

## In-Confidence

### Office of the Minister for the Environment

### Cabinet Environment, Energy and Climate Committee

## Waste Legislation 2: Regulating products and materials to promote circularity

### Proposal

- 1 This is the second in a set of four papers seeking policy decisions on the content of new waste legislation. It sets out proposals for regulatory powers to control products and materials in different ways. Together these powers will support an ongoing programme to encourage more circular activity and reduce the amount of waste being generated, in accordance with the new waste strategy [ENV-22-MIN-0053 refers].
- 2 The link with government priorities is explained in the paper *Waste Legislation 1: Overview and overarching provisions*.

### Executive Summary

- 3 The current Waste Minimisation Act 2008 (WMA) includes some regulatory powers to control products and materials, for example through product bans and product stewardship schemes. But these have proved limited or difficult to use in practice, and do not include some powers that are being introduced in other countries.
- 4 The experience of regulating the sector since the introduction of the WMA indicates that there is a need to:
  - 4.1 address negative environmental impacts associated with products and materials across their life cycle that currently fall on communities, nature and future generations
  - 4.2 rebalance the advantage producers of products and materials have over consumers in holding back information about those environmental costs.
- 5 Table 1 summarises the proposed new powers, compared to the WMA, and why we need the changes. A more detailed version is provided at Appendix 2.

Table 1: Summary of proposed powers

Effect of regulation	Current WMA powers	Proposed changes	Reason for proposed change
<b>Product bans – on a case by case basis</b>	Products that contain certain materials can be banned but only if there is an available alternative	Remove reference to products requiring a particular material  Expand to also cover a ban on importing	Fairness and completeness: Ban applies to domestic manufacture but not import at present. A wider range of products and materials can be prevented from entering New Zealand
<b>Landfill bans and mandatory recycling</b>	Landfill bans or controls on disposal of certain products or types of waste	Expand to enable action to cover all products and materials and to specify where something must go, rather than just where it cannot go	To prevent the disposal of certain products, materials and waste to landfill or requiring them to be recycled or repurposed
<b>Environmental performance requirements</b>	No current equivalent	Establish new requirements to across the full life cycle of certain products and materials, not just at the point of disposal	To ensure products avoid virgin or non-renewable resources and are designed to maintain their value and functionality for as long as possible, as well as to enable future repairs, repurposing or re-use of materials  Allows us to keep pace with overseas regulatory standards
<b>Information on environmental performance</b>	Enables regulations to prescribe some labelling requirements	Expand to information made available on the broader environmental performance of products and materials (including through labelling)	To provide broader information about overall environmental performance to empower consumers and businesses and support better decision making
<b>Extended producer responsibility</b>	Provisions for voluntary and mandatory (regulated) product stewardship	Replace with provisions for extended producer responsibility, drawing on decisions Cabinet has already made for a New Zealand Container Return Scheme (NZ CRS)	To more clearly establish a regulatory framework to design, establish, fund, monitor and enforce extended producer responsibilities

	(CAB-22-MIN-0539.01 refers)	
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- 6 The regulation-making powers will enable government to set controls on certain products and materials on a case-by-case basis. The legislation will include safeguards to ensure intervention is appropriate and consequences are well considered. Each regulation making power would have its own place in ensuring products and materials are regulated appropriately and therefore all these powers should be considered and the most appropriate power or powers chosen.
- 7 The powers will enable New Zealand to align with regulatory controls used in other jurisdictions, which will prevent problematic products and materials banned overseas from being exported to us.
- 8 I am therefore seeking approval for a package of regulation-making powers to:
- 8.1 control or prohibit the import, supply, sale and manufacture of products and materials
  - 8.2 prohibit and/or prescribe actions for disposal and recycling of products and materials (including waste)
  - 8.3 prescribe environmental performance requirements across the full life cycle of certain products and materials
  - 8.4 prescribe information that is to be made available to consumers and businesses on the environmental performance of products and materials (including through labelling)
  - 8.5 prescribe extended producer responsibility (EPR) requirements. I will cover proposals for EPR in a subsequent Cabinet paper, alongside further policy agreements for the NZ CRS.

## Background

- 9 The paper *Waste Legislation 1: Overview and overarching provisions* provides a background to this legislative reform. Public consultation on the strategy and legislation took place towards the end of 2021. The proposed new legislation will repeal and replace the WMA and Litter Act 1979 (the Litter Act).

## Problem definition

- 10 This paper proposes regulation-making powers that will help to address two market failures:
- 10.1 negative environmental impacts (costs) associated with products and materials across their life cycle that currently fall on communities, nature and future generations (externalities)
  - 10.2 the advantage producers of products and materials have over consumers in holding back information about those environmental costs (asymmetric information).

- 11 These market failures contribute to unsustainable consumption and production patterns recognised as being the root cause of the triple planetary crises of climate change, biodiversity loss and pollution.<sup>1</sup>
- 12 The current linear “take-make-dispose” model, where resources are used to produce products that end up as waste, is leading to a missed opportunity for economic gain in a more circular economy and effective resource recovery system.<sup>2</sup>
- 13 There are a range of opportunities from the transition to a circular economy.<sup>3</sup> As the Climate Change Commission stated last year, “transitioning from a relatively linear economy to a more circular economy has the potential to reduce emissions across the economy and generate numerous social, environmental and economic co-benefits”.<sup>4</sup> The economic co-benefits include substantial net material savings, mitigation of price volatility and supply risks, innovation and job creation.<sup>5</sup>
- 14 Improved sustainable material sourcing to harness that opportunity and for the ongoing security of supply chains, through better circularity of materials and manufacture of easily recyclable products within New Zealand.
- 15 To address these issues, we also need better data (see *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime*).

*We are disposing of too much recyclable or reusable material to landfill – including e-waste, plastics and textiles*

- 16 In New Zealand we produce an estimated 19.2 kg of e-waste per capita per year, almost three times the global average. Almost all our household e-waste ends up in landfills. Recycling is not keeping pace with the growth of e-waste, driven by higher consumption, short life cycles, and few repair options. The Government has identified e-waste as a priority product for regulated product stewardship [ENV-20-MIN-0024 refers] but provisions in existing legislation are not fit for purpose.
- 17 Rapidly increasing levels of plastic pollution, including microplastics, present a serious environmental problem with social and economic implications [ENV-22-MIN-0038 refers]. New Zealand also has a very high per capita use of plastics. Plastics pose a threat to ecosystems and human health and this threat will continue, and worsen, if the input of plastic into the environment continues to increase<sup>6</sup>. In a recent study, scientists found microplastics in three quarters of wild commercial fish caught off the coast of southern New Zealand.<sup>7</sup>

<sup>1</sup> Goal 12 of the United Nations’ Sustainable Development Goals is for “Responsible Consumption and Production” noting the need for consideration of the entire life cycle of economic activities.

<sup>2</sup> Simon P. Michaux (2021), *Assessment of the Extra Capacity Required of Alternative Energy Electrical Power Systems to Completely Replace Fossil Fuels*, Geological Survey of Finland.

<sup>3</sup> By way of comparison, NSW Circular estimates that transitioning to a circular economy could lead to 50,000 new jobs over the next 5 years in New South Wales the-circular-economy-opportunity-in-NSW.pdf (nswcircular.org)

<sup>4</sup> Ināia tonu nei: a low emissions future for Aotearoa (amazonaws.com)

<sup>5</sup> Towards the circular economy - Reports - World Economic Forum (weforum.org)

<sup>6</sup> Royal Society Te Apārangi (2019), *Plastics in the Environment*. www.royalsociety.org.nz.

<sup>7</sup> Clere, I. et al. (2022), *Quantification and characterization of microplastics in commercial fish from southern New Zealand*, Marine Pollution Bulletin.

- 18 An estimated 220,800 tonnes of textiles are landfilled in New Zealand every year, or 44 kg per person (compared to 28 kg per person in Europe)<sup>8</sup>. Synthetic fibres are linked to microplastics pollution in water, primarily via laundry effluent, with one study estimating up to 87 per cent of microplastic pollution in Auckland's marine environment comes from clothing fibres.<sup>9</sup>

*The public and business consumers do not have enough information to make environmentally conscious choices*

- 19 The advantage industry holds over household and business consumers in not disclosing products' full environmental costs is not adequately addressed by voluntary initiatives or existing policies. Inadequate and limited claims on a product's environmental performance can provide consumers with the false impression they are making sustainable decisions when they are not. The *Kantar Better Futures Report 2022* found 63 per cent of respondents agreed the way businesses talk about their social and environmental commitment is confusing and 44 per cent agreed insufficient information about a products' credentials was a barrier to more sustainable behaviour.

## Solutions

*Voluntary action is not enough*

- 20 In an August 2022 report by the Sustainable Business Network and Grant Thornton,<sup>10</sup> the authors noted that only a minority of businesses have circular business models in New Zealand. We already have a number of initiatives underway to achieve more circular business planning in the private sector, including product bans, developing a NZ CRS (CAB-22-MIN-0539.01 refers), and the development of regulated product stewardship schemes for the identified priority products. However, the provisions in existing legislation for regulating products and materials are not fit for purpose.

*Rethinking how we produce and consume*

- 21 An estimated 80 per cent of product-related environmental impacts are determined at the design stage of a product.<sup>11</sup> Reducing these impacts requires producers changing production processes, by taking action at the top of the waste hierarchy. These actions aim, for example, to:
- 21.1 avoid the use of virgin and non-renewable resources and where possible use secondary raw materials from the same or other production cycles
  - 21.2 design products and materials to maintain their value and functionality for as long as possible, for example, by extending the lifetime of parts and products
  - 21.3 enable reuse, repair, refurbishing, remanufacturing or repurposing so that products retain their value in the economy for longer

<sup>8</sup> Casey, B. and Johnston, B (2021), *Recommendations to the New Zealand Government from the Clothing and Textile Industry*. Available at [www.textilereuse.com](http://www.textilereuse.com)

<sup>9</sup> Scion (2019) *Fibres dominant in microparticle contamination on Auckland beaches*. Available at [www.scionresearch.com](http://www.scionresearch.com)

<sup>10</sup> Sustainable Business Network and Grant Thornton (August 2022), *The Circular Revolution; A call to action for Aotearoa New Zealand*.

<sup>11</sup> This is a widely claimed estimate. See for example: EU Commission, Sustainable Product Policy. <https://joint-research-centre.ec.europa.eu>

- 21.4 ensure that, when products are no longer useful in their existing form, they can be disassembled to become raw materials for new products (recycled) or, as relevant, composted to add nourishment to organic systems.

*Aligning with international jurisdictions to prevent the import of goods being banned overseas*

- 22 Many overseas jurisdictions are introducing or strengthening their regulatory measures to drive circularity of products and materials, and place greater responsibility for waste on producers and consumers.
- 23 Failing to keep pace with international measures risks international markets seeking to offload old stock that is non-compliant with overseas regulatory settings onto the New Zealand market, making domestic efforts to manage waste responsibly harder.
- 24 The approach proposed in this paper will help ensure New Zealand has tools to align with other jurisdictions so that we do not become a dumping ground for products and materials that are non-compliant elsewhere.

**Overall proposal: future-proof legislation by providing a flexible range of interventions**

- 25 This paper seeks agreement to include a suite of regulation-making powers in new waste legislation to provide government with interventions for improving the environmental performance of products and materials. The provisions will allow for the gradual or staged introduction of circular requirements, with appropriate safeguards to ensure their judicious use.
- 26 Provisions enabling different forms of secondary legislation allow the legislation to remain fit for purpose over time. It will enable us to be responsive to rapidly changing technologies and shifts in consumer expectations and regulatory action in other jurisdictions.
- 27 The provisions proposed in this paper replace similar provisions in the WMA and in some cases, provide new ones. A comparison of the proposals with existing legislation is provided in Appendix 2.

*New powers will contribute to a circular, low-emissions, low waste economy*

- 28 Using regulations to set requirements on certain products and materials can:
- 28.1 internalise the costs of environmental harm, placing greater responsibility on industry for the environmental performance of products across the products' life cycle
  - 28.2 drive action up the waste hierarchy to design waste out and maintain products for as long as possible at their highest value
  - 28.3 improve information to empower consumers and businesses and support better decision making.
- 29 The provisions will provide for:
- 29.1 general decision-making parameters and safeguards that apply across the suite of regulation-making powers to control products and materials



29.2 regulation-making powers that can be used as stand-alone or complementary interventions

- 30 Appendix 1 illustrates which proposed powers might be used for different purposes when considering regulatory action under the new legislation.

*Key policy decisions to be made by Order in Council, on the recommendation of the Minister*

- 31 Some of the proposed regulation-making powers will enable direct economic interventions for certain products or industries. The Government has used similar existing powers in the WMA, for example, to ban some products from the New Zealand market.
- 32 The authority to make regulations will continue to sit with the Governor-General in Council, on the recommendation of the Minister for the Environment. This will ensure that the usual range of checks will apply to new regulation, including public consultation, Cabinet scrutiny, the requirement to prepare a Regulatory Impact Statement, and drafting and certification by the Parliamentary Counsel Office.

*Routine, minor and technical updates*

- 33 In order to respond to fast-evolving markets there will need to be amendments reflecting product innovations and technological changes.
- 34 To enable this, it is the intention that the Minister for the Environment will seek delegated authority from Cabinet, as appropriate, to make policy decisions on routine, minor and technical updates, and procedural or administrative matters, to save time and reduce the burden on Cabinet decision-making.

**General decision-making parameters and safeguards**

- 35 Across the suite of regulation-making powers the legislation will set out a common set of parameters and safeguards to guide decision making.

*Defining products and materials within scope*

- 36 For clarity, the new legislation will explicitly confirm that the government can use regulations in a flexible way to respond to diverse, changing markets. The legislation will confirm that:
- 36.1 regulation-making powers can be applied to any products and materials in the economy, at any stage of their life cycle and across their entire life cycle, and including raw, biological (organic) and technical materials and products, imports, commercial materials and products, secondary materials and by-products, and including packaging.
- 36.2 products and materials that fall within scope of a regulation can be defined in regulation using a wide range of parameters, including but not limited to their attributes, functions, situational context<sup>12</sup> and processes used in their development.

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<sup>12</sup> Examples of situational context are “dine-in” food outlets, outdoor festivals, or educational facilities.

- 36.3 requirements in regulation can be phased in over time, be of general or specific application, and allow for exceptions or exclusions.
- 37 Officials are still working through to what extent, if any, controls should apply to second-hand markets and how to provide for this in legislation. This paper seeks delegated authority to the Minister for the Environment to make policy decisions and issue drafting instructions on this matter.

*Prioritising products and materials for action*

- 38 The paper *Waste Legislation 1: Overview and overarching provisions* covers provisions in the new legislation that the responsible Minister may develop an action and investment plan (AIP) to support the national waste strategy.
- 39 The AIP will be the key mechanism defining which products and materials should be prioritised for regulatory action, the tool or tools best suited to the task and reasons for those assessments.
- 40 In the absence of an AIP, the legislation will allow for the Government to prepare and publish a discrete work plan (or plans) on controls for products and materials. The Minister may therefore publish such a work plan either as a stand-alone document or as part of a wider action and investment plan. This maintains flexibility to respond to changing market conditions quickly when needed. The process for developing a work plan and detail about its expected content can be handled operationally so does not need to be set out in legislation.

*General safeguards*

- 41 For all regulations, the legislation will require that the Minister for the Environment must, before making recommendations:
- 41.1 Be satisfied:
- 41.1.1 the regulation will support the purpose of the new legislation (see *Waste Legislation 1: Overview and overarching provisions*) and is the best approach (singly or in combination with other tools) of those allowable in the legislation.
- 41.1.2 there has been adequate consultation with persons or organisations significantly affected by the regulation
- 41.1.3 adequate lead-in time is provided to meet the requirements of the regulation.
- 41.2 Have regard to:
- 41.2.1 the principles of the Act
- 41.2.2 the impacts, costs and benefits of a proposal
- 41.2.3 relevant international obligations; and
- 41.2.4 the market structure of the sector.
- 42 In addition to these general safeguards, where any conflict occurs between this proposed legislation and the Biosecurity Act 1993, it is intended that the Biosecurity



Act 1993 will take precedence, to prevent spreading unwanted organisms through the waste system. These general parameters and safeguards may be refined further during the drafting process and exact wording is subject to the Parliamentary Counsel Office's discretion.

### **Regulation-making powers that can be used as stand-alone or complementary interventions**

- 43 The regulations will include empowering provisions to make regulations that provide for:
- 43.1 product bans and controls
  - 43.2 prohibiting or prescribing actions for disposal and recycling
  - 43.3 environmental performance requirements
  - 43.4 consumer information requirements
  - 43.5 extended producer responsibility (to be covered in a subsequent Cabinet paper).
- 44 These powers will either be used individually or collectively, to provide a comprehensive solution.
- 45 The regulations will include the power to identify and name the appropriate regulated parties and offences applicable to these parties if these regulations are not adhered to. Due to the flexibility of the tools and variable nature of the products and materials, this approach will allow for a more appropriate and targeted approach to regulation and compliance than a broad approach in the primary legislation.

#### *Product bans and controls*

- 46 Prohibiting problematic products and materials from circulation in New Zealand avoids harm to nature and people, reduces waste in our natural environment and landfill, and prevents the contamination of recycling and disposal systems.
- 47 The new legislation will carry over the power in existing waste legislation (which has been used for banning microbeads, plastic shopping bags, and some hard-to-recycle and single-use plastics).
- 48 To control or prohibit the import, supply, distribution, sale and manufacture of products and materials, the definition of "sale" will continue to include sales from online shopping sites and non-financial supply such as "give-aways" and "free gifts".
- 49 Examples of types of bans may include:
- 49.1 bans on specific products, such as banning single use bags made out of any material,
  - 49.2 ban on products made of a specific material, such as any plastic containing a certain amount of virgin PET<sup>13</sup>

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<sup>13</sup> PET (polyethylene terephthalate) is the plastic widely used for packaging foods and beverages.

- 49.3 ban on products in certain situations, such as banning disposable cups while dining in.
- 50 Officials will ensure that these provisions complement, rather than duplicate, controls on substances in the Hazardous Substances and New Organisms Act 1996.
- 51 In addition to the general safeguards, I propose the Minister must have regard to two specific matters before recommending the making of product ban regulations:
- 51.1 the availability of an alternative product or material, to the extent an alternative is required
- 51.2 the risk of a regulated product or material being substituted with an undesirable alternative.
- 52 This will ensure the Minister for the Environment considers two key risks when making product bans. First, that users are left without access to products they value for good reasons, with no alternatives available<sup>14</sup>. Second, that banning a product shifts consumer demand to an unregulated product that is also problematic.

*Prohibiting or prescribing actions for disposal and recycling*

- 53 The ability to prevent the disposal of certain products, materials and waste to landfill or requiring them to be recycled or repurposed will increase the circularity of resources and improve resource recovery rates.
- 54 For example, landfill bans of organic waste would divert waste to beneficial uses, reducing methane emissions in some situations, and support key actions in the emissions reduction plan and waste strategy. Requirements to recycle batteries via an EPR scheme would ensure that these potentially hazardous batteries are kept out of landfill and enable a more circular economy of battery components.
- 55 New waste legislation will include a regulation-making power to prohibit or prescribe actions that must be taken for disposing of and/or recycling products and materials (including waste). Such actions could include requirements to use certain types of processing facility or specify circular processes and/or destinations that retain products' value.
- 56 In addition to general safeguards, for regulations prohibiting or prescribing actions for disposal or recycling the legislation will require that:
- 56.1 The Minister for the Environment is satisfied that there is adequate infrastructure in place to provide for specified actions, or provide in the regulations for a reasonable time to put these in place before they take effect.
- 56.2 The Minister for the Environment have regard to end markets. In particular, the potential viability, volatility and the risk of supporting markets of low or negative value. Viable end markets for recyclable material will mitigate the risk of stockpiling and dumping<sup>15</sup>.

<sup>14</sup> The importance of drinking straws to some people with disabilities is an example.

<sup>15</sup> A ban may also be considered as a driver to establish or grow end markets for materials.

*Environmental performance requirements*

- 57 The new waste legislation will include a regulation-making power to prescribe environmental performance requirements for products and materials across, or at any stage of, their life cycle. The provision will include the ability to prohibit a product or material from being imported, manufactured, distributed, sold or supplied unless it meets the specified requirements as per the previously described power to ban certain products.
- 58 The ability to prescribe requirements for environmental performance that products and materials must meet before they can be sold or supplied in a market, will enable the government to shift market conditions to align with a circular, low emissions economy. Regulations of this kind might include, for example, minimising the use of virgin or non-renewable materials, requiring the use of recycled materials, requiring products to be repairable and to provide access to spare parts for repair for a certain length of time, setting minimum product lifetimes and measures supporting recycling and recovery possibilities at end of life.
- 59 Similar requirements are already in place in New Zealand for the energy efficiency and conservation of some products, which is one aspect of environmental performance. The Energy Efficiency and Conservation Act 2000 (EEC Act) has empowering provisions to make regulations to implement minimum performance standards for energy efficiency and require labelling for some energy-using products, vehicles and services.
- 60 These regulations have been in place for over 20 years. Supported by the educational work of the Energy Efficiency and Conservation Authority (EECA), the regulations have reduced energy consumption and associated greenhouse gas emissions, removed poorly performing products from the market, and assisted consumers to make more energy-efficient purchases.
- 61 Officials are considering how the energy efficiency standards under EEC Act and any regulations made under the new waste legislation should best relate to each other, with a view to anticipating future needs and simplifying and streamlining regulatory requirements. Solutions may lie in legislative change and/or operational arrangements. This is discussed further below in the section on roles and responsibilities, paragraphs 85 – 86.
- 62 The development of standards will be developed through the independent, consensus-driven process provided for by the Standards and Accreditation Act 2015 and facilitated by Standards New Zealand. While this will be appropriate in most cases, there will be cases where the Government needs to make requirements that can be put in place relatively quickly and where the consensus of representative committees will not be necessary for the effectiveness of the proposal.
- 63 The merits of establishing requirements would be assessed on a case-by-case basis. Requirements that are set by reference to standards could cite international standards with necessary adaptations, standards developed as part of a trans-Tasman regime, or standards developed domestically for the New Zealand context.
- 64 The scope of the empowering provision should confirm that requirements can be applied to all products or materials as set out in paragraph 36.
- 65 The broad parameters of environmental performance are set out in Table 2. The scope is intended to ensure New Zealand can place requirements on products and materials

that align with aspects of environmental performance being regulated in other overseas jurisdictions, for example, the UK and EU.

**Table 2: Parameters and aspects of environmental performance requirements**

Broad parameters to improve environmental performance	Examples of aspects of products and materials
Extend and improve product and material life	Durability, reliability, repairability, upgradability. Possibility of maintenance and refurbishment.
Improve quality to reduce negative environmental impacts or enhance positive impacts	Qualities relating to whether a product or material is compostable and/or biodegradable. Aspects of a product or material that benefit and enhance natural systems or have a negative impact on natural systems.
Improve recovery of materials	Possibility of being recovered, recycled and/or remanufactured.
Require the use of recycled materials and/or minimise the use of virgin or non-renewable materials	Source of materials used in manufacturing or production, including minimum requirements for the use of recycled or secondary materials. Limits or restrictions on the use of virgin or non-renewable materials such as fossil fuels, metals and minerals.
Design out pollution, effluents, emissions and waste	Expected generation of waste materials. Substances of concern, pollutants emitted at any stage of a product's production, use or disposal, including embedded emissions.
Minimise use of natural resources	Resources may include energy carriers such as electricity and fossil fuels, as well as land, water, fibre, materials and chemicals.

66 Candidates for placing requirements on products and materials for environmental performance include:

- 66.1 setting a minimum recycled content requirement for products – in the first instance for all PET bottles as a supporting measure for the NZ CRS [CAB-22-MIN-0539.01 refers]<sup>16</sup>
- 66.2 other requirements for recyclability that align specifically with New Zealand's infrastructure and market conditions
- 66.3 requirements that reduce the complexity of some materials to reduce their risks to natural systems, improve their reusability or recyclability and/or avoid contamination of waste streams

<sup>16</sup> This example was also used to illustrate a ban, the difference between the two powers is that a ban is a simple instrument covering many products, while an environmental performance standard would cover fewer products but in a more prescribed manner. Each would need to be considered to understand the best regulatory choice.

- 66.4 requirements around materials and adhesives used in labels
- 66.5 standards for durability, reusability and repairability of products
- 66.6 standards for any product that is intended to be compostable.
- 67 Focusing too narrowly on one aspect of a product can have unintended consequences on others. Improving the recyclability of materials, for example, may make them less durable or unintentionally introduce harmful substances. To mitigate this risk, the legislation will require that in addition to the safeguards set out above, when making recommending regulations that set environmental performance standards and before recommending regulations, the Minister for the Environment must have regard to:
  - 67.1 the impact on the functionality and safety of the product
  - 67.2 the impact on other environmental objectives not targeted by the standard.

*Information for consumers and businesses across the supply chain*

- 68 A lack of access to information about products' overall environmental performance prevents consumers from making accurate choices that minimise their individual impact and send market signals to drive business to adopt circular business models. The disadvantage consumers have in the marketplace through lack of information, or assessing claims that cannot be easily verified, also extends to businesses seeking to make good environmental choices about raw materials and commercial goods associated with their own business models.
- 69 At the bottom end of the waste hierarchy, we know from various surveys that confusing and inconsistent information is one reason why people are sending recyclable material to landfill and contaminating recycling systems. At the top end of the waste hierarchy, only a small proportion of industries are providing transparent and independently verifiable assessments of how their products perform across the multiple environmental impacts products can have.
- 70 In relation to labelling, a range of voluntary measures are in place or underway, including:
  - 70.1 The Food and Grocery Council recently decided to adopt the Australasian (Australian) Recycling Label (ARL) providing standardisation across a wide range of products. The ARL would be a good candidate for a future mandatory requirement.
  - 70.2 The New Zealand Ecolabelling Trust runs the government-owned Environment Choice New Zealand label which enables industries to clearly identify products that reflect best practice in reducing life-cycle impacts as measured against internationally recognised standards.
  - 70.3 One of the pillars of plurilateral negotiations towards an Agreement on Climate Change, Trade and Sustainability<sup>17</sup> includes the development of principles-based guidelines for voluntary eco-labelling programmes.
- 71 In relation to misleading claims, the Fair Trading Act 1986 (FTA) provides an important backstop for enforcing fair competition across the economy and constraining

<sup>17</sup> The initial negotiating cohort is New Zealand, Costa Rica, Fiji, Iceland, Norway and Switzerland.



misleading claims about products. The FTA makes it illegal for businesses to mislead or deceive consumers about the goods and services they sell. Businesses making environmental claims must ensure such claims are accurate, scientifically sound and able to be substantiated<sup>18</sup>. The FTA also enables standards to be set, through regulations, for consumer information<sup>19</sup>.

- 72 As a future-proofing measure, the proposal is to ensure voluntary initiatives have a regulatory backstop that allows consumer information requirements to be made mandatory, should this be required. I am also seeking to enable more pro-active and targeted information requirements than the FTA requires.
- 73 The proposal is for new waste legislation to include a regulation-making power to prescribe requirements for the provision of information on products and materials. This will provide a regulatory alternative to voluntary initiatives and aligns with my overall intention of having a comprehensive suite of powers to support the objectives of a waste strategy.
- 74 The provision would enable requirements broader than labelling so that information can be provided in a way that makes sense for a particular product, for example, physically on the product itself, on the packaging, in accompanying information or through digital channels. The scope would cover the same aspects of environmental performance as the previous proposal for environmental performance requirements and include prescribing:
- 74.1 the type of information required
  - 74.2 how that information must be made available, including by labelling
  - 74.3 requirements by reference to a standard that must be adhered to, or existing labelling or information scheme with which products must comply
  - 74.4 requirements or conditions that must be met in order to make specific environmental claims, for example, by reference to a standard or a verified certification process.
- 75 Consumer information requirements already exist for some aspects of products, including safety, water efficiency, fibre content, care labelling, country of origin and food safety. We do not want an overall regulatory system that requires products to bear multiple labels or that places an unreasonable burden on businesses.
- 76 To avoid creating a fragmented system of requirements for consumer information, I propose to include a safeguard that the Minister for the Environment must have regard to requirements for consumer information in other statutes and the benefits to the customer of streamlined, accessible information. I will work with the Minister of Energy

<sup>18</sup> For example, about sustainability, recycling, carbon neutrality, and impacts on the environment. The *Environmental Claims Guidelines for Traders* provide guidance on the making of environmental claims (e.g. how and when to claim a product is "plastic free" and whether products are recyclable, compostable or biodegradable). The Guidelines are not legally binding but indicate how the regulator will interpret its powers under the FTA.

<sup>19</sup> For example, the *Consumer Information Standards (Water Efficiency) Regulations 2017* set the official standard that suppliers of water-using products must comply with for consumer information on water efficiency. The Regulations cover all new washing machines, dishwashers, lavatories, showers, taps and urinals and are administered by the Commerce Commission.



### Repair of products

- 77 The difficulties getting things repaired is one of the main reasons that products and materials end up in landfill. Even when something has a minor fault, it often needs to be replaced. This frustrates many people and has led to the 'right to repair' movement. A number of other jurisdictions are taking steps to enable products to be repaired more easily and cost-effectively.
- 78 The changes I am proposing will enable future regulations made under the new waste legislation to address reparability in the following ways:
- 78.1 under the new environmental performance standards, regulations could be made requiring certain categories of products to meet a certain reparability standard. This could include being able to take the product apart (for example, being able to remove batteries) in order to repair it or to replace parts. A performance standard on reparability could also include providing spare parts and allowing independent repairers to access these spare parts
- 78.2 under the provision of information requirements, regulations could be made requiring manufacturers and retailers of certain products to provide information about their reparability. This could also include providing information about how to repair the product
- 78.3 under EPR schemes, manufacturers and retailers could also be incentivised to focus on reparability.
- 79 Beyond waste legislation, there is scope to consider amending other relevant legislation, such as the intellectual property law, the Consumer Guarantees Act 1993 and the Fair Trading Act 1986. As set out in the waste strategy, the government will be doing further work on how best to address repair issues in the future.

## Implementation

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#### *Roles and responsibilities*

- 85 As outlined in the paper *Waste Legislation 1: Overview and overarching provisions*, the majority of regulatory functions that will put these powers in place will fall between the Ministry for the Environment, the Environmental Protection Authority (EPA) and New Zealand Customs Service (Customs).
- 86 In addition, further work is required to identify the appropriate body for functions relating to environmental performance standards and labelling in particular with MBIE and existing regulators. The intention is to report back to Cabinet later in 2023 on preferred options.

#### *Border control and compliance*

- 87 Monitoring compliance at the border will not be practical for some imported products and will need to occur further along the supply chain, for example, at retail level. Obligations could then be tracked back to importers and distributors. Officials are still considering how compliance with the proposed controls can be enforced for online sales on market-based platforms outside New Zealand. I have asked officials to continue working with Customs and other agencies to work through the practical implementation of these controls and I propose that Cabinet delegates power to the Minister for the Environment and the Minister of Customs to take decisions on these matters.

#### *Funding regulatory schemes for products and materials*

- 88 Funding to implement the product and material controls will come primarily from general taxation and/or cost recovery, with the balance dependent on the nature of the controls. As noted in the paper *Waste Legislation 1: Overview and overarching provisions*, for EPR schemes it may be appropriate to use waste levy funding for one-off discrete costs, such as start-up costs.

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- 89 As a general approach, system-level functions such as strategic and operational policy, stakeholder engagement and compliance, monitoring and enforcement will be paid for through general taxation.
- 90 For functions that will work across all products and materials, such as the product bans, disposal controls, environmental performance standards and consumer information requirements, the funding for the policy and operational administration will come from general taxation, while the monitoring and enforcement will come from either general taxation or the waste levy.
- 91 For functions tied to servicing participation of industry (regulated parties) in a programme, some degree of cost recovery may be warranted. The services are being provided to respond to environmental costs producers and manufacturers are passing on to others. The participants will benefit from market conditions that level the playing field with larger markets and protect the long-term availability of raw materials. Examples of costs that may be partially or fully recovered, include, but are not limited to those relating to:
- 91.1 registration, certification, accreditation, applications, assessments, and auditing
  - 91.2 set-up and maintenance of registers
  - 91.3 data and information associated with monitoring, reporting, and compliance of regulated products and materials
  - 91.4 services by third parties.

### Financial Implications

- 92 The overall financial implications for the package of policy proposals are set out in *Waste Legislation 1: Overview and overarching provisions*.
- 93 The financial implications of enabling provisions cannot be calculated in advance. Nonetheless, the proposal is to have a greater use of regulation-making powers to control products and materials over the next decade, as part of the transition to a circular economy. This will require increased administrative capacity and capability from regulatory agencies, and in-house expertise in science and communication, particularly relating to measuring and comparing the environmental impacts of products and materials across their life cycle.

### Legislative Implications

- 94 This paper is part of an overall proposal to repeal and replace the WMA and Litter Act. See *Waste Legislation 1: Overview and overarching provisions* for details of the legislative timetable.

### Regulatory, climate and population impact analysis

- 95 The impact analyses for the overall reform are set out in *Waste Legislation 1: Overview and overarching provisions*.

## Human Rights, Bill of Rights compliance

- 96 *Waste Legislation 1: Overview and overarching provisions* discusses compliance for the overall reform.

## Consultation

- 97 This is set out in *Waste Legislation 1: Overview and overarching provisions*.

## Communications and proactive release

- 98 This is set out in *Waste Legislation 1: Overview and overarching provisions*.

## Recommendations

The Minister for the Environment recommends that the Committee:

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

### *Authority to make regulations*

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

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

- 6 **agree** that action and investment plans will be the primary avenue for signalling government's priorities on products and materials;
- 7 **agree** that as a complementary measure new legislation should set out that the Minister may publish a work plan on products and materials identified for regulatory action across the full suite of regulatory tools;
- 8 **agree** that new legislation should require that in making regulations for any products and materials. the Minister must be satisfied that:
  - 8.1 the regulation will achieve the purpose of the new legislation;

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

*Product bans*

- 16 **note** a regulation-making power to control or prohibit the import, supply, sale and manufacture of products and materials will avoid harm to nature and people, reduce waste in our natural environment and landfill, and prevent the contamination of recycling and disposal systems;

- 17 **agree** the new waste legislation should include a regulation-making power to control or prohibit the import, supply, sale, and manufacture of specified products and materials;
- 18 **agree** the new waste legislation should set out the following matters the Minister must have regard to, before recommending regulations for product bans:
- 18.1 the availability of an alternative product or material to the extent that an alternative is required;
- 18.2 the risk of a regulated product or material being substituted with an undesirable alternative;

*Prohibiting or prescribing actions for disposal or recycling*

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

*Prescribing environmental performance requirements*

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



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

*Requiring information on environmental performance*

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

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36 **note** that the Minister for the Environment will consider options for the regulator of the environmental performance standards and provision of information regime, and report back to Cabinet in 2023;

37 **note** officials will work with Customs and other relevant agencies on policy decisions requiring enforcement at the border and the practical implementation of any new controls, including how requirements can be enforced for online sales on market-based platforms outside New Zealand:

- 38 **agree** to delegate power to the Minister for the Environment and Minister of Customs to make decisions on matters relating to the border and the role of Customs, and to issue drafting instructions as appropriate;

*Drafting of the Bill and delegated authority*

- 39 **invite** the Minister for the Environment to issue drafting instructions to Parliamentary Counsel Office to give effect to the proposals in this paper, as part of the *Responsibility for Reducing Waste Bill*;
- 40 **authorise** the Minister for the Environment to further clarify and develop matters relating to proposals in this paper, in a manner consistent with the agreed policy recommendations, and develop commencement, transitional and any other provisions with Parliamentary Counsel Office, through the drafting process;
- 41 **authorise** the Parliamentary Counsel Office to make technical or drafting changes that arise during the drafting of the legislation.

Authorised for lodgement

Hon David Parker

Minister for the Environment

## A flexible choice of regulation-making tools for improving circularity of products and materials

- ✓ Landfill ban
- ✓ Mandatory composting (recycling)



- Use these tools for:
- Food waste
  - Organic goods that are OK to compost
  - Products/materials that are a source of methane emissions in landfill
  - Regulations will drive system change

- ✓ Landfill ban
- ✓ Mandatory recycling



- Use these tools for:
- Products bought but not made to last
  - Materials with economic value when recovered
  - Insufficient voluntary action

- ✓ Product ban or prohibition



- Use these tools for:
- Mere convenience goods with ready alternatives
  - As waste, contaminates compost or recycling or harms nature
  - Materials that are unsustainably sourced
  - Insufficient voluntary action

- ✓ Requirements for information on environmental performance



- Use these tools for:
- Specifying conditions that must be met before making environmental claims
  - Ensuring businesses and people have trustworthy information to be good environmental stewards
  - When consumer demand will provide a competitive advantage

- ✓ Environmental performance standards (EPS)



- Use these tools for:
- Improving environmental performance across a market of widely varying quality
  - Shifting market conditions to make circularity the norm
  - Levelling the playing field for businesses already doing the right thing

- ✓ Extended producer responsibility (EPR)



- Use these tools for:
- Solutions depend upon supply chain cooperation and change
  - Products have high social value so the administrative burden is warranted
  - A quorum of industry is willing to lead within parameters set by Government

- ✓ Deposit return scheme



- Use these tools for:
- Materials have economic value when recovered/recycled
  - Deposit return will drive behaviour change
  - High volume waste streams

Package tools – for example:

- ✓ Deposit return scheme
- ✓ Landfill ban

Package tools – for example:

- ✓ Extended product responsibility
- ✓ Environmental performance standard

We will not be able to:

- Place a tax on a product as a form of price control or disincentive
- Control products legally supplied in any Australian state or territory - unless we apply for a general or specific exemption
- Require refill services by certain businesses eg by supermarkets
- Require cafes and other food outlets to accept or provide reusable cups (as required in Germany)



## Appendix Two - Comparison of proposed new powers and existing legislation

Proposed regulation-making power in new waste legislation	Purpose	Scope	Additional safeguards	Comparison to Waste Minimisation Act 2008
<b>Product bans</b> Control or prohibit the import, supply, sale and manufacture of products and materials	Preventing problematic materials and products from entering our system to: <ul style="list-style-type: none"> <li>– reduce harm to the environment and people</li> <li>– minimise waste</li> <li>– reduce contamination and improve the efficiency of our recycling systems.</li> </ul>	Provides a level playing field for domestic and imported goods. The provision is intended to encompass the supply of imported goods to retailers, sales from online shopping sites, and non-financial supply such as “giveaways” and “free gifts”. The intention is to complement and not duplicate the Hazardous Substances and New Organisms Act 1996.	The Minister must have regard to: <ul style="list-style-type: none"> <li>– the availability of practicable alternatives to the extent that alternatives are required</li> <li>– the risk of regulated products or materials being substituted by undesirable alternatives.</li> </ul>	Expanded and revised s23(1)(b) <i>Controlling or prohibiting manufacture or sale of products that contain specified materials (if there is an available alternative)</i> Changes: <ul style="list-style-type: none"> <li>– Clarifies that sale includes supply by specifying both in the provision</li> <li>– The availability of a practicable alternative is a factor to consider, not a prerequisite for making a ban</li> <li>– General provisions will clarify that products can be defined using a range of parameters, and not just in relation to “specified materials”.</li> </ul>
<b>Landfill bans and mandatory recycling</b> Prohibit and/or prescribe actions for disposal and recycling of products and materials (including waste)	<ul style="list-style-type: none"> <li>– Reduce environmental harm</li> <li>– Reduce contamination and improve the efficiency of our recycling systems.</li> <li>– Increase the proportion of recycled organic materials to reduce emissions from waste and avoid unnecessary resource use</li> <li>– Add economic value and avoid resource depletion by reusing and recycling technical materials.</li> </ul>	Such actions could include: <ul style="list-style-type: none"> <li>– requirements to use certain types of processing facility</li> <li>– require building and construction businesses to divert and recycle waste or unused building materials for other purposes</li> <li>– requirements for recycling plans for certain products or groups of products eg, e-waste and food waste.</li> </ul>	The Minister must be: <ul style="list-style-type: none"> <li>– satisfied there is adequate infrastructure and facilities in place to provide for prescribed actions, or a reasonable time to be put in place</li> <li>– have regard to end markets, for example, the viability of markets, their potential volatility, and the risk of supporting markets of low or negative value.</li> </ul>	Expanded s23(1)(a) <i>Controlling or prohibiting the disposal, or anything done for the purpose of disposing, of products or waste</i> Changes: <ul style="list-style-type: none"> <li>– Expanded from a control on disposal to a control on appropriate actions for products and materials at their end of life</li> <li>– Added an additional constraint requiring consideration of end markets.</li> </ul>
<b>Extended producer responsibility (EPR)</b> Extend producer and importer responsibility for problem products to management of their end-of-life products and improvement of resource circularity	<ul style="list-style-type: none"> <li>– Reduce environmental harm and increase resource circularity and economic value for problem products</li> <li>– Shift responsibility for end-of-life product management from local government to producers and consumers</li> <li>– Ensure all producers pay their share (remove current free-rider issues with voluntary schemes).</li> </ul>	Requires producers and importers of certain products to register with the enforcement agency and join an accredited producer responsibility organisation in order to sell their product in New Zealand. Additional requirements would include: <ul style="list-style-type: none"> <li>– Targets for take-back services, recycling and recycled content</li> <li>– Input methodologies for fees and design standards.</li> </ul>	As above, also components of existing WMA ss 22(2) and 23(2 and 3).	Replace ss 22(1)(a) <i>prohibiting sale of a priority product except in accordance with an accredited scheme with enforceable mechanisms.</i>  <i>In practise the current WMA has proven unfit for purpose to deliver effective regulated product stewardship. Until such time as it can be amended existing priority product declarations will be progressed and interim solutions/ transitional arrangements provided for any WMA revision.</i>



Proposed regulation-making power in new waste legislation	Purpose	Scope	Additional safeguards	Comparison to Waste Minimisation Act 2008
<b>Environmental performance requirements</b> Prescribe environmental performance requirements across the full life cycle of certain products and materials	<ul style="list-style-type: none"> <li>Prevent poor-performing products from circulating in the economy by establishing minimum requirements for environmental performance that a products and materials must meet before being supplied or sold on the NZ market.</li> <li>Drive action at the top of the waste hierarchy, for example, through requirements that extend products' life or that require a proportion of recycled content in certain products.</li> <li>Standardise and align the environmental performance of products and materials in the New Zealand market with requirements in other jurisdictions.</li> </ul>	<p>Environmental performance requirements can be to:</p> <ul style="list-style-type: none"> <li>extend and improve product and material life, e.g. through durability and repairability requirements</li> <li>improve quality to reduce negative environmental impacts or enhance positive impacts</li> <li>improve recovery of materials</li> <li>require the use of recycled materials and/or reduce the use of virgin materials</li> <li>design out pollution, effluents, emissions and waste across the full life cycle</li> <li>minimise use of natural resources.</li> </ul> <p>The scope of the empowering provision should confirm that requirements can be applied to all products or materials as set out in general provisions. For clarity, as applied to environmental performance requirements this includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>all technical and biological (eg, compost) products and materials, including imported goods</li> <li>materials from which the product is manufactured, techniques used in manufacture, and by-products of the manufacturing process</li> <li>packaging and labelling, and the substance used to fix a label</li> <li>all and any combination of life cycle stages of a product or material such as design, raw material acquisition and pre-processing, manufacturing, distribution, use stage, and end of life.</li> </ul>	<p>The Minister must consider:</p> <ul style="list-style-type: none"> <li>the impact on the functionality and safety of the product</li> <li>the impact on other environmental objectives not targeted by the standard.</li> </ul>	<p>New power. Replaces 23(1)(g) and (h).</p> <p><i>s23(1)(g) for any product or material that has become waste, prescribing standards to be met when reusing, recycling, or recovering the product or material.</i></p> <p><i>S23(1)(h) requiring specified persons or specified classes of person to ensure that the standards prescribed under s23(1)(g) are met.</i></p> <p>The proposal constitutes a new power as it is such a substantive expansion of the existing power.</p>



Proposed regulation-making power in new waste legislation	Purpose	Scope	Additional safeguards	Comparison to Waste Minimisation Act 2008
<b>Information on environmental performance</b> Prescribe information that is made available to consumers on the environmental performance of products and materials (including through labelling)	<ul style="list-style-type: none"> <li>Support consumers to make better-informed purchasing decisions and take sustainable action through providing information on environmental performance</li> <li>Assists in preventing specific misleading claims and greenwashing by specifying conditions that must be met in order to make such claims.</li> </ul>	Regulations can specify: <ul style="list-style-type: none"> <li>the ways in which information is provided</li> <li>the types of information required</li> <li>if relevant, any specific standard, or labelling or information scheme that products must comply with</li> <li>conditions that must be met in order to make specific environmental claims, for example, by reference to a standard or a verified certification process.</li> </ul> Information could cover (for example): <ul style="list-style-type: none"> <li>product end of life / end of use (eg, recyclability or best end-of-life destination)</li> <li>durability and repairability (eg, performance on a repairability index, maintenance, estimated product life)</li> <li>environmental impact (eg, resource efficiency, emissions, full life cycle assessment)</li> <li>product composition (recycled content, presence of problematic materials/substances)</li> </ul>	The Minister must have regard to requirements for consumer information in other statutes and the benefits to the customer of streamlined, accessible information.	Revised s23(1)(f) <i>prescribing requirements for the labelling of a product</i> The revised power would: <ul style="list-style-type: none"> <li>expand scope from labelling to information about environmental performance of products and materials</li> <li>clarify the regulations can specify the ways in which information must be provided and the types of information required</li> <li>provide the ability to specify a specific standard, or existing labelling or information scheme with which products must comply.</li> </ul>