this reason, I propose Design Standards provide that an application demonstrate how the applicant intends to ensure the PRO has the right mix of skills and perspectives. Further that the applicant must demonstrate how the PRO will operate to manage conflicts of interest (particularly in respect of industry participation and community aspirations) and ensure one person or 'block' of members do not dominate decision making.
- 56 Scheme continuity and loss of critical assets – There is a risk that should an organisation fail, or the shareholders decide to cease operating it, assets key to the operation of the scheme

(such as storage, processing facilities, vehicles for product collection) may be lost. I propose that the applicant must identify the assets, including critical assets, held by or likely to be held by the PRO and outline how they will be managed. The application must also propose arrangements for providing for the uninterrupted continuation of the scheme should shareholders wish to divest themselves of ownership.

57 Funding management of orphan/legacy products¹⁵ – PROs will need to identify how they plan to deal with costs associated with managing products from non-members of the scheme. This may arise in several scenarios:

57.1 It is frequently difficult (or impossible) to distinguish between products already on the market and those that come to market after a scheme takes effect. Products already on the market when the scheme commences may subsequently be submitted for end-of-life management through the scheme (causing costs that haven't been covered by upfront charges);

57.2 Producers may go out of business, meaning they no longer contribute to scheme charges but their products remain in circulation;

57.3 Consumers may present products for collection that are not in-scope.¹⁶

58 Making schemes responsible for orphan/legacy products can increase the costs for scheme participants and may create perverse incentives, such as participants seeking to avoid known future costs by altering their trading status. However, it is also a practical way of ensuring scheme objectives are met, and the industry takes responsibility for managing the impacts of their products.

59 I propose that applicants for EPR management will be required to demonstrate how they propose to fund costs associated with orphaned products. For example, a PRO may establish a fund that can be drawn from in the future to meet costs. Where appropriate, Design Standards and/or Input Methodologies may identify that the scheme need not manage legacy products. In some cases a return would not be payable on ineligible (legacy) products where an upfront deposit has not already been paid.

60 Tax status of PROs – As private entities, PROs will need to pay income tax on any profits. Given the public good nature of EPR/CRS schemes, it may be appropriate to provide a tax exemption for income arising from scheme charges and deposits. However, further consideration is needed and I therefore seek Cabinet delegation to the Ministers of/for Finance, Revenue and Environment to determine whether an exemption is appropriate, the scope of such an exemption, and how it would be given effect.

61 Providing for PRO accountability following their appointment – Upon appointment, I propose the PRO must enter into an agreement with the Minister to reflect the arrangements set forward in the PRO application.

62 Need for transparency and accountability – I propose requiring that charges set by the PRO must be published on the PRO's website and in the Gazette, to improve transparency and accountability of the PRO.

¹⁵ Legacy products are those that are already on the market (or have reached end-of-life) at the time regulations take effect. Orphan products are those whose producers no longer exist.

¹⁶ This is less likely to be a problem for deposit return schemes such as a CRS which have an electronic verification and management system based on product barcodes, so the eligibility of containers can be readily identified. However, it may arise with other schemes with a regulated take-back requirement where, whether out of a lack of information or to avoid disposal costs they might otherwise incur, consumers may deposit other (out-of-scope) product types at recovery points.

Eco-modulation of scheme charges

- 63 Eco-modulation is a differential pricing mechanism used to incentivise waste minimisation and circular economy outcomes. Higher charges may be set for products/materials that contribute less to meeting overall scheme outcomes, for example because they are hard to recycle, while products/materials that better meet objectives (e.g. those that are easier to recycle) may have lower scheme charges.
- 64 I propose that primary legislation contain a purpose statement outlining the circumstances in which PROs should consider eco-modulation. Further requirements on calculating eco-modulated charges would be provided in relation to specific products subject to EPR through the Input Methodologies issued by the Secretary.¹⁷
- 65 I propose that the Input Methodology for eco-modulation of EPR scheme charges more broadly will include:
- 65.1 differential charges for each primary material based on the costs to recycle the recovered material into similar products (where possible);¹⁸
- 65.2 differential charges based on an amount of recycled content¹⁹ (i.e. a lower fee for more than a certain percentage of recycled material and a higher fee for products made from virgin materials);
- 65.3 anything else the Secretary specifies in Input Methodologies.

Ensuring effective ongoing operation of EPR schemes

A framework for the use of the Secretary for the Environment's tools

- 66 In November 2022, Cabinet agreed that the Secretary should be empowered to set requirements for how PROs operate. Specifically, Cabinet agreed that the Secretary be able to set Input Methodologies, Information Disclosure requirements, and Design Standards.
- 67 Input Methodologies will enable the Secretary to specify how certain costs are to be treated and impose cost caps on specific types of expenditure; for example, capping the amount a PRO can spend on lease costs. In this way, input methodologies help to ensure PROs do not 'gold plate' their expenditure and, in doing so, require the setting of unduly high charges.
- 68 In addition, Cabinet agreed in November 2022 to empower the Minister to intervene should the Minister consider the PRO's charges were set too high or too low. In such circumstances the Minister may set the PRO's charges by notice.
- 69 Information disclosure requirements will enable the Secretary to mandate the provision of specific information to enable a better understanding of PRO and scheme performance.
- 70 Design standards will ensure the Secretary is able to specify key aspects of a scheme's design to improve the attainment of scheme outcomes.

¹⁷ The benefits of this approach include the ability for the PRO to define a scheme charge structure that works for the specific product while also giving the Government the opportunity to assess whether the charges are reasonable and would adequately incentivise producers to achieve scheme outcomes.

¹⁸ Polyethylene terephthalate (1), high density polyethylene (2), polypropylene (3), and liquid paperboard.

¹⁹ The required amount of recycled content in products will likely vary across material types.

71 I propose the Bill should provide further measures to guide the Secretary in the use of the tools agreed by Cabinet in November 2022. Specifically, I propose a hierarchy of key considerations for the Secretary in developing Input Methodologies, Information Disclosure Requirements, and Design Standards. This will provide greater assurance that these tools are developed first and foremost to achieve scheme outcomes. I propose that:

71.1 these tools must be developed to give effect to the attainment of scheme outcomes;

71.2 in developing these tools, the Secretary must have regard to possible compliance costs that may be imposed on scheme participants.

Managing the risk of private benefit from government-imposed charges²⁰ and refundable deposits

72 The new legislation will establish the PRO as a statutory monopoly, in that industry will be required to establish/own and operate a PRO; the legislation will require those participating in scheme to pay charges to the PRO; and if participants do not pay charges to the PRO, they will not be able to supply their product to the market.

73 It is important to effectively manage the possible negative implications associated with a statutory monopoly.

74 I recognise that this is not unique and that the Commodity Levies and National Animal Identification and Tracing (NAIT) scheme shares many similarities to EPR schemes. I therefore propose that the NAIT Act framework be used as a starting point for drafting. I consider this framework provides the right balance between enabling industry leadership while providing effective checks to hold the PRO accountable for the statutory monopoly under which it operates.

75 It can be challenging to accurately forecast expenditure and revenue, particularly in the early years of a scheme (and therefore set scheme charges appropriately without generating either a surplus or deficit).

76 In November Cabinet agreed that a PRO should review its charges annually [CAB-22-MIN-0539.01]. However, I note that this may be too frequent a timeframe for some EPR schemes. Therefore, I propose that the new legislation require PROs to review their charges no later than three years after they were last set. I note that this is a standard timeframe for charge reviews.

Compliance monitoring and enforcement

77 EPR schemes could provide a number of opportunities for participants in a scheme to take advantage of settings for their own financial gain.²¹

78 The specific circumstances of individual products and industries subject to EPR²² may lead to different incentives and risks for different schemes.

²⁰ Includes fees for service and levies.

²¹ This could include attempts to return ineligible products to claim a deposit refund; misrepresentation of the number of products collected at a return point to claim higher handling fees; limiting the number of products returned to the scheme to decrease scheme costs; attempting to sell products not registered and approved by the scheme; misrepresenting the treatment of products at end-of-life (e.g. claiming recycling outcomes or rates not actually achieved); inappropriate use of confidential information for gain (e.g. to gain understanding of a competitor's market share).

²² Such as the stability or otherwise of the industry, barrier to entry, longevity of products, portion of online sales, and costs of collecting transporting and suitably managing products at end of life.

Roles and responsibilities

- 79 Ensuring that EPR scheme participants understand their obligations under a scheme and are effectively monitored to ensure those obligations are met will help to achieve scheme outcomes.
- 80 I propose to establish a compliance framework for EPR schemes that provides a PRO with choices around how it will meet the scheme's core obligations, but with a strong regulatory backstop to make sure the intended outcomes of a scheme are achieved.
- 81 Roles and responsibilities will include:
- 81.1 The PRO – responsible for managing the day-to-day running of the scheme (CAB-22-MIN-0539.01 refers). The PRO will have an oversight function in managing the EPR scheme to ensure it meets its obligations (e.g. that scheme return targets, and disposal/recycling outcomes are met), and that agreements between scheme participants are carried out. It is expected that the PRO will use written agreements/contractual arrangements to set and manage obligations for scheme participants;
- 81.2 The Minister and MfE – will be responsible for monitoring to ensure EPR schemes are achieving legislative performance outcomes [CAB-22-MIN-0539.01]. This is in line with proposals in *Waste Legislation 1: Overview and overarching provisions* and *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime*) [ENV-23-MIN-0002, ENV-23-MIN-0006];
- 81.3 The Minister – In November 2022 Cabinet agreed that the Minister would have powers to intervene in the PRO or appoint a review team or Crown Manager if required. As a last resort the Minister may dissolve the scheme's PRO [CAB-22-MIN-0539.01];
- 81.4 The Secretary – In November 2022 Cabinet agreed that the new legislation require a review of a CRS, should the scheme fail to meet its targets [CAB-22-MIN-0539.01]. Upon further consideration I believe there are other reasons a review of an EPR scheme may be warranted. Rather than specifying an exhaustive list of when a review may be undertaken that may not foresee future eventualities, I propose Cabinet supplement decision 37 [CAB-22-MIN-0539.01 refers] by agreeing that the Secretary may undertake a review of EPR scheme performance as required;
- 81.5 The EPA as regulator – to administer elements of the scheme and oversee scheme compliance. In March 2023 Cabinet agreed that the EPA take on operational and enforcement functions for products and materials [ENV-23-MIN-0002]. This would include regulatory compliance monitoring and enforcement oversight of EPR schemes. Real time data will be provided to the regulator and PRO through electronic counting and verification technology where appropriate. Traditional enforcement by warranted officers is also proposed where breaches of legislation have occurred;
- 81.6 The EPA – to have statutory powers to monitor EPR schemes and scheme participants to ensure that all regulated obligations are met, and that where they are not met, it is able to use compliance tools to enforce obligations (or penalise non-compliance);
- 81.7 The EPA's statutory powers being in line with those proposed in *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime* [ENV-23-MIN-0006] and set out in Appendix 4. The compliance framework of the proposed legislation provides for which tools to use to be largely at the discretion of the regulator to maintain flexibility and maximise effectiveness.

Effectively managing PRO financial risk

82 A central objective of extended producer responsibility schemes internationally and domestically is that they are industry led. This is critical to ensuring industry buy-in.

83 I set out below how I intend to strike the right balance between industry leadership and governments role in providing effective assurance over the financing of EPR schemes:

83.1 Government will set the outcomes the scheme must achieve;

83.2 The PRO will determine how to achieve the outcomes, what funding is required and will sets the charges (other than the refundable deposit, which will be set in regulations);

83.3 MfE will monitor attainment of the outcomes (e.g. whether the PRO has enough money/has set the charges too high or too low);

83.4 The Minister will have the ability to step in and address any poor performance, including by overriding PRO decisions as to the level of charges.

84 The Secretary will set out detailed reporting requirements (alongside more general information gathering powers) to ensure government has a strong view of financial performance to underpin action if required.

85 With good information, good monitoring and a willingness to act, I do not consider there is any greater risk of PRO financial failure over and above having charges set by government.

Information requirements to support compliance monitoring and enforcement

86 EPR scheme compliance and performance monitoring requires a wide range of data from all participants in a scheme. It is imperative that MfE and regulator have direct access to data to support monitoring activities and provide evidence for further investigation of non-compliance or enforcement/intervention if necessary. This may include receiving data directly from scheme participants, or in real time through the PRO.

87 Cabinet has previously agreed to use Information Disclosure Requirements to ensure that MfE and regulator have access to the necessary information from scheme participants to understand compliance and scheme performance [CAB-22-MIN-0539.01].

88 As part of its monitoring and enforcement role, the regulator will be empowered to undertake activities to determine compliance with regulated requirements, including auditing of schemes and scheme participants. This could include requiring and reviewing data that has been received, or physical audits (e.g. auditing return points to ensure they meet required regulatory standards for health and safety, signage, etc).

89 I propose that monitoring compliance of EPR schemes is in line with the approach for general power of entry and information gathering in the Cabinet paper *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime* [ENV-23-MIN-0006].

90 For the purposes of compliance monitoring, I envisage identifiable information will be exchanged between the PRO and the regulator. The regulator may identify actual or likely breaches of contract that the PRO will want to be informed of. Equally, the PRO may become aware of breaches of regulations, Design Standards or Information Disclosure Requirements.

- 91 Where the regulator or PRO become aware of actual or potential breaches, I propose a statutory obligation be placed on both to notify the other and to provide any supporting information.
- 92 I propose that the PRO be required to develop internal policies and procedures to prevent industry stakeholders who may be involved in the governance of the organisation from accessing commercially sensitive information that may be held by the PRO as a consequence of discharging their functions or receiving information from the regulator to aid in compliance monitoring.
- 93 In addition, the PRO will be required to provide MfE with frequent reports on the performance of the scheme, and what is being done to meet the required scheme outcomes. MfE may also periodically require the provision of information to assist in scheme performance monitoring. I expect this to be non-identifiable information that enables the MfE to understand if performance targets are being achieved and why or why not. In such instances I expect the flow of information to be one way (i.e. from the PRO to MfE).
- 94 The PRO may use written agreements with scheme participants to require specific information or data to support the collection of charges and running of the scheme. This will enable the PRO to ensure participants are meeting obligations set out in written agreements, and also enable the PRO to adjust scheme management as necessary (e.g. to adjust the return network, or increase marketing etc).

Regulator approvals of applications

- 95 A key source of information for the regulator is the Registration Portal where the first supplier to the New Zealand market of a regulated product ('first responsible supplier') will be required to register and input product information in the Portal [CAB-22-MIN-0539.01]. The EPA will be required to assess applications to determine whether the product is eligible, exempt or excluded in a particular scheme, and in turn whether it is approved for sale.
- 96 I propose that the Registration Portal requirement is extended to retailers in EPR schemes where there is regulated retail take-back of products. All retailers selling in-scope products would be required to register in the Portal and provide evidence of a return point on site, or apply for an exemption where grounds for exemptions are provided for.²³

Dispute resolution

- 97 Disputes could vary in nature and scale and may arise from contractual agreements between the PRO and scheme participants (e.g. return point operators or materials consolidation facility operators), or other aspects such as the setting of the scheme charges.
- 98 Dispute resolution clauses can be built into contractual agreements, but in practice power imbalances between different parties can affect fair dispute resolution. I consider it is necessary to establish expectations for dispute resolution processes in Design Standards, as a tool which is easily adaptable depending on the specific circumstances of the EPR scheme.
- 99 While the dispute resolution process will largely be industry led, it may also be necessary for government intervention. I propose that primary legislation provides for dispute resolution processes modelled on provisions in section 46 of the Fuel Industry Act 2020, which enables

²³ Certain categories of retailers such as those below a certain size threshold (such as dairies) could have a blanket waiver of the registration requirements in regulation. Changes could also be made to the regulations as required to ensure scheme outcomes are met (for example to require certain smaller retailers in rural areas to register). Overall, this would reduce bureaucracy and compliance costs for smaller retailers while still providing for a flexible approach to the network configuration options across New Zealand.

parties that are unable to resolve a dispute to refer the dispute to mediation and follow a process set out in regulations. Failing mediation, the dispute may then be referred to arbitration.

- 100 MfE officials will continue to work with Ministry of Business Innovation and Employment (MBIE) officials and the Parliamentary Counsel Office to develop the details of dispute resolution for EPR schemes in future.

Tiriti o Waitangi / Treaty of Waitangi implications

- 101 Further to the preliminary analysis provided in the previous CRS Cabinet paper, no Tiriti o Waitangi settlement implications that relate directly to the EPR policy have been identified. Tiriti o Waitangi interests and principles are nevertheless relevant, and some significant claims such as WAI 262 are relevant to the broader policy issue of solid waste management.
- 102 Proposals for how EPR schemes will be designed to maximise opportunities for Māori participation in the scheme and mitigate unintended costs for Māori (i.e. to ensure that return points are accessible for Māori) are set out in table 1 below:

Table 1: Provisions for Māori interests in new EPR schemes

Ensuring equitable outcomes for Māori	The PRO appointment criteria will require applicants to demonstrate how the scheme and its outcomes will be equitable for Māori.
Māori participation in the scheme (accessibility and convenience)	Design Standards will require the PRO to seek advice from Māori to demonstrate how the PRO will best ensure equitable access for Māori (including, but not limited to, ensuring scheme accessibility to return points for Māori in rural and urban areas, where appropriate).
Social procurement model (economic benefits)	Where appropriate, Design Standards will require the PRO to provide for a social procurement model that provides opportunities for Māori participation in a return network.
Governance	Design Standards will require the PRO, following engagement with Māori, to set out its proposal for representing Māori where Māori indicate an intention to be involved (in addition to NGOs, community groups, etc.) within the PRO board structure and/or in other decision-making processes.
Reporting requirements of the PRO	The PRO will provide regular reporting in relation to equitable outcomes for Māori related to the scheme's network convenience, accessibility and social procurement approach.
Monitoring of Māori participation in the scheme	MfE (or authorised third party) will commission nationwide demographic surveys of EPR scheme participation to demonstrate whether the return network is fit for purpose, including impacts for rural and urban Māori (in addition to wider population/demographic groups).

- 103 I propose that the provisions outlined in Table 1 and those previously agreed by Cabinet [CAB-22-MIN-0539.01 refers] also be applied to other EPR schemes, as appropriate.

Implementation

Financial implications

- 104 The overall financial implications for the package of policy proposals (including EPR) are set out in *Waste Legislation 1: Overview and overarching provisions* [ENV-23-MIN-0002].

- 105 The financial implications of enabling provisions cannot be calculated in advance, because costs and benefits associated with their use in different scenarios could vary substantially. Nonetheless, I am proposing increasing use of regulation-making powers to control products and materials over the next decade, as part of the transition to a circular economy.
- 106 I propose consideration of costs, benefits and impacts of proposals as part of the regulation-making process (along with advice from a Waste Advisory Board, consultation with affected parties, and consideration of international obligations). This is in keeping with the approach outlined in the other waste legislation papers.
- 107 This will require increased administrative capacity and capability from regulatory agencies. As covered below, some of these costs such as monitoring may be covered through cost recovery, while others may be supported through proposed changes to the ways in which revenue from the waste disposal levy can be used.

Funding the Regulator

- 108 The regulator will have the following statutory functions that will require funding:
- 108.1 Registration of first responsible supplier and retailers (where appropriate);
 - 108.2 Registration of products against regulated categories;
 - 108.3 Compliance monitoring and enforcement.
- 109 In line with Treasury and Office of the Auditor-General guidance, I propose that the regulator can recover the costs of processing applications in the Registration Portal (from either first responsible suppliers or retailers). I propose that the new legislation will provide for the regulator to set fees, including hourly rates and fixed charges and recover the actual and reasonable costs associated with application processing. I further propose that the regulator notify fees in the New Zealand Gazette. Finally, I consider it appropriate that the new legislation provide for waivers or reductions in fees in line with policy developed by the regulator.
- 110 The underlying premise of EPR schemes is a “producer pays” approach, whereby the cost to suitably manage the product at end-of-life is moved from councils and ratepayers, to those responsible for the production and consumption of products (producers, retailers and consumers). In line with this, it is appropriate that costs to monitor the compliance of EPR schemes are covered by participants in the scheme and are included in the scheme charge.
- 111 I propose compliance monitoring costs will be recovered from the PRO. Investigation costs will be a mix of cost-recovery and Crown funding depending on whether wrongdoing has been substantiated and whether it is feasible to charge. I seek delegated decision-making to work through the details of how this cost recovery may operate and in what circumstances this should be provided for.
- 112 Prosecution costs will be funded by the Crown.
- 113 As with all cost-recovery regimes, the regulator will not be able to cost recover 100 per cent of its costs. When staff are not working on cost recoverable activities these costs will be Crown funded.
- 114 I propose legislation will be modelled on sections 143 – 147 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act), excluding section 146, and sections 21(1) and (6) of the Hazardous Substances and New Organisms Act 1996. I

consider these provisions provide the right balance of certainty and flexibility. I also note that the EPA, as the proposed regulator, is familiar with operationalising these provisions.

- 115 Regulatory Impact Statements will need to be prepared to support the development of regulations to enable individual EPR schemes. The Cost Recovery Impact Statement in Appendix 3 includes a high-level overview of scheme functions, responsible parties and funding mechanisms.

Legislative implications

- 116 This paper is part of an overall proposal to repeal and replace the WMA and the Litter Act 1979. See *Waste Legislation 1: Overview and overarching provisions* for details of the legislative timetable [ENV-23-MIN-0002].

s 9(2)(h)

s 9(2)(h)

Impact Analysis

Regulatory Impact Statement

- 121 Cabinet's impact analysis requirements apply to this paper.
- 122 The EPR proposals are included as part of the overall package to repeal and replace the WMA and Litter Act 1979. Analysis of regulatory impacts is included in *Waste Legislation 1: Overview and overarching provisions*.
- 123 A Stage 1 Cost Recovery Impact Statement is attached to this paper at Appendix 3 and outlines the high level policy rationale for cost recovery activities within EPR schemes.

Climate Implications of Policy Assessment

- 124 CIPA analysis for the overall reform (including EPR proposals) is set out in *Waste Legislation 1: Overview and overarching provisions* [ENV-23-MIN-0002].

Population implications

- 125 The population implications of EPR will be specific to what product/s are proposed for regulation, and what particular provisions are proposed. I intend to use the proposed tools for the Secretary to provide input into schemes (i.e. via Design Standards) to ensure schemes adequately consider and allow for particular populations such as rural communities, Māori, and others.
- 126 PRO applicants will be required to demonstrate how the scheme provides for equitable outcomes for these groups. I propose that MfE will also commission nationwide demographic surveys of scheme participation to demonstrate whether the return network is fit for purpose, which would include impacts for these identified groups (and any others that may be identified in future).

Human rights

- 127 *Waste Legislation 1: Overview and overarching provisions* discusses compliance for the waste strategy reform package [ENV-23-MIN-0002].

Consultation

- 128 Details of public consultation on the waste strategy and legislation are set out in the Cabinet paper *Waste Legislation 1: Overview and overarching provisions*. Public consultation on a CRS and other proposals in the Transforming Recycling consultation took place from March to May 2022.
- 129 The Department of Conservation, the Treasury, Inland Revenue Department, MFAT, Te Puni Kōkiri, Te Arawhiti, the Ministry for Primary Industries, the Department of Internal Affairs, MBIE, the Ministry of Justice, the Ministry of Social Development, the Public Services Commission have been consulted. The Privacy Commission and the Department of Prime Minister and Cabinet has been informed.

Communications

- 130 On 29 March 2023, I issued a press release on a range of improvements to waste management in New Zealand following Cabinet's decisions on the proposals for the new waste legislation. No specific announcements on changes to the legislative framework for EPR are proposed.

Proactive release

- 131 I intend to proactively release this paper with the series of five waste legislation Cabinet papers within 30 days of Cabinet decisions, in line with Cabinet guidance.

Recommendations

The Minister for the Environment recommends that the Committee:

- 1 **note** that this 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;
- 2 **note** that Cabinet agreed to the accompanying four waste legislation papers in March 2023 [CAB-23-MIN-0089 refers];

3 **note** that the proposals in this paper relate to the Government priorities set out in the paper *Waste Legislation 1: Overview and overarching provisions* [ENV-23-MIN-0002];

4 **note** that the proposals in this paper 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 **note** that current provisions in the WMA for product stewardship are not fit-for-purpose and it is proposed to replace them in the new legislation with an extended producer responsibility (EPR) framework;

6 **note** 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 **agree** that the existing provisions for product stewardship in the WMA will be replaced with the proposed provisions for EPR in the new legislation;

8 **note** 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 **note** 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 a CRS;

10 **note** that proposals for the legislative framework set out in the November Cabinet paper and agreed to by Cabinet are relevant for EPR schemes more broadly;

11 **agree** to reconfirm the decisions Cabinet agreed to in November [CAB-22-MIN-0539.01] to make 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 **note** 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 **agree** 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;

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- 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 **agree** to establish in the new legislation additional provisions needed for regulation of EPR schemes:
- 14.1 **agree** that this primary legislation establish the purpose for which EPR tools can be used;
- 14.2 **agree** that the Minister's powers of intervention laid out in decisions 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 **agree** that the primary legislation continue 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 **agree** 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 **agree** 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 **note** 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);

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- 15.3 provisions for 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 **note** 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 **note** that it is proposed that the process of EPR scheme development involve industry, Māori and wider public interests;
- 18 **note** 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 **note** that six product groups were declared “priority products” under the Waste Minimisation Act 2008, triggering a requirement for regulated product stewardship which MfE will work on with stakeholders over the next four to five years;
- 20 **note** 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 **note** 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 **note** that it would be desirable for regulations made under sections 22 and 23 of the WMA Act 2008 (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 **note** that different transitional arrangements may be required for different products;
- 24 **authorise** 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*;

EPR governance

- 25 **agree** 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 **note** 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 **agree** that Input Methodologies and cost caps agreed to by Cabinet in November 2022 [CAB-22-MIN-0539.01 refers] may be used to offset any incentives to over-remunerate PRO board members;
- 28 **agree** that applicants will need to demonstrate in their application how they intend the organisation will be governed, in particular how they will:

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- 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 **note** that provisions are needed to ensure continuity of operation and management of critical assets if the PRO changes;
- 30 **agree** 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 **note** that assessment criteria for PRO applications to be developed by the Secretary;
- 32 **note** 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 **agree** 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 **agree** 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 **note** that further work is required regarding the desirability of a tax exemption for PROs;
- 36 **agree** to delegate decisions regarding tax status of PROs to the Minister of Finance, the Minister of Revenue, and the Minister;
- 37 **note** that the PRO needs to be held accountable for undertakings it makes in its application;
- 38 **agree** that the PRO and the Minister will enter into an agreement covering key matters put forward by the PRO in its application;
- 39 **note** that in November 2022 [CAB-22-MIN-0539.01] Cabinet agreed to several measures to enable the PRO to set scheme charges with appropriate checks and balances;
- 40 **agree** to strengthen transparency and accountability by requiring scheme charges to be published on the PRO website and gazetted once set;

Eco-modulation

- 41 **note** that eco-modulation refers to variable fee pricing to set higher charges for products/materials that detract from meeting overall scheme outcomes;
- 42 **agree** 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 **agree** 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 **agree** 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 **agree** the new legislation should provide guidance regarding key considerations for the Secretary in developing Information Disclosure Requirements, Input Methodologies and Design Standards including:
 - 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 **note** 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 **agree** 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 **note** that for some products a review of charges every year may be too frequent and could lead to unnecessary churn for scheme participants;
- 49 **note** that the standard timeframe for reviewing charges is no later than three years after they were last set;
- 50 **agree** 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 **note** 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 **note** 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 **note** 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 **agree** 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;

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- 55 **note** 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 **agree** 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 **note** that 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 **agree** that the Minister's powers of intervention as agreed in CAB-22-MIN-0539.01 apply to EPR schemes more widely;
- 59 **agree** 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 this paper;
- 60 **note** 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 **note** that the EPA will monitor the behaviour of parties as set out in any underlying regulations and undertake the enforcement role;
- 62 **note** that Cabinet 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 **note** that auditors' powers of entry for EPR schemes will be captured by proposals for amendments to the WMA more broadly;
- 64 **note** 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 **note** 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 **agree** 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 **note** 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 **note** 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;

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- 69 **agree** 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 **note** that the PRO will be required to develop internal policies and procedures to manage commercially sensitive information;

Regulator approval of applications

- 71 **note** 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 **note** 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 **agree** 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 **agree** 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 **agree** that the criteria that will guide the exemption of categories of retailers will be set out in regulations;

Funding the Regulator

- 76 **note** 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 **note** 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 **agree** 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 **agree** that the PRO be required to pay the monitoring costs identified at recommendation 78 to the EPA;
- 80 **note** 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 **agree** 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;

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- 82 **note** that any costs incurred by the EPA that cannot be recovered will need to be Crown funded. These costs include:
- 82.1 prosecutions;
 - 82.2 non-recoverable staff time (e.g. leave, attendance at training, attendance at organisational meetings etc);
 - 83.3 provision of policy advice (e.g. assessing the attainment of scheme outcomes or reviewing the operation of the Act);
- 83 **note** 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 **note** that the dispute resolution process for issues that may arise between parties in EPR schemes will be largely industry led;
- 85 **agree** 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 **agree** that PRO applicants will be required to demonstrate how the scheme and its outcomes will be equitable for Māori;
- 87 **agree** 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 **agree** 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 **agree** 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 **agree** that before recommending regulations for EPR, the Minister must consider the impacts, costs and benefits of the proposed regulation; advice from the Waste Advisory Board; consult

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with persons or organisations who may be significantly affected; and consistency with New Zealand's international obligations;

s 9(2)(h)

Next steps

- 92 **invite** the Minister to issue drafting instructions to the Parliamentary Counsel Office based on the decisions presented in this set of recommendations and in CAB-22-MIN-0539.01;
- 93 **authorise** the Minister to further clarify policy decisions relating to the proposals in this paper during drafting.

Authorised for lodgement

Hon David Parker

Minister for the Environment

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Appendices

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Appendix 1 – Regulatory components required for EPR

EPR legislative provisions in new waste legislation

Role	Requirement	Proposal
Minister for the Environment		
Establishment powers	<ul style="list-style-type: none"> Appoint a PRO on advice from the Secretary for the Environment (Secretary) 	Explicit provisions will be needed for identifying products that are proposed to be considered for EPR, along with the most suitable EPR approach (eg advance stewardship fee, deposit return, take-back obligation)
Regulatory parameters for schemes Powers to set regulatory parameters for how a specific EPR scheme will operate, including:	<ul style="list-style-type: none"> To set and vary specific categories of products that would be subject to the scheme 	Primary legislation would need to establish the framework (such as the general provisions placing the onus on the first responsible supplier to the New Zealand market to register their products (decision 26) and that excluded products of specified EPR schemes cannot be sold or supplied on the market, unless a temporary exemption to the exclusion is applied (decision 27), and enable regulation-making powers for more detailed specification of some of the scheme parameters such as which products would be eligible, exempt, or excluded
	<ul style="list-style-type: none"> Ability to set performance parameters such as mandatory return rate targets and requirements where targets are not met 	
	<ul style="list-style-type: none"> Definitions of recycling/ processing/ safe disposal requirements and requirements 	
	<ul style="list-style-type: none"> Parameters for retail take-back obligations and exemption criteria 	
	<ul style="list-style-type: none"> Obligations for all participants within scheme to comply with conditions detailed in Design Standards and Information Disclosure Requirements 	
<ul style="list-style-type: none"> Setting a deposit level in regulation 	This is one option but will not be relevant to all EPR. It is proposed that scheme charges for other EPR schemes could include, where relevant, an advance stewardship fee (which could be charged by the PRO on a per product basis, by market share, or other agreed approach). Primary EPR legislation should provide that a refundable deposit or advance stewardship fee (as applicable) would be applied to all eligible, registered and approved EPR products subject to a	

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		specific scheme and is payable by first responsible suppliers to the PRO
	<ul style="list-style-type: none"> Obligations placed on return point operators (e.g. to enter into services agreements with PRO covering payments of deposits, handling fees etc) 	Primary legislation would need to enable regulation-making powers for these purposes . Return point operators will also have obligations under Design Standards.
	<ul style="list-style-type: none"> Setting charges (including Input Methodologies and eco-modulation of scheme charges) 	Primary legislation should establish ability for PRO for EPR schemes to set charges, in accordance with Input Methodologies if any
	<ul style="list-style-type: none"> Specifying how particular parties will be covered by the scheme and how deposits will be managed in relation to these entities (e.g. material recovery facilities, councils), including provisions for fraud prevention 	Provide for in secondary legislation – primary legislation could indicate the parties sought to be bound (e.g. councils, material recovery facilities), and the types of ways in which they were bound (i.e. requirement to enter revenue and/or cost sharing agreements, parameters such agreements could cover) at a high-level (so that flexibility to design fit-for-purpose schemes is not hindered). The provisions at decision 69 about what fraud prevention measures the Secretary can cover in Design Standards should be carried across but generalised
	<ul style="list-style-type: none"> First responsible suppliers are prohibited from selling their products unless they meet certain obligations 	Provide for in primary legislation (with application to products regulated by an EPR scheme). As for CRS, provision should be made for the Secretary to outline specific details in EPR Design Standards

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Monitoring and intervention	<ul style="list-style-type: none"> • require reports/information from PRO in accordance with Information Disclosure Requirements • require the PRO to replace an existing scheme charge with a charge specified by the Minister • issue a Gazette notice allowing for exceptions to scheme requirements in exceptional circumstances • if scheme performance issues arise, may: <ul style="list-style-type: none"> ○ appoint a Crown review team ○ appoint a Crown Manager ○ dissolve the PRO Board ○ take over and manage assets of the PRO and make changes to the Board • review the operation of the scheme after a specified period of time, and in other defined circumstances (such as failure to meet targets) 	<p>These requirements should apply <i>mutatis mutandis</i> (ie with any necessary changes) to EPR (see Recommendation 72 in this paper).</p>
Secretary for the Environment (or authorised party)²⁴ Sets detailed requirements and issues determinations		
Duty to act independently	<ul style="list-style-type: none"> • In discharging functions, powers and duties the Secretary must act independently 	Proposed to apply to EPR
Establishment responsibilities	<ul style="list-style-type: none"> • Set criteria for assessment of PRO application • Provide advice to the Minister on appointing a PRO 	Apply directly to EPR
Setting detailed requirements	Develop and publish: <ul style="list-style-type: none"> • Information Disclosure Requirements • scheme-specific Design Standards • Input Methodologies 	Apply <i>mutatis mutandis</i> to EPR
Registration and approval of regulated products	<ul style="list-style-type: none"> • Establish and operate registration portal and categorise regulated products • Approve products for sale in the scheme 	Apply <i>mutatis mutandis</i> to EPR

²⁴ Noting that some functions may be carried out by the regulator.

<p>Monitoring and provision of advice on scheme performance</p>	<ul style="list-style-type: none"> • Monitor scheme performance • Appoint auditors • Provide advice to the Minister including on replacing an existing scheme charge, and product categories 	<p>Apply <i>mutatis mutandis</i> to EPR, noting the power to appoint auditors is general to compliance monitoring and enforcement powers proposed for the new legislation rather specific to EPR/CRS</p>
<p>Producer Responsibility Organisation (PRO)</p>		
<p>Establishment</p>	<ul style="list-style-type: none"> • Enters into arrangements with producers/importers/other relevant parties (e.g. return network operators, councils) • Sets up relevant scheme logistics (for example establishes a return network and transport logistics; procures counting and consolidation facilities) • Enters into arrangements for recycling of containers 	<p>Primary legislation to enable Minister to make regulations covering roles and functions for the PRO</p>
<p>Ongoing scheme operation</p>	<ul style="list-style-type: none"> • Coordinates and manages the scheme in compliance with regulations and standards/requirements set by the Secretary • Manages financial elements of scheme, including: <ul style="list-style-type: none"> ○ setting the scheme charges ○ collecting deposits and/or scheme charges from producers/importers ○ paying handling fees to return point operators ○ making arrangements for payment of refunds directly or indirectly such as via return point operators • manages sites required for scheme operation, such as consolidation and/or counting sites • arranges for transport, recycling/processing of specified products • collects agreed information from scheme participants 	<p>Apply <i>mutatis mutandis</i> to EPR; primary legislation should also include powers for the Minister for the Environment to recommend regulations requiring the PRO and first responsible supplier of regulated EPR products to collect and pay relevant charges upon first supply to the market and within a specific timeframe</p> <p>Primary legislation should provide that scheme charges will be set by the PRO for EPR schemes, and that the primary legislation provide for the Secretary to set Input Methodologies for determining the scheme charges if required</p> <p>Primary legislation to enable Minister to make regulations covering roles and functions for the PRO</p>

<p>Reporting and advice</p>	<ul style="list-style-type: none"> • provides regular reporting as set out in the Information Disclosure Requirements • provides advice to the Secretary on specified topics • provides Minister with assessments of scheme performance, financials and forward projections 	<p>Apply <i>mutatis mutandis</i> to EPR</p>
<p>Scheme participants</p>		
<p>Comply with obligations placed on them</p>	<ul style="list-style-type: none"> • First responsible suppliers are prohibited from selling their products unless they meet certain obligations • Obligations placed on return point operators (eg to enter into services agreements with PRO covering payments of deposits, handling fees, etc) 	<p>Apply <i>mutatis mutandis</i> to EPR</p>

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Appendix 2 – Obligations and generic offences for EPR scheme with examples of CME tools

Obligation	Offence	Example of CME tool application ²⁵
First responsible supplier²⁶		
All products intended for sale are required to be registered in the Registration Portal by the first responsible supplier for assessment and categorisation	A first responsible supplier commits an offence if they fail to register product in the Registration Portal that they then intended to sell in the New Zealand market	<p><i>Written reminder</i></p> <p><i>Directive notice</i> – Formally require the first responsible supplier to register a product, and cease selling the product until it is registered and approved</p> <p><i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with daily increases until the product is registered</p> <p><i>Monetary benefit order</i> – If the first responsible supplier fails to register a product a monetary benefit order may be used to recover profits from sales of products not included in the scheme. Secondary legislation would articulate types of considerations but may include the value of the scheme charge avoided, amount saved from not amending the labelling</p> <p><i>Pecuniary penalty</i></p> <p><i>Criminal penalty</i></p>
Prohibition on sale of products unless registered and approved for sale in accordance with scheme Design Standards, or exempted from the scheme	A first responsible supplier commits an offence if they sell a product into the New Zealand market without being registered and approved, or exempt	<p><i>Written reminder</i></p> <p><i>Directive notice</i> – Formally require the first responsible supplier to cease selling the product until it is registered and approved</p> <p><i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with daily increases until the first responsible supplier ceases selling the product or the product is registered and approved</p> <p><i>Monetary benefit order</i> – If the retailer fails to stop selling a product a monetary benefit order may be used to recover profits from sales of unregistered/approved products</p> <p><i>Criminal penalty</i></p>

²⁵ Examples are indicative only and in line with the CME tools in *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime* [ENV-23-MIN-0006].

²⁶The first responsible supplier means the producer or importer which first supplies the product to the New Zealand market.

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Obligation	Offence	Example of CME tool application ²⁵
Prohibition on the sale of excluded products (unless temporarily exempt)	A first responsible supplier commits an offence if they sell a product into the New Zealand market without being approved (e.g. an excluded product)	<p><i>Pecuniary penalty</i></p> <p><i>Written reminder</i></p> <p><i>Directive notice</i> – Formally require the first responsible supplier to cease selling the excluded product unless it becomes approved</p> <p><i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with daily increases until the first responsible supplier ceases selling the product or the product is registered and approved</p> <p><i>Monetary benefit order</i> – If the first responsible supplier fails to stop selling a product a monetary benefit order may be used to recover profits from sales of excluded products.</p> <p><i>Criminal penalty</i></p> <p><i>Pecuniary penalty</i></p>
First responsible supplier must pay the scheme charge (including the refundable deposit if required) to the PRO	A first responsible supplier commits an offence if they do not pay the scheme charge (and refundable deposit if required) to the PRO	<p><i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with daily increases until the scheme charges are paid</p> <p><i>Monetary benefit order</i> – If the first responsible supplier fails to pay its scheme charges a monetary benefit order may be used to recover profits from sales of products. Secondary legislation would articulate types of considerations but may include the value of the scheme charge avoided.</p> <p><i>Pecuniary penalty</i></p> <p><i>Criminal penalty</i></p>
Producer Responsibility Organisation (PRO)		
PRO must meet product return rate targets where they are set out in legislation or regulations		Failure to meet return rate targets will trigger a statutory review of the scheme by the Ministry for the Environment including reviewing settings such as the deposit rate and scheme charges and return point numbers and locations

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Obligation	Offence	Example of CME tool application ²⁵
PRO must meet recycling or disposal outcomes for the scheme as set in legislation		<p><i>Written reminder</i></p> <p><i>Directive notice</i> – Formally require the PRO to take action/provide evidence of how they intend to meet recycling or disposal outcomes, or how they are meeting the outcomes</p>
PRO to collect scheme charges (including refundable deposit if required) to use towards cost of scheme management and administration	A PRO commits an offence if it fails to use collected scheme charges towards the cost of scheme management and administration	<p><i>Written reminder</i></p> <p><i>Directive notice</i> – Formally require the PRO to use collected scheme charges towards the cost of scheme management and administration</p> <p><i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons</p> <p><i>Adverse publicity order</i></p>
PRO to pay handling fee to network return point operators	A PRO commits an offence if it fails to pay return point operators the handling fee	<p><i>Written reminder</i></p> <p><i>Directive notice</i> – Formally require the PRO to pay the handling fee to network return point operators</p> <p><i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with daily increases until the PRO pays the handling fee</p> <p><i>Adverse publicity order</i></p>
PRO to pay deposit refunds if applicable (directly or via return point operators)	A PRO commits an offence if it fails to pay deposit refunds (in applicable schemes)	<p><i>Written reminder</i></p> <p><i>Directive notice</i> – Formally require the PRO to pay the deposit refunds</p> <p><i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with daily increases until the PRO pays the deposit refund</p> <p><i>Adverse publicity order</i></p>
Retailers		
Where required by legislation, retailers that sell regulated products are subject to take back obligation (unless exempt) (this may include providing a return point, or collecting products from consumers etc)	An obligated retailer commits an offence if they sell an approved scheme product but do not provide for return of products at the end of life (unless exempt),	<p><i>Written reminder</i></p> <p><i>Directive notice</i> – Formally require the retailer to provide a return point</p> <p><i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with daily increases until the retailer provides for return of products</p>

Obligation	Offence	Example of CME tool application ²⁵
	where required to take back products by legislation	<i>Criminal penalty</i> <i>Pecuniary penalty</i> <i>Adverse publicity order</i>
Return point operators (may include retailers or other specified parties)		
All return point operators must meet necessary Design Standards including those on: Signage Accessibility Health and Safety Product acceptance Quantity of products that can be returned Treatment and storage of products Minimum standards for payments (including charity donation option for RVMs) Data management	Return point operators commit an offence if they do not meet the scheme Design Standards for return point operators	<i>Directive notice</i> – Formally require the return point operator to address breached Design Standard <i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with daily increases until the return point operator remedies the breach of the Design Standard <i>Criminal penalty</i> <i>Pecuniary penalty</i> <i>Adverse publicity order</i>
All products subject to EPR should be counted and verified (unless exempt)	A return point operator commits an offence if they fail to count and verify EPR products in an approved manner	<i>Written reminder</i> <i>Directive notice</i> – Formally require the return point operator to count and verify returned containers electronically <i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with daily increases until the return point operator counts and verifies containers electronically <i>Criminal penalty</i> <i>Pecuniary penalty</i> <i>Adverse publicity order</i>

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Obligation	Offence	Example of CME tool application ²⁵
Provide a deposit refund to the customer/consumer for every eligible product returned (where a legislative requirement is established)	Return point operators commit an offence where they fail to provide a deposit refund to a customer in exchange for returning eligible products (where required to do so in legislation)	<i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons <i>Criminal penalty</i> <i>Pecuniary penalty</i> <i>Adverse publicity order</i>
Councils		
Where applicable, notify the PRO of revenue and/or cost sharing agreement with their recycler/s (unless a council provides its own material recovery facility (MRF)) ²⁷	It is an offence to fail to notify the PRO of the revenue sharing agreement between the council and MRF	<i>Written reminder</i> <i>Directive notice</i> – Formally require the Council to enter into a revenue sharing agreement with its contracted MRF <i>Adverse publicity order</i>
All scheme participants with legislative obligations		
Must adhere to scheme Design Standards	It is an offence to fail to adhere to scheme Design Standards (that the participant is obligated to meet)	<i>Directive notice</i> – Formally require the participant to address breached Design Standard <i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with increases daily until the participant remedies the breach of the Design Standard <i>Criminal penalty</i> <i>Pecuniary penalty</i> <i>Adverse publicity order</i>
Must comply with Information Disclosure Requirements	It is an offence to fail to provide information required by Information Disclosure Requirements	<i>Written reminder</i> <i>Directive notice</i> – Formally require the participant to supply the necessary information in line with Information Disclosure Requirements <i>Infringement fine</i> - up to \$1000 for individuals and \$3000 for corporates/non-natural persons with increases daily until the participant provides the information required in the Information Disclosure Requirement

²⁷ For materials that are associated with council kerbside collections.

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Obligation	Offence	Example of CME tool application ²⁵
Must enter into written agreement with PRO	Participants in a scheme commit an offence where they fail to enter into an agreement with the PRO when required to do so	<p><i>Written reminder</i></p> <p><i>Directive notice</i> – Formally require the participant to enter into an agreement with the PRO</p> <p><i>Infringement fine</i> - Up to \$1000 for individuals and \$3000 for corporates/non-natural persons with increases daily</p>

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Appendix 3 – Cost Recovery Impact Statement

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