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# **A Proposed Framework for a Waste-Free Ontario**

Ministry of the Environment and Climate Change

Winter 2016

**For Consultation Purposes Only**

# Purpose

## Overview:

- Context
- Background
- Proposed Legislation: Bill 151, the Waste-Free Ontario Act, 2015 that contains:
  - Proposed Resource Recovery and Circular Economy Act (RRCEA); and
  - Proposed Waste Diversion Transition Act
- Draft Strategy for a Waste-Free Ontario: Building the Circular Economy
- Next Steps

# Context for Action

**There is a need for action to increase the recovery of resources and reduce waste in Ontario.**

## CHALLENGES

- ✓ Ontarians generate a significant amount of waste.
- ✓ Ontario's diversion rates have stalled.
- ✓ Both municipal and producer budgets to fund diversion are under pressure as costs rise.
- ✓ Ontario's landfills could be filled within 20 years.
- ✓ Waste Diversion Act, 2002 is flawed, resulting in an ineffective system.
- ✓ Application of existing tools is limited and ineffective at encouraging productivity and the recovery of resources.

## OPPORTUNITIES

- ✓ Stakeholders are calling for fundamental reform.
- ✓ Reducing waste presents opportunities to reduce GHG emissions.
- ✓ Improving the recovery of resources has additional environmental benefits (e.g., air and water quality, resource conservation).
- ✓ Resource productivity makes good business sense.
- ✓ There is a significant opportunity to recover economic value of waste. Recovered resources attracts investment, creates jobs and improves competitiveness.

# Ontario's Proposed Framework

- Ontario is transforming its existing waste diversion framework to support Ontario's vision: a circular economy.
- Ontario's goal is to move towards zero waste in the Province and zero GHG emissions from the waste sector to support a circular economy:
  - Ensuring that all resources are used and reused productively; maximizing their potential and reintegration into the economy.
- The framework includes:
  - **Proposed legislation: Waste-Free Ontario Act** that includes two Acts.
    - A proposed Resource Recovery and Circular Economy Act to set overarching provincial direction and establish a new producer responsibility regime.
    - A proposed Waste Diversion Transition Act, to replace the *Waste Diversion Act, 2002*, which would help ensure the smooth transition to the new producer responsibility regime.
  - **Draft Strategy for a Waste-Free Ontario: Building the Circular Economy** to support Ontario in achieving its goals.

# PROPOSED LEGISLATION

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# Proposed Legislation

## Key Policy Areas of the Proposed Resource Recovery and Circular Economy Act:

### Provincial Interest and Policy Statements

- Establishes an overarching provincial interest in resource recovery and waste reduction and enables the government to issue policy statements to provide direction on implementing the provincial interest.

### Strategy

- Requires the development of a Strategy for a Waste-Free Ontario: Building the Circular Economy – a roadmap for achieving Ontario's goals.

### Resource Productivity and Recovery Authority

- Overhauls Waste Diversion Ontario to become the Resource Productivity and Recovery Authority, a non-Crown body with new objects, powers, and compliance and enforcement tools with enhanced oversight and accountability.

### Responsibility for Products and Packaging

- Establishes a new outcomes-based regime where producers would be responsible for their products and packaging and be accountable for recovering resources and reducing waste associated with these materials.

### Compliance and Enforcement

- Provides a full suite of tools to carry-out compliance and enforcement of the Act, including orders and administrative penalties, and identifies what constitutes an offence for the purposes of prosecution.

# Proposed Legislation

## Key Policy Areas of the Proposed Waste Diversion Transition Act (WDTA)

### Resource Productivity and Recovery Authority

- Provides new and continued duties and powers for the Authority under the WDTA.
- Provides for the Authority to oversee the existing programs and their transition to the new regime.

### Waste Diversion Programs

- Sets out the provisions to continue and wind-up the existing waste diversion programs.

### Industry Funding Organizations (IFOs), Programs Operations, and Stewardship Fees

- Provides responsibilities and governance structures for the IFOs; includes making rules for existing waste diversion programs and developing wind-up plans.
- Requires stewards (producers) to pay fees to IFOs based on rules set by IFOs.

### Compliance and Enforcement

- Provides scoped compliance and enforcement tools for the Authority subject to provisions set in the Act and regulation.

# Provincial Interest and Policy Statements

As the government moves towards a new way of approaching waste, there is a need to set clear government direction on important matters.

- The proposed Resource Recovery and Circular Economy Act would identify the overarching provincial interest in resource recovery & waste reduction and underlying aims (refer to section 2 for detailed list):
  - Reduce greenhouse gas emissions resulting from resource recovery and waste reduction
  - Reduce waste and recover resources through product life cycle
  - Hold producers responsible
  - Provide convenient and reliable waste collection and management services
  - Increase opportunities and markets for recovered materials
  - Promote public awareness
  - Enhance collaboration with all relevant parties
  - Minimize the need for waste disposal
  - Foster consumer fairness
  - Promote competition
- The act would enable the government to issue policy statements that provide direction on implementing the provincial interest. Areas that may be addressed include:
  - Criteria for accessible and convenient recycling services
  - Guidance for the collection, reuse and recycling of materials
  - Principles to facilitate sustainable packaging
  - Collaborations among parties to support waste reduction

# Provincial Interest and Policy Statements (see Appendix 1)

- Persons and entities would be required to *have regard to* the provincial interest and *be consistent with* applicable policy statements when engaging in activities related to resource recovery & waste reduction.
  - The persons and entities could include both private and public sector actors such as provincial ministries, municipalities, producers, service providers, owners/operators of a waste management system.
- The policy statements could apply to persons and entities exercising a power or performing a duty under this Act and other provincial Acts where related to resource recovery and waste reduction, including:
  - *Planning Act, Condominium Act, Municipal Act, City of Toronto Act, Environmental Protection Act, Nutrient Management Act, Ontario Water Resources Act, Consumer Protection Act, and Environmental Assessment Act.*
- The application of the provincial interest or policy statements could be appealed to existing tribunals (e.g. ECA appeal to the Environmental Review Tribunal, Ontario Municipal Board, Joint Board).
  - Tribunal decisions may be subject to review by Cabinet where the provincial interest may be adversely affected.
- The proposed Act would enable a (Ministry appointed) Director to require a producer or other persons engaging in resource recovery and waste reduction activities to undertake a review to demonstrate consistency with applicable policy statements or to provide a plan to achieve consistency.
  - Not complying with the Director's requirements could be an offence.
- Policy statements would be developed in consultation with partner ministries, municipalities, and key stakeholders and would require Cabinet approval before being issued.

# Draft Strategy

The draft Strategy provides a roadmap for Ontario's actions to support a circular economy

- The proposed Act requires the Minister of Environment and Climate Change to develop and maintain a strategy entitled “**Strategy for a Waste-Free Ontario: Building the Circular Economy**”.
- The proposed Act requires the Strategy to contain the following key components:
  - Goals of the Strategy;
  - Key actions that support implementation of the goals; and
  - Performance measures to measure progress towards achieving the goals.
- The draft Strategy would be reviewed at least every 10 years in consultation with stakeholders and the public and would be amended as needed.
- The Minister would be required to prepare progress reports at least once every 5 years to outline actions taken to achieve the Strategy's goals, as well as a description of progress made.

# Resource Productivity and Recovery Authority

The existing oversight body has conflicting roles, lacks compliance and enforcement tools as well as reliable data. The proposed framework would address these issues.

- The RRCEA would overhaul Waste Diversion Ontario to become the Resource Productivity and Recovery Authority (the Authority); a non-Crown and not for profit organization.
- Under the RRCEA, the Authority would oversee the new producer responsibility regime and under the WDTA, would oversee existing waste diversion programs and their transition to the new regime.
- The Authority would have two key functions under the new producer responsibility regime:
  - Operate the data clearinghouse: a registry to receive and store information related to resource recovery and waste reduction activities; provide information to the public and the Minister in accordance with prescribed requirements.
  - Compliance and enforcement: take graduated compliance and enforcement actions against persons who do not meet prescribed requirements (e.g., compliance orders and administrative penalties).
- The Authority would also set and collect fees to recover its costs. The RRCEA would include measures to monitor the Authority's operations with a view to efficiency and cost effectiveness:
  - Requiring the Authority's Business Plan to demonstrate measures the Authority plans to take regarding its efficient management;
  - Requiring the Authority to publicly consult on its fee setting;
  - Requiring the Authority to have its accounts and financial transactions audited annually by an independent auditor;
  - Requiring the Authority to publicly report on its activities annually, including an independently audited financial statement;
  - Allowing the Auditor General to conduct a value-for-money audit of the Authority.

# Resource Productivity and Recovery Authority

- The Waste Diversion Ontario Board would end upon the proclamation of the section.
- The Minister would appoint an Initial Board for the Authority to oversee the first year of start-up and help begin a smooth transition to the new producer responsibility regime.
  - The Authority would ultimately be overseen by a skills-based Board of up to 11 members with updated expertise and qualifications to align with the Authority's new mandate.
- The RRCEA contains a number of accountability and transparency provisions in relation to the Authority, including:
  - Enabling the Minister to issue policy direction to the Authority, requiring a review of the Authority, and appointing an administrator under special circumstances (e.g., certain issues of non-compliance, lack of quorum for the board of directors and insolvency);
  - Enabling the Auditor General to audit the Authority;
  - Prohibiting the Authority from establishing a subsidiary corporation or from engaging in commercial activity with a related individual or entity unless authorized by regulation;
  - Allowing the Minister to require the Authority to establish Advisory Councils to seek input from the public and stakeholders on a range of issues;
  - Requiring the Authority to provide an annual public report to the Minister, including an independently audited financial statement and results of compliance actions.
- Specified breaches of the RRCEA by the Authority could result in prosecutorial action.

# Responsibility for Products and Packaging

## See Appendix 2

The new framework would establish an outcomes-based producer responsibility regime.

### Key aspects of the proposed approach:

- Through regulations, government could:
  - Identify designated materials: products, primary packaging that is associated with the products, transport packaging and convenience packaging.
  - Identify responsible persons for products and packaging (i.e., producers): Brand holders, persons with a commercial connection to a product (e.g., importers, distributors, wholesalers, retailers /e-tailers), or who supplies convenience packaging to a consumer or first uses transport packaging.
  - Set clear outcomes (e.g. targets) and requirements (e.g. registration) for designated products and packaging that responsible persons must meet.
- Responsible persons could choose how best to meet these obligations: on their own or by joining others to obtain services for the collection and management of these materials.
- These responsible persons would need to demonstrate that obligations have been met.
- Poor performers may be subject to consequences: Authority would have a full suite of tools ranging from inspections, compliance orders, administrative penalties, and offence provisions.
- Government could, through regulations, exempt persons from requirements on a material by material basis.

# Responsibility for Products and Packaging

- **Responsibilities for products and packaging may include:**
  - **Registration** – e.g. company information and types of products, amount marketed in Ontario;
  - **Waste reduction** – increasing material’s reusability and recyclability, reducing or eliminating use of hazardous or toxic materials or increasing use of recovered materials.
    - An incentive approach may be used in cases where a brand holder makes design changes to a product or packaging that meet prescribed requirements;
    - The provincial interest would also support producers to reduce waste, including collaboration of all parties (e.g. collaboration with other jurisdictions) and increase of opportunities and markets for recovered materials.
  - **Collection** of material – minimum collection rates based on a percentage of the materials marketed or requiring specific service standards, such as geographic-based standards.
  - **Management** of collected material – facilitating the reuse or recycling of materials collected, including the recovery of nutrients.
  - **Promotion and education** – implementing a promotion and education program to support collection requirements and encourage the recovery of resources.
  - **Reporting and record keeping** – requirements to maintain and store documents and provide audited results (e.g., data related to waste reduction, management of the material, etc.).
- Responsibilities for others who engage in resource recovery and waste reduction activities may include: registration, promotion and education, reporting and record keeping.

# Compliance and Enforcement

The Authority needs appropriate tools to ensure the effective and efficient implementation of the new producer responsibility regime.

- Authority would conduct compliance and enforcement activities related to the resource recovery and waste reduction requirements in Part IV of the RRCEA and the requirements for the operation of existing waste diversion programs under the WDTA.
  - Full range of tools available, including inspections, compliance orders, administrative penalties (APs) and offence provisions.
- Administrative penalties (APs) issued for non-compliance of specific provisions in the Act and regulations.
  - Only Registrar and Deputy Registrar issue APs; amount of the APs determined through Cabinet approved regulations.
  - Examples include: non-compliance related to paying fees, registering with the Authority, and record keeping or reporting.
  - Compliance orders and APs could be appealed to the Environmental Review Tribunal.
- Breaches of specified provisions in the RRCEA and WDTA by regulated persons, including the Authority, could result in prosecutorial action.
  - Examples include: Authority engaging in commercial activities unless permitted by regulations, brand holder refusing to comply with a compliance order or prescribed resource recovery and waste reduction requirements. Providing false information is also an offence.
  - Ministry expected to conduct compliance and enforcement activities related to the Authority.
- Cabinet may impose a ban on the sale of a product or packaging in extraordinary circumstances of non-compliance.
  - Failure to establish a collection system for a material or habitual failure to meet prescribed requirements.

# Proposed Waste Diversion Transition Act (WDTA)

The proposed WDTA would facilitate the smooth transition of existing waste diversion programs to the new regime with no service interruptions for Ontarians.

- The proposed Act would replace the Waste Diversion Act, 2002; existing waste diversion programs and related Industry Stewardship Programs (ISPs) would continue until the products and packaging are introduced under the proposed Resource Recovery and Circular Economy Act.
- The principles of transition:
  - Government would lead the overall transition process;
  - Each program would have a customized transition process;
  - Extensive stakeholder consultations would be conducted to ensure a smooth transition;
  - Ontarians' experience with and access to services such as Blue Box curb side collection services would not be negatively impacted.
- No new programs/Industry Funding Organizations would be allowed.
  - No new ISPs would be allowed where one did not previously exist.
- The government would have the ability, through regulation, to increase producers' funding of the Blue Box program beyond the current 50% funding cap during the transition process.
  - The Blue Box regulation (Regulation 101) is expected to remain in place until Blue Box program transitioned to the new producer responsibility regime.

# Proposed Waste Diversion Transition Act (WDTA)

## See Appendix 3

The proposed WDTA modifies the roles and responsibilities for the Minister, Authority and the IFOs.

### Minister

- Leads overall transition process.
- Directs an IFO to develop a plan by working with stakeholders to wind-up an existing program and itself.
  - The wind-up plan would deal with the assets, liabilities, rights and obligations of the IFOs.

### Authority

- Oversees the operation of waste diversion programs until they are wound up.
- No longer responsible for jointly operating waste diversion programs with IFOs.
- Approves wind-up plans developed by IFOs and oversees their implementation.
- Undertakes compliance and enforcement responsibilities provided for in the Act.
- Ability to appoint an Administrator over an IFO under limited circumstances.

### IFOs

- Continue to operate existing waste diversion programs until transitioned.
- Work with stakeholders to develop the wind-up plan in accordance with direction from the Minister.
- Implement the approved wind-up plan to end program, once approved by the Authority.
- wind-up itself in accordance with the *Corporations Act*.

# DRAFT STRATEGY

For Consultation Purposes Only



# Draft Strategy for a Waste-Free Ontario: Building the Circular Economy

The draft strategy outlines the parameters of the conversation that the Province will have with the public and stakeholders. The final strategy will be released once all consultation and reviews have been completed.

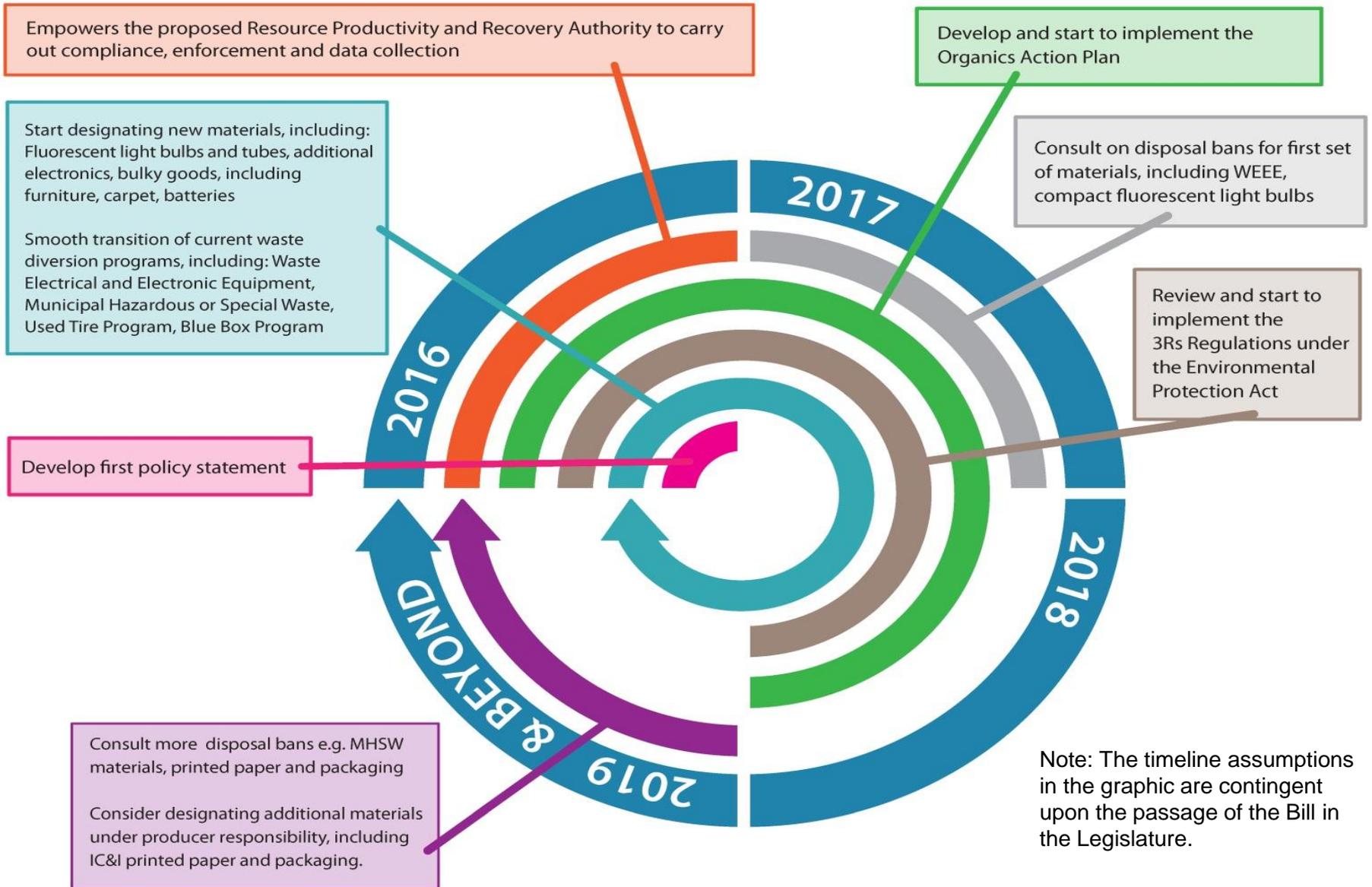
- **Vision:**
  - *A circular economy where we have zero waste and zero greenhouse gas emissions from the waste sector and where all resources, organic or non-organic, are used and reused productively, maximizing their potential and reintegrating recovered materials back into the economy.*
- **Goals:**
  - Zero waste in the Province.
  - Zero greenhouse gas emission from the waste sector.
- **Objectives:**
  - Objective #1: Increase Resource Productivity and Reduce Waste.
  - Objective #2: Enable an Efficient and Effective Recycling System.
  - Objective #3: Create Conditions to Support Sustainable End-Markets.

# Draft Strategy - Actions

The draft Strategy outlines the following actions:

- **Establishing provincial direction** by providing clear direction through issuance of policy statements.
- **Expanding producer's responsibilities** by:
  - Placing full responsibility on producers for their products and packaging;
  - Empowering the Resource Productivity and Recovery Authority; and
  - Ensuring a smooth transition of waste diversion programs to full producer responsibility system.
- **Diverting more waste from disposal** by:
  - Collecting data and putting performance measures in place to enable the Province to make evidence-based decisions;
  - Targeting areas for greater diversion by designating new materials, enhancing generator requirements, and developing and implementing an Organics Action Plan;
  - Using disposal bans to facilitate resource recovery and waste reduction;
  - Minimizing the need for landfills and ensure existing landfills are well managed;
  - Integrating multiple tools to foster collaboration.
- **Helping people reduce, reuse and recycle** by increasing awareness of and participation in diversion activities through promotion and education.
- **Stimulating markets for recovered materials** by implementing modern environmental standards; and demonstrating provincial leadership through green procurement.

# Draft Strategy - Priorities and Proposed Timelines



# Draft Strategy - Performance Measures

- **Move towards zero waste**
  - Declining tonnes of waste sent to landfill.
- **Move towards zero GHG emissions from waste sector**
  - Reduction in GHG emissions from the waste sector.
- **Transition to new producer responsibility**
  - Authority's progress in establishing capacity to fulfil mandate.
  - Meeting transition dates for programs, as outlined in related regulations.
- **Divert more waste from disposal**
  - Timely collection and public reporting of data.
  - Materials designated under new producer responsibility regime.
  - Producers performance in meeting requirements.
  - Progress of the 3Rs Regulations' review and implementation.
  - Progress of the development and implementation of the organics action plan.
- **Create conditions to support sustainable markets**
  - Ongoing implementation of green procurement policies and use of best practices.
  - Progress of the development and implementation of the modern regulator initiative.

# Appendix

# Appendix 1

**Provincial Interest**  
*Overarching government direction*

## Policy Statements

*Further direction to implement the provincial interest on resource recovery and waste reduction*

Apply to persons/entities exercising a power or performing a duty under this Act and other provincial Acts, including:

- *Planning Act, Condominium Act, Municipal Act, City of Toronto Act, Environmental Protection Act, Nutrient Management Act, Ontario Water Resources Act, Consumer Protection Act, and Environmental Assessment Act.*

**Who**

### Statutory Decision Makers

(e.g. Province, municipalities, Authority)

### Producers

(e.g. Brand owners, first importers, retailers)

### Producer Organizations and Service Providers

(e.g. Collectives, haulers, processors)

### Waste Management Owners / Operators

(e.g. Generators, owners of transfer stations)

**What**

- e.g. Municipal OP
- Municipal by-laws
- MOECC ECA and EA

- e.g. Meet obligations under proposed Act

- e.g. Provide services to producers under proposed Act

- e.g. Delivery and operation of waste management systems under *EPA* and *EAA*

### Appeals

- Decisions could be appealed to the existing court and tribunal systems.

### Compliance/ Enforcement

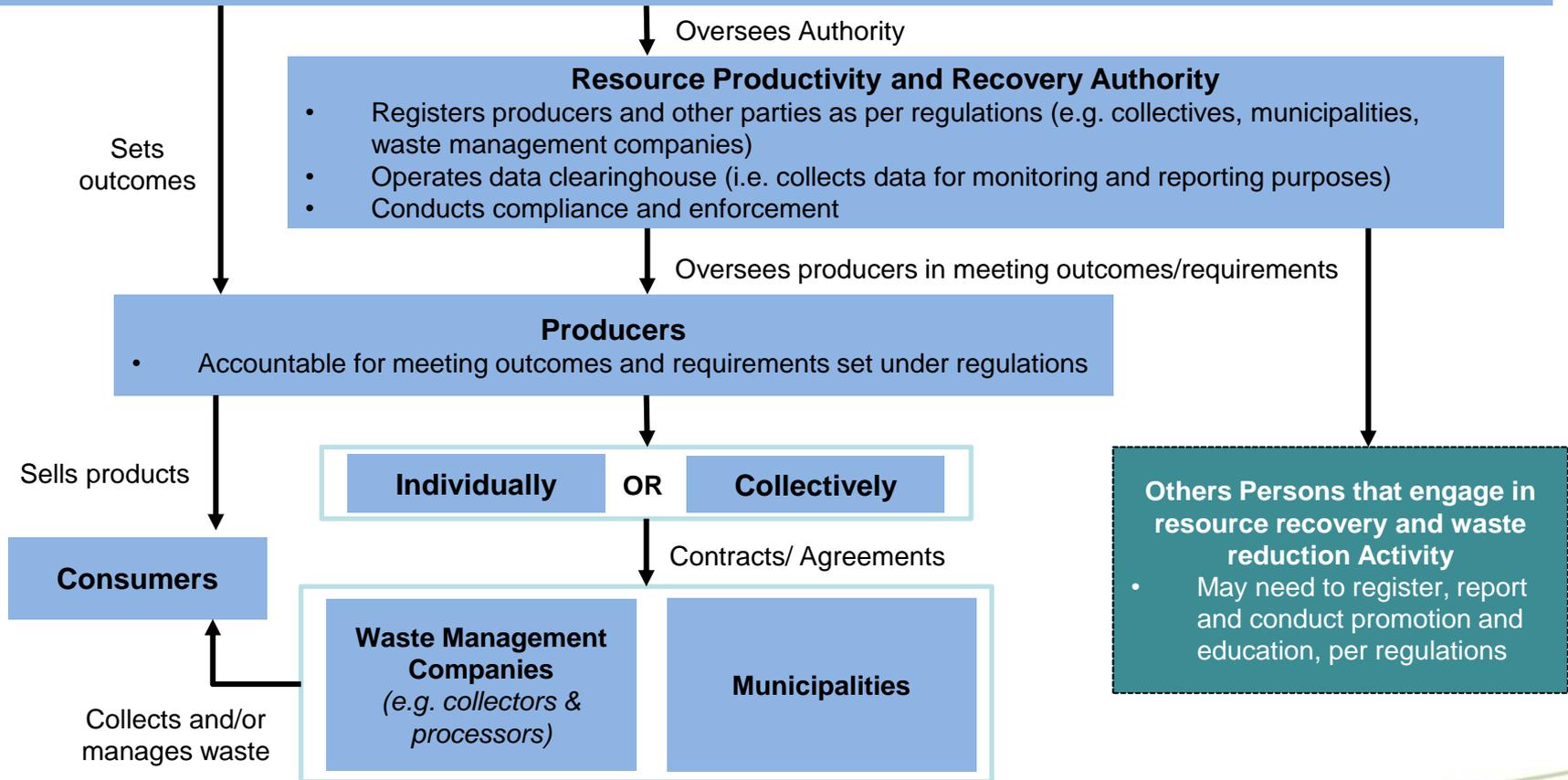
- Director's requirements for a review of consistency with policy statements.
- Director's requirements for a report on how to address non-consistency.
- Not complying with Director's requirements would be an offence.

Cabinet could review decision made by ERT, OMB and joint board.

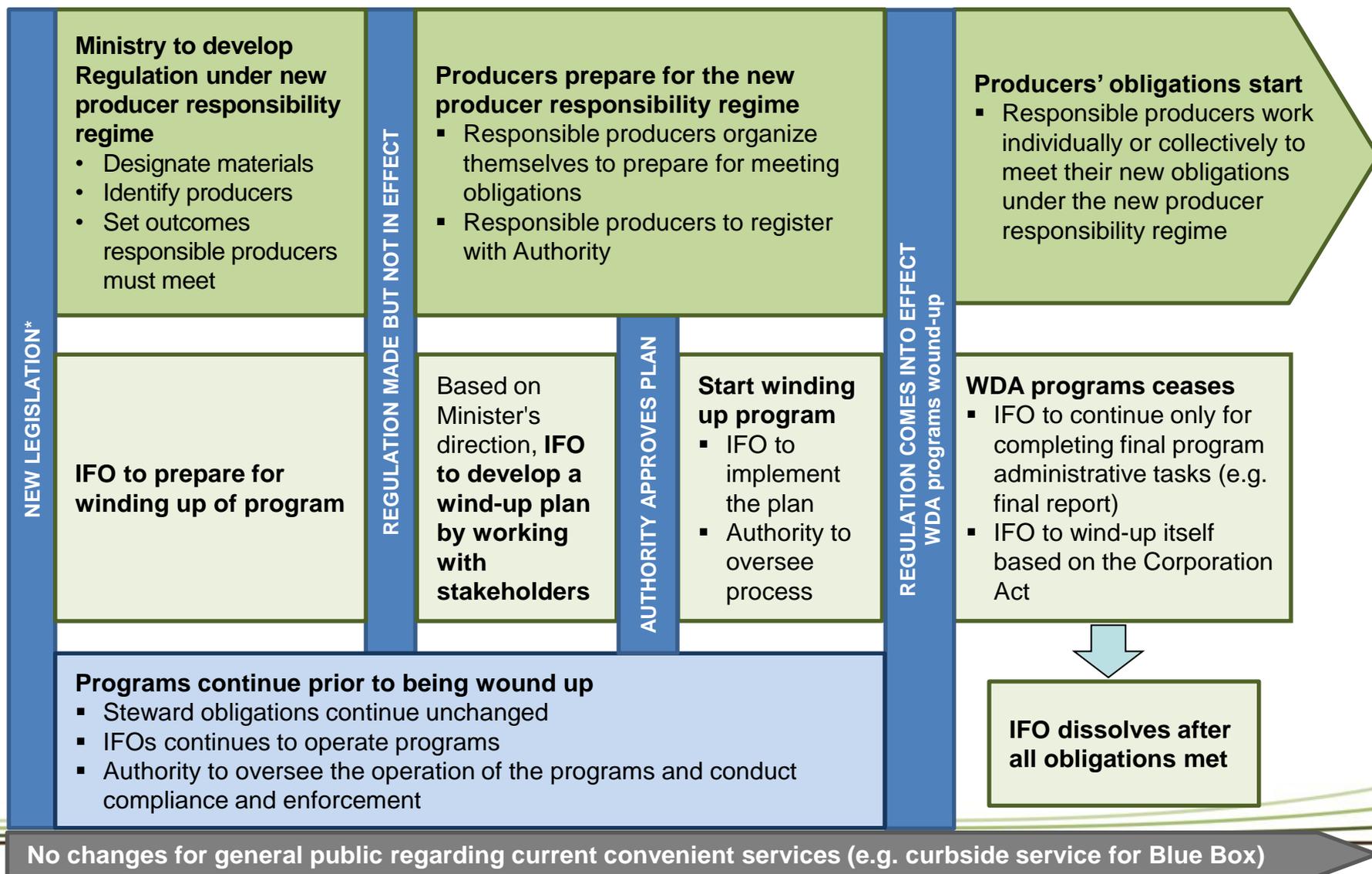
# Appendix 2 - New Producer Responsibility System

## Province: Ministry of the Environment and Climate Change

- Sets outcomes and requirements
- Oversees Authority through multiple tools: legislation/regulations, Minister's policy directions, operating agreement, review of Authority, appointing administrator, etc.



# Appendix 3 - PROPOSED PROGRAM TRANSITION PROCESS



\* Note that the proposed legislation will not become law unless passed by the Legislative Assembly