

SUBMISSION

by



PACKAGING COUNCIL
OF NEW ZEALAND (INC)
(PAC.NZ)

to the

Local Government & Environment Select Committee

on the

Supplementary Order Paper

to the

Waste Minimisation (Solids) Bill

Introduction

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The Packaging Council is the only trade association representing the whole packaging supply chain, including raw material suppliers, packaging manufacturers, brand owners, retailers and recycling operators.

The Packaging Council has approximately 135 members, representing more than 80% of the packaging industry by turnover. The New Zealand packaging industry is valued at NZ\$2 billion. 75% of New Zealand's top 100 food and grocery brands are manufactured by Packaging Council members, contributing NZ\$17 billion to the New Zealand economy.

The Packaging Council of New Zealand welcomes the opportunity to make a submission on the Supplementary Order Paper ("SOP") to the Waste Minimisation (Solids) Bill ("the Bill") on behalf of its financial members (see section 3.0) and congratulates the Government for removing the more draconian requirements from the original Bill.

The Packaging Council has been intimately involved in the development of waste policy since at least 1996 when it signed the 1996 Packaging Accord. The organisation was involved in developing the 2002 Waste Strategy, provided data for the 2006 review of targets and assisted with the research behind the Parliamentary Commissioner for the Environment's 2006 report 'Changing behaviour: Economic instruments in the management of waste'.

The Packaging Council is passionate about voluntary product stewardship and is proud of its achievements under the 2004 Packaging Accord. **New Zealand has one of the highest packaging recycling rates in the world at 57%**, which is higher than both Australia (56%) and the UK (55%) and is on a par with the European Union aggregated packaging recycling rate (60%).

The Packaging Council has already expressed its desire to begin negotiations on a 3rd Packaging Accord to begin at the conclusion of the 2004 Packaging Accord in 2009.

The organisation's broad membership base provides it with a unique understanding of waste management and product stewardship best practice in New Zealand and we would welcome the opportunity to present our comments and recommendations to the Select Committee.

1.0 Summary

- 1.1 The Packaging Council commends the intent of the Waste Minimisation and Resource Recovery Bill, but has concerns that the SOP does not fully reflect the vision laid out in the Cabinet papers.
- 1.2 Specifically, we are concerned that the SOP has the potential to discourage voluntary product stewardship schemes by not offering enough incentives to industry to develop such schemes and the prescribed funding regime and local bylaw provisions could fragment waste streams and thereby limiting a national approach.
- 1.3 We reiterate our concerns about the introduction of a waste disposal levy (tax). A levy is one form of economic instrument that may be used and we consider that there should be further investigation into the use of other economic instruments to ensure that the most appropriate and effective mechanism is selected.
- 1.4 Raising revenue for waste minimisation activities solely by means of a waste levy is an inefficient way of providing funds for these activities. This has been well researched and documented by the Australian Productivity Commission's report and the NZIER 'Waste or Rationality' report.
- 1.5 Notwithstanding these comments, the Packaging Council recommends amendments to the SOP which it believes would motivate industry to invest in voluntary product stewardship schemes and direct funding to initiatives of national strategic importance; thereby consolidating waste streams, building capacity and volume and developing new markets.

Recommendations

- 1.6 Broaden the definition of a 'product' to separate the packaging from the packed product and allow for generic materials such as construction and demolition material to be considered as products for the purposes of establishing product stewardship schemes.
- 1.7 On enactment of the SOP, publish in the *Gazette* a list of recognised voluntary product stewardship schemes and grant those schemes amnesty from the priority product list **and** regulation (as laid out in clause 19 of the SOP) for the duration of those schemes.

- 1.8 Remove 'public concern' from the definition of a priority product to give industry confidence that sound science and economic and environmental benefit will be the only criteria, not unfounded public fears.
- 1.9 The Waste Advisory Board undertakes a national strategic and economic assessment of waste management to specifically identify where additional funding is required and at what level that funding needs to be to achieve the desired outcome. These areas should then be 'ranked' based on strategic importance to New Zealand and consideration given to the best economic model to fund these projects, be that out of established tax regimes, a new waste levy or other appropriate economic instruments.
- 1.10 Require local authorities who own or operate a landfill to demonstrate that their gate fees include all externalities associated with their landfill, including the long term management of the site. Increased gate fees which include the full and real cost of disposal could in itself meet any funding shortfall.
- 1.11 Any levied funds made 100% contestable. Giving territorial authorities 50% of revenues raised as a right, will not, in our opinion, advance a national strategic plan aimed at waste minimisation or resource recovery or allow the level of funding required to be quantified.
- 1.12 Waste generated from recycling be exempted from any waste disposal levy, otherwise a levy would increase the cost of recycling and could make some recycling operations unviable. Clearly this would be contrary to the intention of the SOP.
- 1.13 Require territorial authorities to take into account any existing regulations or product stewardship schemes when making a new bylaw or amending an existing bylaw. Without this safeguard the SOP would create a hybrid situation where some matters of waste minimisation are decided at local level and some at national level. There is no clear indication which is to prevail. In our view that is unsatisfactory, particularly for national businesses operating across the country.
- 1.14 Expand the Waste Advisory Board to recognise that industry as a whole is a user of products and materials and a disposer of waste, whilst the commercial waste industry is a collector and processor of waste. These are two quite different perspectives and both would be required to give a balanced view.

2.0 Comments

The Packaging Council has a number of specific comments arising from the SOP.

Interpretation

2.1 The SOP defines a 'product' as including

- (a) *packaging; and*
- (b) *a class of product*

The word '*and*' in the above definition ties the packaging to the product, making the definition too narrow. As product stewardship schemes for classes of products are developed, a plethora of individual and possibly conflicting schemes for the packaging would be developed at the same time, which would be clearly inefficient. The definition should instead allow for broad product stewardship schemes such as the Packaging Accord.

2.2 We recommend amending the definition as follows:

product means -

- (a) a specified product; or
- (b) a class of products; or
- (c) a specified material; or
- (d) a specified class of materials

2.3 This broader definition would allow packaging itself to be defined as a product and be part of its own product stewardship scheme, such as the Packaging Accord which does not apply to the goods contained in the packaging. This definition would also allow generic materials such as construction and demolition material to be considered as products for the purposes of establishing product stewardship schemes.

2.4 The SOP defines a 'product stewardship scheme' as '*a product stewardship scheme to which Part 2 applies*'.

2.5 To address our concerns about the status of existing product stewardship schemes (ref: paragraph 2.16), we recommend amending the definition as follows:

product stewardship scheme means a product stewardship scheme to which Part 2 applies, including any voluntary product stewardship scheme in place at the time the Act comes into force

PART 2 – PRODUCT STEWARDSHIP

2.6 The product stewardship model laid out in the SOP is quite different to the Ministry for the Environment's previously stated preferred option (and that of the largest group of submissions on the Ministry's product stewardship discussion document¹) for voluntary mechanisms with regulation to act as a safety net to fill in the gaps.

2.7 The Packaging Council is a strong advocate of voluntary product stewardship to achieve waste minimisation and would be in favour of regulation where it was either requested by industry or voluntary schemes were clearly not achieving agreed outcomes and targets. This is consistent with the Ministry for the Environment's previously stated preferred approach as stated on page 12 of their discussion document²:

'Regulation would then be considered only where no effective voluntary scheme could be developed and where there was a clear indication that there would be net benefit from such intervention'.

2.8 The 'priority products' concept is completely new and would essentially introduce mandatory product stewardship. The Packaging Council is concerned that this significant change to the Ministry for the Environment's previously stated preferred approach has only been released for limited consultation with little explanation for the change.

Declaration of priority products

2.9 Clause 7(2) provides for grounds on which a product would be declared to be a priority product. They are that:

¹ Product Stewardship & Water Efficiency Labelling – New Tools to Reduce Waste – Summary of Submissions. Published in August 2006 by the Ministry for the Environment.

² Product Stewardship & Water Efficiency Labelling - New Tools to Reduce Waste – Discussion Document. Published in July 2005 by the Ministry for the Environment.

- (a) *The product will or may cause significant environmental harm at the end of the product's life; or*
- (b) *There is significant public concern about the nature or level of environmental harm arising from the product at the end of the product's life; or*
- (c) *There will be environmental, social, or economic benefits from the reuse, recycling, recovery, or treatment of the product.*

2.10 The Packaging Council would broadly accept the first and third criteria (subject to the suggested amendments made below) but does not agree with the second criteria on the basis that public concern should not be a deciding factor for determining whether a product is a priority product.

2.11 Clause 7(3)(b)(ii) allows for the public to have the opportunity to comment, which the Packaging Council would be comfortable with, but the determination of whether a product is a priority product should be made by the Minister under 7(2)(a) or (c) on the basis of sound science and economic justification not 'public concern'. There is no way of measuring the true extent of 'public concern' or whether it is 'significant'. The danger is that vociferous public clamour by minorities can be mistaken for wider 'public concern'. Furthermore, and unfortunately, public concern is often based on inaccurate information or because of complaints by particular lobby groups. A good example is the call for a ban on plastic shopping bags. Below is the reasoned finding from the Australian Productivity Commission³:

2.12 *Plastic-bag litter has the potential to injure marine wildlife, including endangered species. However, claims that at least 100,000 animals are killed each year by plastic-bag litter are not supported by evidence. Such claims appear to be based on the misinterpretation of Canadian research on the impact of fishing nets. Some have also misinterpreted case studies of individual animals that have come into contact with plastic debris (not just plastic bags) as being representative of the overall impact of plastic-bag litter. The true extent to which plastic-bag litter injures populations of marine wildlife, as opposed to individual animals, is likely to remain very uncertain because it is extremely difficult to measure.*

2.13 The Packaging Council also questions the inclusion of the word 'social' in clause 7(2) on the basis that clauses 18(2)(b)(iii) and 19(3)(b)(ii) (dealing with regulation making

³ Waste Management, Australian Government Productivity Commission Inquiry Report, 20 October 2006

powers) refer only to environmental and economic benefits and costs. They do not refer to social benefits and costs.

2.14 We therefore suggest removing the word '*social*' from clause 7(2) for consistency and suggest tightening up the clause by substituting the word '*or*' with 'and' at the end of clause 7(2)(a) and including the word 'net' in clause 7(2)(b) to require the benefits to outweigh the costs. Our suggested wording is as follows:

- (a) The product will or may cause significant environmental harm at the end of the product's life; and
- ~~(b) There is significant public concern about the nature or level of environmental harm arising from the product at the end of the product's life; or~~
- (c) There will be net environmental, ~~social~~ or economic benefits from the reuse, recycling, recovery, or treatment of the product.

2.15 Clause 7(3) sets out the requirements for the Minister to consult before making a declaration of a priority product as follows:

- (a) *obtain and consider the advice of the Waste Advisory Board; and*
- (b) *be satisfied that-*
 - (i) *the product can be managed effectively under a product stewardship scheme; and*
 - (ii) *the public have had an adequate opportunity to comment on the proposal to declare the product to be a priority product*

2.16 Clause 7(3) does not require the Minister to take account of any voluntary product schemes which may be in place, or to consider whether those schemes are meeting their objectives. If existing voluntary product stewardship schemes are not considered, then industry will have little incentive to develop voluntary schemes. If the Government and the Ministry for the Environment wishes to motivate industry to develop voluntary schemes, which we understand to be the case, then these voluntary schemes must be considered and industry and trade organisations must have the opportunity to comment.

2.17 The Packaging Council therefore suggests amending clause 7(3) as follows:

- (a) obtain and consider the advice of the Waste Advisory Board; and
- (b) be satisfied that-
 - (i) the product can be managed effectively under a product stewardship scheme; and

- ~~(ii) the public have had an adequate opportunity to comment on the proposal to declare the product to be a priority product~~
- (iii) the objectives of any recognised voluntary product stewardship scheme developed for the product are not being met or are not likely to be met within the time frame specified in the scheme; and
- (iv) the public or organisations or the scheme manager of any voluntary product stewardship scheme have had an adequate opportunity to comment on the proposal to declare the product to be a priority product

2.18 The Packaging Council suggests inserting a new sub clause in clause 7, as follows:

- (5) At the time the Act comes into force, the Minister will, by notice in the *Gazette*, publish a list of recognised voluntary product stewardship schemes and their time frames or review dates.

2.19 These amendments would provide certainty and motivation to industry to continue to develop voluntary product stewardship schemes and to meet their stated objectives. In short, industry would be rewarded for doing the right thing.

Requirements for accreditation

2.20 Clause 12 lists the requirements for accreditation, including:

- (h) *provide for enforcement of the scheme against the persons listed under paragraph (e):*

2.21 The Packaging Council requests clarification from the Ministry for the Environment on how they see any enforcement being effected for a voluntary product stewardship scheme, when scheme managers would have no statutory rights for enforcement. In our opinion, attempting to create such enforcement obligations in such schemes would not be practicable or workable.

2.22 The Packaging Council contends that this clause is unnecessary and would undermine the philosophy of voluntary product stewardship schemes.

2.23 With a voluntary product stewardship scheme, industry accepts that there will always be a number of free riders. Although industry will work hard to apply peer group pressure to those free-riding organisations, industry is by and large prepared to

accept that free riders are a fact of life for a voluntary scheme and will live with free riders so long as they do not prevent the scheme from meeting its targets.

- 2.24 Given that the Minister can, under clause 16, revoke an accredited scheme which does not meet its objectives, clause 12(h) is not necessary and we request that it be removed.

~~(h) provide for enforcement of the scheme against the persons listed under paragraph (e)~~

- 2.25 The wording of clause 12(k) is too narrow and too focussed on consumer products. Some product stewardship schemes only apply to industrial products, so we suggest that the clause is amended as follows:

(k) *set out how consumers or affected parties will be informed about the scheme and the safe management of the product at the end of the product's life:*

- 2.26 No scheme can work without funding and we therefore suggest adding the following to clause 12:

"set out how the scheme will be funded"

Accreditation

- 2.27 To avoid conflicts of interest, or schemes working against each other, the Packaging Council recommends adding a new clause to 13(1) as follows:

(f) does not conflict with the objectives of any recognised or previously accredited schemes.

Revocation of accreditation

- 2.28 Clause 16(1)(c) would allow the Minister to revoke the accreditation for a product stewardship scheme for a non-priority product if the product was subsequently declared a priority product.

- 2.29 As discussed in paragraph 2.16, if the intention of Government is to motivate industry to develop voluntary schemes, which we understand to be the case, then the Packaging Council recommends that industry is provided with a strong incentive to do

the right thing. Central to this would be that existing voluntary schemes are recognised and if they are meeting their objectives then they should not be declared priority products for the duration of those schemes.

- 2.30 The Packaging Council also recommends that the clause 16(1)(c) provides for wider consultation, by adding after '*scheme manager*' the words 'and those parties listed under 12(e)'.

Accredited scheme subject to other laws

- 2.31 Clause 17 of the Bill makes clear that accredited product stewardship schemes are required to comply with other statutory obligations, presumably including commerce and consumer protection legislation.
- 2.32 The assumption can be made that product stewardship initiatives which are not of themselves business opportunities and which therefore require regulatory protection under this Bill will likely conflict with the intent of commerce and consumer protection legislation by increasing costs and reducing or eliminating competition. It is arguable that the discussion between trade competitors necessary to identify and promulgate a product stewardship initiative could be misconstrued as unintentional and anti competitive behaviour between competing commercial entities likely to lead to increased cost to the consumer.
- 2.33 The Packaging Council requests Government to review and explicitly prescribe the relationship between the SOP and any direct or indirect conflict with trade, commerce and consumer protection legislation. In particular, consideration should be given to the actual or potential conflict between clause 17 and clauses 19(1)(c)(e) and (i), clause 21, clause 40, clause 41, clause 45(1)(a)(b), clause 51 and clause 65.

Regulations in relation to products (whether or not priority products) and materials

- 2.34 The Packaging Council does not believe there is any justification for allowing the onerous and costly regulations provided in clause 19 to be applied to products other than those which will or may cause significant environmental harm at the end of their life (the first criteria of clause 7(2)).
- 2.35 If the Government's intention is to motivate industry to develop **voluntary** product stewardship schemes, then industry must be rewarded for doing the right thing. Allowing these onerous and costly regulations to be applied to non-priority products would not motivate industry to expend time, money and effort developing a voluntary scheme if it cannot enjoy amnesty from these regulations for the duration of the scheme. In short, clause 19 is all stick and no carrot.
- 2.36 Clause 19(1)(j) is of particular concern, giving the Minister *carte blanche* to pass regulations on any matter. This would create far too much uncertainty for industry and we request this clause be removed.
- ~~(j) — providing for any other matter contemplated by this Part.~~

Potential burden on Packaging Council members and wider industry

- 2.37 The Packaging Council assumes that the regulations allowed for by clause 19 have been included to appease environmental lobby groups and others with a vested interest.
- 2.38 Since these groups often have a very simplistic view of the commercial realities of waste collection and recycling, the Packaging Council would like to draw attention to recent research which demonstrates the enormous costs that the regulations provided for by clause 19 would impose on industry.
- 2.39 The Bill has created much hype around the concept of refundable deposits as an economic incentive for people to return recyclable material. Most of the hype has focussed on container deposits, i.e. a refundable deposit placed on beverage containers as an incentive for them to be returned to a collection centre.

- 2.40 An independent cost benefit analysis conducted by independent economic analysts Covec⁴ on behalf of the Packaging Council concludes that although a container deposit refund scheme would increase recovery of beverage containers by approximately 90,000 tonnes, the net impact on New Zealand would be an annual cost of between \$61 million to \$121 million.
- 2.41 Using the mid range estimate, the additional cost for every additional tonne recovered above current levels would be **\$1020** per tonne. By comparison, the cost of an efficient household collection system is approximately **\$60** per tonne.
- 2.42 If retailers were required to take back all packaging, Covec estimated the annual costs would be between \$133 million and \$175 million per annum and the cost to retailers would be in excess of \$13 million per annum in lost floor space.
- 2.43 Such costs cannot be justified on economic grounds when 77% of New Zealand councils offer a kerbside collection system for recyclables and 95% of New Zealanders have access to recycling facilities.
- 2.44 Such costs cannot be justified on environmental grounds when (i) waste sent to landfill would be reduced by less than 3% and (ii) the additional vehicle movements would increase carbon dioxide emissions by approximately 8000 tonnes per annum at a time when transport efficiency is seen as 'low hanging fruit' for climate change policy development.
- 2.45 South Australia has had container deposit legislation since 1977 and this often used as a reason for introducing the system in New Zealand. Below is the recent finding on container deposit legislation by the Australian Productivity Commission:

Deposit-refund schemes are typically costly and would only be justified for products that have a very high cost of illegal disposal. Container deposit legislation is unlikely to be the most cost-effective mechanism for achieving its objectives of recovering resources and reducing litter. Kerbside recycling is a less costly option for recovering resources, while general anti-litter programs are likely to be a more cost-effective way of pursuing overall litter reduction.

⁴ Impacts of the Waste Minimisation (Solids) Bill, Covec, October 2006

PART 3 – WASTE DISPOSAL LEVY

General comments on introduction of waste levies and Packaging Council suggested alternative solution as a first step.

2.46 The Packaging Council reiterates its concern to the introduction of a waste disposal levy (tax). A levy is one form of economic instrument that may be used and we consider that there should be further investigation into the use of other economic instruments to ensure that the most appropriate and effective mechanism is selected.

Recommendation

2.47 Any local authority which owns or operates a landfill must demonstrate that its gate fee takes account of all externalities associated with their landfill, including the long term management of the site. This would bring all landfills up to commercial standard where full consideration under the provisions of the Resource Management Act are realised. This would also ensure consistency between all local authority owned landfills and commercially owned landfills.

2.48 This recommendation is based on the findings of the recent report by the Parliamentary Commissioner for the Environment⁵, which found that *'many councils charged solely on the basis of landfill operating costs, which underestimated the real costs of landfill disposal, including the long-term management of the site'*.

2.49 Charging the full and real cost of disposal could meet any current shortfall in local funding without any further economic intervention being necessary.

2.50 On the assumption that in some areas this will not be sufficient, a national strategic and economic assessment should then be conducted to **specifically** identify where additional funding is required and at what level that funding needs to be to achieve the desired outcome. These areas should then be 'ranked' based on strategic importance to New Zealand and consideration given to the best economic model to fund these projects, be that out of established tax regimes, a new waste levy or other appropriate economic instrument.

⁵ Changing behaviour: Economic Instruments in the management of waste, Parliamentary Commissioner for the Environment, 2006

- 2.51 A prime example of this in practice would be areas like the West Coast of the South Island where a small population base limits development, yet the area would rank as one of the most strategically important in New Zealand from national perspective.
- 2.52 We believe that this would be a much more reasonable approach which we could support as it would clearly identify a national strategic vision to waste minimisation and resource recovery.
- 2.53 The Packaging Council does not support local authorities receiving levied funds as a matter of right. Whilst our preference is for the approach we have suggested above, at the very least we contend that any funding raised for the purposes of waste minimisation and resource recovery must be fully contestable and in keeping with a national strategic vision towards waste minimisation and resource recovery.
- 2.54 This is not unreasonable given that any project applying for funds needs to fulfil certain criteria and in the interests of New Zealand as a whole these criteria should be met whomever is applying for funding, and there is nothing to suppose that territorial authorities are going to be able to spend this funding any better than anyone else. This also serves to ensure that there is full transparency across projects, it reduces the risk of funding simply displacing other funding in local authorities and it ensures that the funding available is maximised to full effect. This point is particularly noteworthy since it has never been clearly identified what the scale of the problem is and what funding is actually required to achieve the desired outcome. Simply put, the proposal to raise \$30 million in the first year could be way too little or way too much to achieve the desired outcome. Only a fully contestable fund would address this issue.

Specific comments in relation to Part 3

- 2.55 Without prejudice to our stated preference above, the Packaging Council has specific comments on Part 3 of the SOP.
- 2.56 Clause 21 states that the purpose of this Part is to *enable a levy to be imposed on waste disposed to:*
- (a) *raise revenue to be used for waste minimisation; and*
 - (b) *increase the cost of waste disposal to recognise that disposal imposes costs on the environment, society and the economy.*

- 2.57 Raising revenue for waste minimisation activities by means of a waste levy is an inefficient way of providing funds for these activities. This has been well researched and documented by the Australian Productivity Commission's report and the NZIER 'Waste or Rationality' report⁶.
- 2.58 The Australian Productivity Commission's report on Waste Management recommends that (Australian) Governments should discontinue the current practice of using landfill taxes since:
- i) *pursuing objectives, such as arbitrary landfill diversion targets and revenue generation, to fund waste policies, will lead to inefficient outcomes;*
 - ii) *the external costs of disposal of a modern, fully-compliant landfill are believed to be small, and levies are a poor instrument for directly targeting those externalities; and*
 - iii) *the objective of reducing greenhouse gas externalities should be addressed within a broad national response to greenhouse gas abatement, not through landfill regulation or levies.*
- 2.59 The NZIER report stated:
- The economic principles applying to waste levies have been extensively examined in New Zealand. The government-commissioned tax review in 2001 considered in detail the possible consequences of taxes levied nationally to achieve environmental benefits and concluded that they had practical disadvantages (MacLeod 2001). A levy on a waste stream of around 3 million tonnes a year is unlikely to be as efficient a means of raising public revenues as raising it through established tax instruments. A new levy requires a specific infrastructure for collection, incurring new costs for agencies administering the levy and also for those charged with collecting it. If extra funding is required for waste minimisation initiatives, it would be more efficient to raise it through existing broad-based government revenue instruments such as income tax, GST or property rates.*
- 2.60 It is also unclear how the purpose "*Increasing the cost of waste disposal to recognise that disposal imposes costs on the environment, society and the economy*" can be realised when the regulatory impact statement states that '*...the levy is not designed or expected to act as a direct incentive for people to reduce waste generation*'.

⁶ NZIER Waste or Rationality? Economic perspectives on waste management and policies in New Zealand, 16 February 2007

2.61 The Packaging Council would also like to point out that the financial impact of levies on business is not as simplistic as the regulatory impact statement implies. It does not take into account how waste services are currently priced. For example, front end load bins are prolific amongst SME's and these are priced on a per bin basis. So even if SME's are committed to reducing their waste many would have no means to actually measure this and would have no financial incentive to do so since they are paying per bin and not per weight going to landfill.

2.62 We believe that a new clause should be added Clause 23 "*Rate of Levy*":

- (c) Change of rate should not occur until the Minister has completed a review of the effectiveness of the levy under Clause 35 – "*Minister must review effectiveness of levy*".

2.63 Clause 25 – Waiver of levy payment.

The Secretary may waive the requirement for an operator to pay any amount of levy, if satisfied that exceptional circumstances justify the waiver. The Packaging Council requests clarification of what circumstances are anticipated here. We would strongly suggest that waste as a by-product of recycling should be exempt. Otherwise the levy would likely increase the cost of recycling, potentially rendering some recycling activities too expensive to be continued, which we assume is not the intent of this SOP. We also question why cleanfill is exempt, given this currently represents circa 50% of the waste stream and a perverse outcome of landfill levies would be more material diverted to cleanfill to avoid paying the levy.

2.64 "~~Clause 26 (b) Secretary must distribute and spend levy money by paying shares to territorial authorities in accordance with section 27 & 29~~ – should be deleted in accordance with our position that all levied funds should be fully contestable.

2.65 Clause 35 (1) *Minister must review effectiveness of levy.* We have concerns that the review intervals detail **maximum** timeframes only, ie *not later than 3 years after commencement* and *then at intervals of not more than 5 years after the last review.*

2.66 Clause 27 (1) *monies have to be paid in respect to a **financial year** and; Clause 33 states that the Minister can direct the Secretary to retain 1 or more payments of levy money in respect of a **financial year** if the Minister considers that the territorial*

- authority has not met any of the [following] requirements or standards in respect of the **previous financial year**. This implies that spending of funds is to be on an annual basis therefore effectiveness should be measured annually.*
- 2.67 Clause 35 (2) Implies that the effectiveness of the levy will be based on “amounts of waste *disposed and amounts of waste reused, recycled or recovered*”. The Packaging Council would like to express their concerns over these metrics.
- 2.68 Firstly, pursuing simply ‘waste reduction’ targets suggests the ‘zero waste’ approach is favoured. We would like to point to the Auditor-General’s performance audit report⁷ using Ashburton District Council as an example of a council who had adopted a zero waste policy. “4.19 *Ashburton District Council has a target of zero waste to landfills by 2015. Council staff told us it will be difficult to meet this target within reasonable cost, but that it is a goal to aspire to.*”
- 2.69 The Packaging Council would question where the control would be around ‘reasonable cost’.
- 2.70 The NZIER report Waste or Rationality summed up our concern stating: *There is [further] risk that pursuing targets for waste minimisation and maximising material recovery, reuse and recycling, without in most cases explicit consideration of the costs and benefits of so doing, will in itself be wasteful of resources, diverting them from other activities of greater value to the community, without any demonstrable gain for environmental quality.*
- 2.71 The Packaging Council therefore asks that a further clause be added to this section which requires effectiveness to be measured in cost/benefit economic terms.
- 2.72 Clause 37 (1) (h) *allowing an operator who objects on conscientious or religious grounds to paying the levy in the prescribed manner to pay it in another manner*. The Packaging Council is somewhat perplexed by this clause, since tax avoidance is not usually encouraged, we seek clarification on what is intended here.
- 2.73 Clause 37 (1) (a) *prescribing the manner in which a levy collector may estimate the amount of levy payable by the operator of a disposal facility* we understand this is

⁷ Controller and Auditor-General Performance audit report, Waste management planning by territorial authorities, April 2007

likely to refer to landfills where weighbridges do not exist. We have two main concerns here:

1. estimating the amount of levy payable is a result of estimating the volume/weight entering the facility. This situation is not conducive to introduction of well reasoned policy on waste minimisation and resource recovery since it does nothing to establish what scale of problem actually exists.
2. we see no incentive in this clause to change those circumstances. We suggest a sunset clause is inserted where all landfills are required within a certain timeframe – say 3 years – to install weighbridges, negating the need after that time for this clause.

2.74 The above points reiterate our preferred position on waste levies as detailed at the beginning of this section.

PART 4 – RESPONSIBILITIES OF TERRITORIAL AUTHORITIES IN RELATION TO WASTE MANAGEMENT AND MINIMISATION.

2.75 The Packaging Council is somewhat alarmed at what appears to be largely unconstrained powers afforded to the territorial authorities. There is nothing in these provisions which requires territorial authorities to act in accordance with existing product stewardship schemes developed by industry and recognised by central government.

2.76 As it stands, any national product stewardship programme developed under **Part 2 – Product Stewardship** can be undermined by a territorial authority under the powers afforded it by Clause 47(1) *A territorial authority may make bylaws for 1 or more of the following purposes: (a) prohibiting or regulating the deposit of waste or of waste of any specified type.*

2.77 The Packaging Council took legal advice on this matter. The advice we received confirmed that there is theoretically some overlap in the jurisdictions conferred firstly on the Minister and secondly on the territorial authorities when it comes to the function of regulating or controlling the handling of material that is waste for disposal. There is the potential for a conflict if the measures and philosophies that are reflected

in Regulations under clause 19 are different to the measures and philosophies of territorial authorities acting under Part 4.

2.78 The SOP appears to be creating a hybrid situation where some matters of waste minimisation are decided at local level and some at national level. There is no clear indication which is to prevail. In our view that is unsatisfactory.

2.79 The prospect of significant inconsistencies between various geographical regions has the potential to make for intolerable business operating conditions for national companies.

2.80 **Acting on our legal advice, we strongly recommend that a new sub-clause is added to clause 47 to provide that a territorial authority must take into account any existing regulations or product stewardship schemes when making a new bylaw or amending an existing bylaw.** Otherwise the best of local intentions could very likely give rise to the very worst of national unintended consequences.

2.81 Clause 51 *Grants*

(1) *If authorised to do so by its waste management and minimisation plan, a territorial authority may make grants or advances of money to any person, organisation, group, or body of persons for the purpose of promoting or assisting the reduction, reuse, recycling, recovery, treatment, or disposal of waste;*

(2) *A grant or advance of money may be made on terms and conditions the territorial authority thinks fit, including that an advance of money is free of interest.*

2.82 It is the Packaging Council's position that whilst we acknowledge that community groups etc have a part to play in local community solutions for waste management, under a regime where territorial authorities are provided with additional funding this could lead to a plethora of funding for well intentioned local projects which:

1. do nothing to advance a national strategic approach to waste minimisation and resource recovery;
2. do not realise efficiency gains across regions, and
3. potentially compete against national commercial operators undermining potential benefits to the national economy ie economies of scale through consolidated volumes.

This reinforces the Packaging Council's position that these perverse consequences would not exist if any levy fund were fully contestable.

Part 7 – Waste Advisory Board

- 2.83 The Packaging Council commends the government for seeking to provide a more cost effective, less bureaucratic alternative to the Waste Minimisation Authority.
- 2.84 Clause 82(1) states that the Minister must appoint at least four, but not more than eight members to the board. We would like to express our concern that given the scope of expertise required to comprehensively advise the Minister under Clause 80 *Function of the Board* in order that he or she can make sound, factual decisions then the minimum requirement of four people would without exception be too few. Even the maximum number of eight people in our view would not adequately provide for the necessary expertise and representation from industry to provide the balance between local government, Maori and community group interests.
- 2.85 Clause 83(4) states that the *Minister must consult with the Minister of Maori Affairs before appointing any member to the Board*. The Packaging Council questions why only one other Minister need be consulted when clearly the expertise required from the Board would span the portfolios of several Ministers.
- 2.86 Further it is submitted that Clause 83(5)(d) should be split into two to refer to industry and the commercial waste industry. This reflects the fact that industry as a whole is a user of products and materials and a disposer of waste, whilst the commercial waste industry is a collector and processor of waste. These are two quite different perspectives and both would be required to give a balanced view.
- 2.87 The Packaging Council believes that the SOP should clearly provide for members of the Board to possess the relevant knowledge, skill and experience in relation to economics and science/technology to advise on waste minimisation and resource recovery.

3.0 Financial Members of the Packaging Council Endorsing this Submission

3M New Zealand Ltd	Greif NZ Ltd
Astron Plastics	Griffins Foods Ltd
Aerosol Association of NZ (Inc)	Healtheries of NZ Ltd
Alcan Packaging Danaflex	Heidelberg New Zealand
Alto Holdings Ltd	Heinz Wattie's Australasia Ltd
Amcor Kiwi Packaging Ltd	Hubbard Foods Ltd
Amcor Beverage / Aerosols Australasia	Huhtamaki Henderson Ltd
Amcor Flexibles Australasia	Imperial Tobacco New Zealand
Amcor Food Cans Australasia	Interpac Packaging Ltd
Aperio Group (NZ) Ltd	ITW Packaging Systems
Arnotts New Zealand Ltd	Jenkins Group
Auckland Drum Company	Johnson & Johnson Pacific
Aztec Packaging Ltd	Kimberly-Clark Australia
Barnes Plastics	Kyocera Mita NZ
B J Ball Papers	Lamprint Packaging Ltd
Bluebird Foods Ltd	Lion Nathan Ltd
Boxkraft (NZ) Ltd	- NZ Breweries Ltd
British American Tobacco (NZ) Ltd	- Maltexo Ltd
Cadbury Confectionery Ltd	- Lion Nathan Wine & Spirits NZ Ltd
Cas-Pak Products Ltd	- Lion Nathan School of Business Ltd
Cerebos Greggs Ltd	- McCashin's Breweries
Charta Packaging Ltd	- Contracting Bottling Company
Chemiplas NZ Ltd	- Lion Breweries
Chep New Zealand	- Lion Nathan International
Clorox New Zealand Ltd	- Speight's Brewery
Coca-Cola Amatil NZ Ltd	- Canterbury Brewery
Codemark Ltd	- Wellington Brewery
Colgate Palmolive Ltd	Lion Nathan Liquor Distinguished Vineyards
Corus New Zealand Ltd	LinkPlas Ltd
Cospak (NZ) Ltd	Living Nature
Creation House Ltd	McDonald's Restaurants (NZ) Ltd
DB Breweries Ltd	Maniaia Mist Paper Solutions
Detpak (NZ) Ltd	Matua Valley Wines
EC Attwood Ltd	Meadwestvaco Pty Ltd
Eco-Pal Ltd	Mil-tek New Zealand Ltd
Eillex Packaging Ltd	Mobil New Zealand Ltd
Envirowaste Services	Monaghan Plastics & Engineering Ltd
Flint Group Ltd	NCI Packaging (NZ) Ltd
Fonterra Co-Operative Group Ltd	Nestle New Zealand Ltd
- Fonterra Brands (New Zealand) Ltd	Nobilo Wine Group Ltd
- Fonterra Brands (Tip Top) Ltd	Nova Inks & Chemicals Ltd
- Ingredients	NZ Retailers Association Inc.
Foodstuffs (NZ) Ltd	NZ Sugar Company Ltd
Frucor Beverages Ltd	NZ Winegrowers
General Recycle Ltd	NZ Food & Grocery Council
Glass Packaging Forum	NZ Juice & Beverage Assn
Glaxo Smith Kline Consumer Health	NZ Paperboard Packaging Assn (Inc)
Goodman Fielder	NZ Plastic Recycling Ltd
- Goodman Fielder NZ Ltd	Nutrimetics International NZ Ltd
- Goodman Fielder Commercial NZ Ltd	OI New Zealand Ltd
Gravure Packaging Ltd	Office Max New Zealand Ltd
	Packaging House

Paper Coaters Ltd
Pernod Ricard New Zealand Ltd
Peter's Packaging (NZ) Ltd
Pharmapac Ltd
PJ Papers Ltd
Plastics New Zealand
Poynter Agencies Ltd
PPCS Ltd
Port Nicholson Ltd (Fluteboard)
Premier Plastics Ltd
Progressive Enterprises Ltd
- Countdown
- Foodtown
- Price Choppers
- Woolworths (NZ) Ltd
PZ Cussons (New Zealand) Pty Ltd
Quickshrink Distributors (NZ) Ltd
Range Industries
Reckitt Benckiser (NZ) Ltd
Replas Ltd
Rotaform Plastics Ltd
S.C Johnson & Son Pty Ltd
Saito Labels Ltd
Sanford Ltd
Sanitarium Health Food Company
Scholle New Zealand Ltd
Sealed Air (New Zealand) Ltd
Siegwerk New Zealand Ltd
Shell New Zealand Ltd
Shiseido NZ Ltd
Signum NZ Ltd
Snell Packaging & Stationery Ltd
Sonoco New Zealand Ltd
Spicers Paper (NZ) Ltd
Steel Can Association of NZ (Inc)
Sullivan Packaging Ltd
Sutton Group Ltd
Terranova (Metca)
Tetra Pak (NZ) Ltd
The Associated Bottlers Company Ltd
The Warehouse Ltd
The Wrigley Company (NZ) Ltd
TPF Restaurants Ltd
TSL Plastics Ltd
Unibag Packaging Ltd
Unilever Australasia
- Lever Rexona
Viscount Plastics (NZ) Ltd
Visy Industries
- Visy Board (NZ) Ltd
- VisyPak NZ Beverage Packaging
- Visy Industrial Packaging
- Visy PET
Visy Recycling NZ Ltd
Waste Management NZ Ltd
Washtech Ltd
Westfield NZ Ltd

