



P O Box 58899
Botany
Auckland 2163

17E Greenmount Drive
East Tamaki
Auckland 2013

Phone: 09 271 4044
pac.nz@packaging.org.nz
www.packaging.org.nz

4th October 2019

By email: priorityproducts.submissions@mfe.govt.nz

Submission: Proposed priority products and priority product stewardship scheme guidelines

Introduction

Packaging New Zealand's role is to represent the interests of industry in public policy on packaging issues. Our members have a primary responsibility and commercial imperative to manufacture 'fit for purpose' packaging. This includes reducing the environmental impact of packaging through cost effective innovation including extended product stewardship where that is appropriate.

Packaging New Zealand represents the whole packaging supply chain, including raw material suppliers, packaging manufacturers and brand owners to retailers and recycling operators.

Packaging New Zealand has approximately 70 members, representing more than 80% of the packaging industry by turnover. The New Zealand packaging industry contributes \$4,229m to New Zealand's GDP supporting over 5900 businesses and employing over 50,000 people, it also underpins a further \$32b of New Zealand's annual export revenue.

General comments

The consultation document does not define Product Stewardship in measurable and therefore consistent terms. It is described in the consultation document as a desire for "*....a productive, sustainable, inclusive and low emissions economy....(resulting in) "....a prosperous and fairer society, and economic growth within environmental limits."* "Environmental limits" are not defined which is particularly unhelpful.

The motivation for the designation of 'packaging' as a priority product appears to be a combination of rapid changes in the commodity value of some packaging products and commercial decisions by some Councils who chose to prioritise collection over domestic recyclability at a time of high international commodity pricing.

No account of the value or purpose of single use consumer goods packaging is considered, only end-of-life outcomes. This simplistic, one-dimensional approach when applied to the complex, multi-



faceted requirements for packaging has the potential to lead to unintended consequences which potentially will be more damaging socially, environmental and economically than the issues attempting to be addressed.

There is no discussion of the difficulty of lowering the embodied emissions and other environmental costs of products imported to New Zealand. The consultation document does not confront the reality that product design is often a function occurring in some other country based on environmental assumptions, including recycling capability, that may or may not apply in New Zealand, nor does it offer any indication that this asymmetry is understood and how it might be addressed and/or mitigated.

The imposition of onerous product stewardship obligations on all forms of packaging is not the solution to decisions that are more logically the responsibility of Councils acting as commercial participants in the supply chain.

It is unreasonable and potentially environmentally retrograde if problems associated with “*high volume legacy and orphaned product collections*” act to curtail or prevent the development of optimal future circular economy models.

Designing out waste: ‘circular economy’ approach

The aspiration inherent in the concepts of a circular economy are laudable. Unfortunately, the consultation document does not develop the concept. It therefore offers little meaningful direction to Packaging New Zealand members on the environmental limits aspired to and (presumably) the reallocation required for a “fairer” society in an open, market economy.

Packaging New Zealand contend that using product stewardship as a means of transitioning to a circular economy, is clumsy. Overseas jurisdictions who have had mandatory product stewardship models in place for many years are recognising that new models will be required if they are to shift to a circular economy. The majority of global FMCG companies have already made international commitments around transitioning to a circular economy. It is not clear in the consultation document if consideration has been given into understanding if this shift will inherently conflict with proposed localised product stewardship regulations. This consideration is particularly pertinent in relation to the proposed timeframe envisaged in this consultation; mandatory schemes to be in place “*within 3 years*”. We suggest this is completely out of step with the speed of the changing commercial environment, potentially rendering any developed regulations a retrograde step for businesses.

The consultation document states “... *such systems can shift the cost of minimising harm from products away from the wider community and environment to product designers, producers and users.*” We suggest that this aim is seriously flawed since the largest sector of packaging use is food packaging which will, of course, impact the wider community. It is a fact that the ratio of packaging-cost-to-product is higher in staples and basic staples than it is in discretionary and luxury items. This means that the ‘impact’ will be highest on those whose proportion of income is spent on food and lower value goods.

Proposed scope of priority products (comments limited to 6. Packaging)

A key concern for Packaging New Zealand is the undefined descriptor ‘packaging’. Packaging is a catchall for the protection, conveying and storing of goods. It is a hugely variable concept and therefore unhelpful as a descriptor of a “*priority product*”. Used oil, tyres, electrical components and refrigerants are all roughly similar products with a single or very limited range of reuse and recycling options. Farm plastics is similarly a limited concept and even so creates confusion where plastic



agricultural containers and silage wrap overlap with other named 'priority products' including 'packaging'.

The consultation document places emphasis on "beverage packaging" and "plastic packaging". This implies that the report's authors favour 'product stewardship' based on segregated recovery of recyclables. Packaging New Zealand extrapolate from this that product stewardship obligations extend to those undertaking collections including Councils.

It is unclear exactly what potential scope is envisaged with regard to 'single-use' packaging since under the section **Proposed scope of priority products Section 6:** "*single use plastic (emphasis added) consumer goods packaging – potential scope*" then point (b) states "... or any non-plastic (emphasis added) material, and not designed to be refilled." Without prioritising objectives and limiting particular packaging materials/formats which warrant designation as a 'priority' we contend that the scope of 'single-use consumer goods packaging' is simply too large a scope to be workable in any meaningful sense.

Table 2: Summary information relating to Waste Minimisation Act 2008 Section 9(2) criteria for declaring priority products.

Applying the statutory test of 'Risk of harm' to packaging as outlined in the consultation document is, in our opinion, misleadingly inflating the part packaging contributes towards the broad environmental impacts cited as justification for imposing regulations. Similarly, it is inflammatory to use language such as "...and the toxins they can bring into the food chain..." without qualifying these statements with referenced scientific research. No-one is denying that "*incorrectly disposed plastic packaging can cause direct harm...*" nor is there any question to the growing concerns of pollution, but the examples such as "*plastics disposed to landfill can enter the environment over time if the landfill is sited so as to be subject to stormwater or sea level rise*" is clearly not a packaging design issue and not of itself any justification for regulating packaging.

The presumption in determining harm reduction should be the full internalisation of environmental costs to the package concerned, rather than the redistribution of those costs across other packaging types, other businesses or the tax-payer. A precedent for targeting the environmental costs to those causing the harm exists in the hypothecated taxing of waste sent to landfill. It would be environmentally retrograde for the incentive created by such targeting to be blunted by use of the levy and other intervention to then shield producers and consumers from the environmental costs of their design and purchasing decisions, respectively.

Applying the statutory test of 'Waste minimisation benefits' also contains flawed reasoning for introduction of regulations:

- Sub-optimal recovery of packaging materials through co-mingled collection systems is not a packaging design failure. A fully functioning, national infrastructure network for waste and recycling would significantly benefit packaging material recovery. It seems a stretch to suggest that mandatory product stewardship will deliver this, given the fragmented nature of recovery systems inherent in individual 'schemes'.
- Packaging New Zealand has repeatedly highlighted the complexity inherent in determining 'optimum' packaging solutions. There is the obvious consideration, that packaging that fails to deliver the goods in a useful and useable way represents a complete environmental and economic loss resulting in significant contributions to, rather than avoidance of, 'waste'. An implication of the redesign of packaging to enable greater levels of recycling and reuse is that functionality, safety, accessibility and equity could all be compromised. For example packaging that doesn't keep medical supplies aseptic poses a health and a product liability



risk. A product packaged for ease of recyclability could compromise accessibility by the disabled or increase the risk of inappropriate access by children. Requirements for increased recycled content in packaging pose legal and market acceptability risks where contaminant concentration exceeds international standards or appearances acceptable to the buying public.

- The implication that the packaging industry are "*litter contributors*" we suggest is another misleading conflation of issues. Litter is the product of irresponsible consumer or business behaviour. Nowhere in this document is litter education or penalties covered. Litter is a wider community issue. Regardless of packaging choice/materials design, without stopping littering behaviour we will continue to have environmental consequences.
- Overall, Packaging New Zealand supports the benefits of waste minimisation, however the consultation document approach "*realignment of responsibility for these costs*" seems to ignore the point that effective waste minimisation will occur as a result of an optimised systemic approach to waste and recycling in New Zealand, not by simply adding costs onto businesses and consumers.

Applying the statutory test of '**Product stewardship effectiveness**' to packaging as outlined in the consultation document appears to be based on the unsound assumption that systems which work in Europe and North America can be applied in the New Zealand context. The geographic and population considerations underpinning optimal product stewardship vary greatly between countries. What works in one country is no guide to what works in another.

Table 3: Proposed guidelines for priority product stewardship scheme design

We are concerned the proposed design features of a packaging product stewardship scheme, or schemes, reflect a desire to protect the position of Councils and Council's contractors with contractual and commercial interests. We suggest the primary objective of this consultation needs to be established from the outset. If the primary objective is to address the environmental costs of some forms of packaging in a better way than currently occurs, it is a matter of logic that some existing systems of collection and processing need to change.

2. Fees, funding and cost effectiveness. *"The full net costs of collection and management of the priority product (reuse, recycling, processing, treatment or disposal) will be covered by the producer and product fees associated with the scheme"*

- This is an inbound tax system and no incentive for a circular economy to develop a sustainable recycling industry. How can producers be expected to pay without including recycling resource value recovery?

3. Governance. *"The scheme governance entity will be independent, non-profit and represent producers and wider stakeholders, including public interest."*

- See points below (**4. Non-profit status**).

4. Non-profit status *"Given the prominence of expected net public good outcomes, the default expectation is that all priority product stewardship schemes will be operated by non-profit entities representing key stakeholders."*

The implications of this 'design feature' are profound, including that:



- Profitable recycling is not considered ‘product stewardship’, notwithstanding the obvious argument that product stewardship, including recycling, occurring without intervention has all the same environmental advantages and superior economic benefits.
- Regulatory intervention directly, or indirectly via waste levy funding to ‘prop up’ inherently unprofitable recycling, poses a significant risk to commercial recycling of the same or similar products. Taken to its logical conclusion, only unprofitable recycling will be ‘profitable’ in the business continuity sense.
- Intervention in the public interest to enable the recovery and recycling of inherently uneconomic and or environmentally deleterious products serves to detract from the incentive to design for recyclability and reduced environmental impact. Conversely, imposition of the full environmental (and other) costs of design and purchasing decisions on customers and consumers will generate the strongest incentive to adopt ‘circular economy’ features.
- The New Zealand economy is small and open. New Zealand’s ability to influence the design decisions of larger economies and international brands is limited. Conversely, products imported from countries with a more concerted focus on ‘circular economy’ principles could be seen as a guide or dictate for New Zealand’s approach in the future. Intervention to recover and recycle materials that would in the normal course impose a cost on the customer and consumer will do little in dissuade importers from poor purchasing/ importation decisions.
- It is difficult to reconcile design feature 4 with the expectation set out in design feature 5, that *“The scheme will clearly provide for transparent, non-discriminatory and competitive procurement processes for downstream (emphasis added) services, such as collection, sorting, material recovery and disposal.”* It is a matter of logic that schemes able to deliver non-commercial/public interest outcomes must operate outside of the usual constraints and assumptions in the Commerce Act.

8. Targets. *“e) A clear distinction will be made between funding arrangements and market capacity to manage both potential high volume legacy and orphaned product collections in earlier years...”*

- It is not acceptable to simply make a “clear distinction” between the funding arrangements for high volume legacy products and ongoing continuous improvement. This will leave New Zealand businesses bearing the brunt of costs for legacy issues and potentially compromising the design of a ‘scheme’ from the outset. Legacy issues should have no part in the proposal to declare priority products and introduce mandatory product stewardship. Instead this should be treated as a separate issue to be dealt with alongside specific industry expertise to achieve the most cost effective, pragmatic solution, unencumbered by ideals for desired (product stewardship) solutions.

10. Market development. *“The scheme will have a research and development budget...”*

- Logically, this will mean that consumers will be footing the bill for R & D rather than in the course of the competitive nature of business.

15. Public awareness. *“Branding and clear information on how and why the scheme operates will be easily available at point of distribution (intercompany) and purchase (consumer), point of waste product collection and online, and a link to the online information will be on the product or product packaging.”*

- Whilst this is achievable in the domestic market it is inconceivable to understand how this might work for on-line purchases – which brings into sharp clarity the impost likely on New



Zealand businesses versus overseas companies and somewhat contradicts the “aim for a more prosperous and fairer society” as far as New Zealand businesses are concerned.

17. Accessible collection networks. *“The scheme will provide for an end-of-life product collection system that is reasonably accessible for all communities generating waste product whether metropolitan, provisional or rural.”*

- Who will determine what constitutes “reasonably”?
- Whilst the intention to combine collections and share infrastructure seems logical (and desirable) in theory, it is difficult to see how in practise this design feature reconciles with design feature **13. Design for the environment** where *the “fees paid by a producer to a collective scheme will, as far as possible be linked to actual end-of-life treatment costs for their (emphasis added) products...”*. Who would be responsible for determining and delivering ‘greater good’ outcomes across multiple schemes operated by multiple entities each with their own ring-fenced cost structures?
- *“b) collection will be free to the public (fully funded by the scheme) for all products covered by the scheme.”* Given that Council kerbside bin collection services are for ‘packaging’ waste only will it be a requirement on Councils to pass savings back onto to rate-payers?

Recommendations

Prioritise the objectives held for “Product Stewardship” in New Zealand conditions (see above) and use that information to limit the particular packaging products or types of packaging warranting designation as a “Priority”.

Review the assumptions in the proposed priority product scheme “Design Features” in collaboration with the packaging sector. The purpose of that review should be to determine ‘priority packaging’ posing an unreasonable environmental cost. Those specific packaging items (imported as well as domestically manufactured) could be individually assessed such that targeted public intervention acts to incentivise the redesign or reduced use, thereby lowering the environmentally cost to an acceptable level.

Work with the packaging industry through a re-formed Packaging Accord structure/platform to determine and define the limits and choices between desired but mutually exclusive objectives. This may require open acceptance that Government needs to regulate for and against different outcomes, acknowledging such direct intervention could be constrained by the presumption in some of New Zealand’s trading agreements.

Specific reconsideration is needed of the fact that effective (includes long-term) investment in ‘product stewardship’ require rigorous and dispassionate cost benefit analyses. Similarly, dispassionate and informed decisions are required as to the trade-offs to be made if such investment is to contribute to New Zealand’s Carbon Zero 2050 roadmap and the Government’s commitment to reduce the current 80 million tonnes of CO₂ equivalents per annum to 60 million tonnes of CO₂ equivalents by 2030.



Conclusions

Packaging New Zealand suggests that the proposed designation of 'packaging' as a priority product is precipitate, reflecting a lack of understanding of the full suite of issues that legitimately form part of the determination of a package as 'fit for purpose'.

Packaging New Zealand supports the overarching intention underpinning this consultation document; *"to increase incentives for people and businesses to take responsibility for the life-cycle impacts of their products."* We suggest with respect to 'packaging' as a designated priority that attention needs to be given to better defining "the harm posed" and the specific products giving rise to those harms.

The priority for members of Packaging New Zealand is the effective, safe, efficient delivery of goods into the New Zealand and global markets. Meaningful collaboration with the packaging industry is required to identify the cost-effective means by which environmental and economic harm can be avoided or mitigated and over what time frame to meet the broad social outcomes desired by all of society.