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NEWSLETTER

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Plastics phase-out update

In late 2008 the Waste Minimisation Act 2008 came into force. Its purpose included to encourage waste minimisation and a decrease in waste disposal in order to protect the environment. In part, it outlined a path for regulations to be made to control or prohibit the manufacture, sale or disposal of a product that "will or may cause significant environmental harm when it becomes waste; or there are significant benefits from reduction, reuse, recycling, recovery, or treatment of the product."

In June 2021 the Ministry for the Environment released a regulatory impact statement, 'Phasing out specific hard-to-recycle plastics and single-use plastic items' to help inform the Government in developing regulations aimed at reducing plastic waste. It included increasing the recyclability of plastic packaging, reducing the use of hard-to-recycle plastics, and eliminating unnecessary single-use plastic items. 'Hard-to-recycle' plastics are those with attributes that make them difficult to recycle, have low economic value for recyclers, and are likely to contaminate the recycling of high-value plastics.

In due course, the Government mapped out a plan to phase-out certain problem plastics in three consecutive tranches, with the first, the Waste Minimisation (Plastic and Related Products) Regulations 2022, coming into force on 1 October 2022. The regulations banned the manufacture and sale of:

- single use drink stirrers and plastic/synthetic cotton buds (with some exemptions);
- products containing plastic with pro-degradants;
- PVC food trays or containers; and
- specified polystyrene packaging for food or drink.

Following on from this, the second tranche of phase-outs, the Waste Minimisation (Plastic and Related Products) Amendment Regulations 2022, will come into

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force 1 July 2023, and will ban the manufacture or sale of single-use:

- plastic cutlery and tableware;
- plastic produce bags;
- plastic straws (with exemptions for those with health or disability requirements); and
- non-home compostable produce labels used on fruit and vegetables grown domestically and intended for our domestic market.

Under the second tranche, non-compostable plastic labels used for imported fruit and vegetables may continue to be sold until phased out by 1 July 2025. No ban applies on plastic labels used on produce intended for export, as the regulations are focused on reducing plastic contamination in New Zealand.

The third tranche of plastics to be phased out by mid-2025 will include all other PVC and polystyrene food and beverage packaging not covered by the first two tranches.

The Ministry for the Environment assure businesses they will work with them to ensure they understand their obligations, however, where systemic or ongoing non-compliance occurs penalties will apply.

Natural health products under the Therapeutic Products Bill

The Therapeutic Products Bill (Bill), introduced late 2022, and currently before the Select Committee, if passed, will regulate how therapeutic products are manufactured, tested, imported, promoted, supplied, and exported. It will replace the current Medicines Act 1981 and the Dietary Supplements Regulations 1985.

Under the Bill, therapeutic products are medicines, medical devices, natural health products, and active pharmaceutical ingredients. Natural health products (NHPs) include vitamin and mineral supplements, herbal remedies, animal extracts, probiotics, enzymes, and essential fatty acids. Due to their lower risk profile, NHPs will be regulated as a separate category to medicines and medical devices and evaluated against different standards.

One of the cited shortcomings of current regulations governing NHPs is that they do not provide an appropriate level of assurance that products imported and supplied in New Zealand are safe or made to the appropriate quality standards. By providing for greater regulation of NHPs, the Bill not only looks to address this concern, but will provide producers of NHPs with the ability to make claims about the substantiated benefits of their products. Key means by which the Bill seeks do this are outlined below.

Market authorisation: Therapeutic products will require a market authorisation before they can be imported into, exported from, or supplied in New Zealand. The market authorisation process for NHPs will require applicants to make a self-assessment declaration to the regulatory authority demonstrating that they meet the specified criteria for authorisation. These criteria will include:

- the NHP ingredients in the product are all recognised NHP ingredients;
- there is reasonable and adequate evidence to demonstrate the safety and quality of the NHP;
- each standard health benefit claim made about the NHP is a claim the rules allow to be made;
- any custom health benefit claim made about the NHP is substantiated (including by scientific evidence, evidence of traditional use, or both);
- information about the traditional use of a product or ingredient that is in a pharmacopeia (an official publication of medicinal drugs) listed in the regulations is prima facie evidence (self-evident) of that use; and
- the NHP is not a prohibited product.

Market authorisation, however, would not be required for low concentration NHPs; these are products in which the concentration of every ingredient in it (other than an additive or formulation aid) is not more than 20 parts per million.

License/permit: A license or permit will also be required to carry out certain controlled activities involving therapeutic products. For NHPs these controlled activities are manufacturing and exporting, and importing low concentration NHPs.

Regulator: The Bill will establish a new therapeutic product regulator (replacing Medsafe), which will be responsible for ensuring the safety, quality and efficacy of regulated products across their lifecycle.

While the Bill will work to ensure that NHPs are safe and that they provide the benefits they claim, others in the industry are concerned that the more stringent compliance and higher cost regime, will stifle the industry, and lead to more expensive and fewer NHPs. However, according to the Hon Andrew Little (Minister of Health when the Bill was introduced), the industry potential of natural healthcare products, which account for $2.3 billion of our GDP, has been “stymied by piecemeal regulatory responsibilities spread across multiple Government entities”.

The Bill is complex and expected to take a few years to fully come into force. If you have interests that may be impacted by this Bill, it is advisable to seek legal advice to help navigate these changes.

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Environmental correctness

The call for action regarding climate change and mitigating man's negative impact on the planet is not new. However, there has been a shift in the last few years. It has moved from being a focus of 'greenies' and the 'young' to being accepted by the mainstream population as something that can no longer be ignored. It has evolved into a broader attitude encompassing Environmental, Social and Governance (ESG) issues. With it has come an expectation and pressure from all stakeholders - customers/clients, shareholders and employees alike – for businesses to prove they are taking ESG seriously and what actions they are taking.

It's no secret that businesses have a large impact on the world's environmental state. Reports have found that 100 companies are responsible for 71% of the world's greenhouse gas emissions. To reduce this negative perception, global companies are betting big with sustainability investments. For example, international oil company BP have reformed their business by forming an 'integrated energy company' with a goal to reach net zero carbon emissions by 2050. They have created actional steps including developing offshore wind projects with capacity to power 5 million homes.

Realistic sustainable processes will vary depending on the nature and size of a business' operations. Focus could start on the four low-hanging fruit of a company's operation - energy, water, material, and waste. Implementing change to reduce these elements not only addresses ESG expectations but can lower operational costs, as well as yield potential increases in revenue. For example, remote working has grown in popularity since COVID-19, and it has become an employee's expectation that an employer will provide some form of flexible working. This offering is great for the environment, as fewer cars on the road equates to less carbon dioxide being emitted into the air. For commonly used paper items, look for materials made from post and pre consumer waste such as recycled products, which maintain a circular economy. There will be a portion of a business' carbon footprint that cannot be reduced through sustainable practices. For this portion, the option of purchasing carbon offsets from carbon marketplaces can shift the needle to becoming carbon neutral.

Consumers are voting green with their wallets as they become educated about sustainability and ethical employment practices, causing buyers to reassess their purchasing habits. "Fast fashion" has become a well-known term – those who are lucky enough to afford it are doing their research about suppliers, to enable informed decisions when it comes to buying items such as clothes and shoes. People have become more willing to spend a bit extra for the peace of mind that they are not supporting unethical employment practices. In the same vein, existing and potential shareholders are increasingly scrutinizing a business' non-financial results when making investment decisions.

While sustainability initiatives may not always deliver immediate benefits to the bottom line, a business that promotes environmental practices on the forefront of its business model may attract or retain clients and customers; while also connecting with its employees who value environmental sustainability.

Local government pecuniary interests register

In November last year the Local Government (Pecuniary Interests Register) Amendment Act 2022 (Act) came into force. This amendment to the Local Government Act 2002 requires local authorities to keep a register of the pecuniary interests of their elected members (as under the Local Electoral Act 2001), including community and local board members. Local authorities must also make a summary of the information in the register, publicly available.

A pecuniary interest, as defined in the Act, is "a matter or activity of financial benefit to the member." These interests need to be recorded and include:

- a company of which the member is a director;
- a company or business entity in which the member has a pecuniary interest;
- if employed, the employers name and business activity;
- description of payments received for activities involved in;
- countries travelled to, purpose of travel and persons contributing to costs;
- organisations where member is a member or part of the governing body;
- trusts in which a member has a beneficial interest;
- location of property in which a member has a legal interest; and
- gifts of more than $500.

The Act makes it mandatory for members to declare their pecuniary interests; with the Bill creating an offence for members who do not meet their responsibilities.

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The legislation states that “The purpose of the register of members’ pecuniary interests is to record members’ interests so as to provide transparency and to strengthen public trust and confidence in local government processes and decision-making.” However, the list of pecuniary interests that members are required to disclose includes information that most people would consider private or confidential. One of the concerns raised during the amendment’s progress related to the fact that it is difficult to find people willing to run for election for local authorities, local boards, and community boards. Requiring that members make this information available to the public could be an added impediment for those considering running for local government.

In light of this privacy issue, the Bill sets out that the local authority is only to compile a summary of the contents of the register and make that publicly available. This allows for some specific details to be withheld from the public, while still delivering on increased transparency. The local authority is also required to ensure that information in the register is only used or disclosed in accordance with the purpose of the register, and that information provided by a member is removed after seven years.

Most local authorities have some form of pecuniary interests register for the purposes of managing conflicts of interest. However, this amendment better aligns the requirements for notifying and declaring pecuniary interests for local authorities with those of members of Parliament, and will deliver consistency across local authorities.

Snippets

High-wealth individuals report

Inland Revenue made the headlines end of April 2023 with the release of its report on the amount of tax paid by our high-wealth individuals (HWIs). It found that HWIs’ overall effective tax rate when taking into account all sources of income, including unrealised capital gains, is 8.9%. The Treasury simultaneously released a number of reports which investigated the progressivity of New Zealand’s tax system. The Treasury found, using information from the Household Economic Survey, that an average middle-income New Zealander has an effective tax rate of more than double the HWI rate, at 20.2%.

How do our tax rates compare to the rest of the world? Unfortunately, no other country has recently undertaken a similar exercise on the effective tax rate of HWIs, but it is possible to compare our other tax rates against the world’s heavy hitters:

- Ivory Coast’s highest personal income tax rate (i.e. tax on an individual’s salary and wages) is an eye watering 60%. New Zealand’s top personal marginal tax rate is 39%.
- The highest corporate tax rate goes to Puerto Rico, at 37.5% - higher than New Zealand’s corporate tax rate of 28%.
- The highest sales tax is in Bhutan, at 50%. Our equivalent tax, GST, pales in comparison at 15%.
- Denmark has the highest capital gains tax at a rate of 42%. At this point in time, New Zealand does not have a broad-based capital gains tax.

Proposed amendment to directors’ duty

One of the fundamental director’s duties within the NZ Companies Act 1993 is to act in good faith and in what the director believes to be the best interest of the company. This has traditionally been interpreted to mean decisions should be aimed at maximising shareholder returns. In September 2021, an amendment was proposed to make it clear that directors of companies can consider a wide variety of factors, such as:

- recognising the principles of the Treaty of Waitangi (Te Tiriti o Waitangi),
- reducing adverse environmental impacts,
- upholding high standards of ethical behaviour,
- following fair and equitable employment practices, and
- recognising the interests of the wider community.

On 8 May 2023 the Select Committee recommended that the list above is not enacted, but instead replaced with the following:

“To avoid doubt, in considering the best interest of a company or a holding company for the purpose of this section, a director may consider matters other than the maximisation of profit”

This addresses submitters’ concerns that the original drafting of the bill may create inconsistencies within the Act, as well as confuse directors about their responsibilities. Further, some submitters felt that the law already allows a director to consider non-financial factors when deciding the best interest of a company.

We will wait to see what is ultimately enacted.

If you have any questions about the newsletter items, please contact me, I am here to help.

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