



Cabinet Environment, Energy and Climate Committee

Minute of Decision

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Waste Legislation 1: Overview and Overarching Provisions

Portfolio **Environment**

On 16 March 2023, the Cabinet Environment, Energy and Climate Committee (ENV):

- 1 **noted** that in June 2020, Cabinet noted the planned review of the Waste Minimisation Act 2008 and Litter Act 1979 [CAB-20-MIN-0264.01];
- 2 **noted** that in October 2021, the Minister for the Environment released a public consultation document, *Te kawe i te haepapa para / Taking responsibility for our waste*, which contained proposals to repeal the Waste Minimisation Act 2008 and Litter Act 1979 and the contents of new legislation to replace them;
- 3 **noted** that the proposals referred to above advance:
 - 3.1 Labour's 2020 Election Manifesto plans to prevent, reduce, and recycle waste;
 - 3.2 The Cooperation Agreement between the New Zealand Labour Party and the Green Party of Aotearoa New Zealand, in particular the commitment to take action to minimise waste and problem plastics;
 - 3.3 implementation of the circular economy and waste-related commitments in the Emissions Reduction Plan;
 - 3.4 implementation of the new waste strategy agreed by the Cabinet Environment, Energy and Climate Committee in November 2022 [ENV-22-MIN-0053];
 - 3.5 legislative context to support the implementation of standardised kerbside recycling and food waste services as well as a container deposit return scheme (NZ CRS) both agreed by Cabinet in November 2022 [ENV-22-MIN-0058 and CAB-22-MIN-0539.01];
- 4 **agreed** that the Waste Minimisation Act 2008 and Litter Act 1970 be repealed and replaced with one new piece of legislation to be enacted;
- 5 **noted** that the paper under ENV-23-MIN-0002 is one of four seeking policy decisions on the content of the new legislation;
- 6 **noted** that the paper on kerbside standardisation contains policy decisions for the new legislation relating to the substantive decisions in those papers;

- 7 **noted** that the Minister for the Environment intends to introduce the legislation in this term of Parliament if the PCO drafting and House schedules allow;
- 8 **noted** the intention for the Bill to be introduced and referred to a select committee in late 2023 or early 2024 and for legislation to be enacted by 2025;

Overarching provisions

- 9 **agreed** to “Responsibility for Reducing Waste Act” (the Act) as the working title for the bill;
- 10 **agreed** that the purpose of the new legislation will be to support the transition a low emissions, low waste society built upon a circular economy;
- 11 **agreed** that the principles of the new legislation will reflect:
- 11.1 the promotion of responsibility across all parts of society for how we make, use, manage and dispose of products and materials;
 - 11.2 the waste hierarchy preferences for the management of materials;
 - 11.3 the need to protect and regenerate the natural environment;
 - 11.4 the need to deliver equitable and inclusive outcomes;
- 12 **invited** the Minister for the Environment to report back to the ENV by 30 June 2023 with further advice on the inclusion of a Treaty of Waitangi clause;
- 13 **agreed** to review the operation of the Act no later than five years following its commencement;

Central Government roles and responsibilities

- 14 **agreed** that the Ministry for the Environment retains the role and responsibilities regarding waste and resource recovery policy, all stewardship, regulatory policy, investment and behaviour change functions;
- 15 **agreed** that the Environmental Protection Authority takes on the role and responsibility of waste and resource recovery regulator;

Local Government roles and responsibilities

- 16 **agreed** that the new legislation will prescribe minimum obligations on territorial authorities and that this will include:
- 16.1 delivery of domestic waste and recycling collection through kerbside services and other collection methodologies;
 - 16.2 setting waste bylaws to control waste practices in their area (for matters not controlled by national standards or licensing systems in future);
 - 16.3 compliance monitoring and enforcement for duties of care and bylaws set by the territorial authority; agree to delegate power to the Minister for the Environment (the Minister) and Minister of Customs to make decisions on matters relating to the border and the role of Customs, and to issue drafting instructions as appropriate;
 - 16.4 behaviour change and education relevant to local services and waste minimisation;

- 16.5 working with local communities to support waste minimisation projects, either through levy funds or facilitation roles;
- 17 **agreed** to delegate power to the Minister for the Environment and Minister of Customs to make decisions on matters relating to the border and the role of Customs, and to issue drafting instructions as appropriate;

Advisory function

- 18 **agreed** to a requirement in the new legislation for the Minister for the Environment to establish a Waste Advisory Board, with some changes:
- 18.1 refocusing the Waste Advisory Board mandate to be more strategically focused;
 - 18.2 broadening the remit of the Waste Advisory Board so that advice can be provided to both the Minister and the Ministry;
 - 18.3 removing the constraint that advice can only be provided on ministerial request;
 - 18.4 strengthening membership requirements;
 - 18.5 renaming the Waste Advisory Board to align with the overarching purpose of the new legislation;
- 19 **noted** the intention to increase the Waste Advisory Board's capacity with increased secretariat support and an allocated budget for research and preparation of advice;
- 20 **agreed** to make changes to the Waste Advisory Board's legislated appointment processes by including the requirement to consult with the Minister responsible for the Circular Economy strategy in addition to the Minister for Māori Affairs;

Waste strategy

- 21 **agreed** that the new legislation will require the Minister for the Environment to produce a national waste strategy (strategy) that looks out at least 20 years, and sets goals and priorities to guide activities over that period to support the purpose and principles of the Act;
- 22 **agreed** that waste legislation should broadly outline the scope of the strategy; the process for development (including any consultation requirements), and the high-level aspects that need to be covered (such as principles, priority areas for focus and investment, reporting, and review timeframes);
- 23 **agreed** that new legislation should require that the strategy is reviewed no later than ten years after publishing;

Action and investment plan

- 24 **agreed** that new legislation include a provision to the effect that the Minister for the Environment may publish action and investment plans from time to time to support delivery of the strategy;

Waste management and minimisation plans

- 25 **agreed** that the new legislation will continue to require territorial authorities to produce a waste management and minimisation plan and that these are reviewed no later than five years after publishing;

- 26 **agreed** that territorial authorities be required to align with the waste strategy and any action and investment plans in their Waste Management and Minimisation Plans (WMMP);
- 27 **agreed** to removing the requirement for a special consultative process to be undertaken in preparing or amending a waste management and minimisation plan and allow territorial authorities to make an assessment, at their own discretion, on whether or not the use of such a process is required or appropriate;

Intervention powers

- 28 **agreed** that the new legislation will include the ability for the Minister to direct territorial authorities on their WMMPs through an Order in Council and that this will include a timeframe of within six months of a WMMP being finalised;
- 29 **noted** that performance standards will be replaced in the new legislation by the Ministers ability to set national standards (ENV-23-SUB-0005 - *Waste Legislation 3: Regulating How People Manage Waste*);

Waste assessments

- 30 **agreed** that territorial authorities may undertake a waste assessment in preparation of their waste management and minimisation plan but that this will not be a separate requirement;
- 31 **noted** that consultation with the Medical Officer of Health will form part of the central collaboration and engagement process proposed as part of the waste strategy and action and investment plan process and will no longer be a requirement on territorial authorities;

Bylaw making provisions

- 32 **agreed** that territorial authorities may produce bylaws for:
- 32.1 prohibiting and regulating the deposit, collection and transportation of waste;
 - 32.2 regulating the disposal of dead animals;
 - 32.3 prescribing charges and use of waste and resource recovery facilities under the control of territorial authorities;
 - 32.4 regulating the use of territorial authority provided waste services and bins;
- 33 **agreed** that new legislation should require that territorial authority bylaws are reviewed no later than five years after publishing;

Reporting

- 34 **agreed** that the new legislation will require territorial authorities to report to the Ministry and publicly on progress against their WMMPs and contribution towards AIP and strategy goals, every five years;
- 35 **agreed** that the new legislation will require the Secretary for the Environment to prepare an independent public report on overall national progress against the strategy and any supporting AIP, every five years;
- 36 **noted** that these reports will include information on how waste levy funds have been used and an assessment of effectiveness, at a local, central government and combined level;

Waste Disposal Levy allocation and distribution

- 37 **agreed**, subject to paragraph 54 below, to continue ring-fencing the waste disposal levy funds;
- 38 **agreed**, subject to paragraph 54 below, that the waste disposal levy funds will continue to be split equally between central and local government;
- 39 **agreed**, subject to paragraph 54 below, that the new legislation allocates the local government portion of the waste disposal levy funding as follows:
- 39.1 Twenty per cent of the local government proportion is distributed evenly between territorial authorities to create a flat rate of waste levy funding for all territorial authorities to contribute to their legislated roles and responsibilities, and
- 39.2 the remaining 80 per cent of the local government proportion of waste levy funding is allocated to councils on a population basis, using the current formulaic approach;
- 40 **agreed**, subject to paragraph 54 below, that waste disposal levy funds be used to support the overall purpose of the new legislation and the overarching goals set out in the new waste strategy and any supporting plans;
- 41 **agreed** to broaden the central government activities that can be funded from the levy, to include:
- 41.1 collection and distribution of the levy by the Environmental Protection Authority (EPA);
- 41.2 all compliance and enforcement activity under the new waste legislation;
- 41.3 the long-term national behaviour change programme that is central to the waste strategy (to be run by the Ministry for the Environment);
- 41.4 start-up costs for schemes and systems, such as regulated product stewardship schemes or licensing systems, if those costs cannot be met through the scheme itself or by industry;
- 41.5 administering the investment of waste levy funds;
- 42 **agreed** that the new legislation will include legislative controls governing the investment of levy funds by:
- 42.1 introducing a new power for the Minister to notify investment priorities from time to time;
- 42.2 continuing the existing power for the Minister to gazette criteria for applications;
- 42.3 introducing a new mandatory consideration of value for money;
- 42.4 introducing a new requirement for proposals above \$10 million to be independently assessed before approval;
- 42.5 introducing a new requirement that the Minister must consult with the Minister of Finance before approving proposals over \$25 million;
- 43 **noted** that the formal power to approve funding for a particular proposal or project would sit with the Minister, subject to the new requirement proposed in paragraph 38;

44 **noted** the following decision-making thresholds:

Proposed decision-making thresholds	
Cabinet	Above \$25 million (this aligns with the general approach in CO (19) 6)
Minister	Between \$10 million and \$25 million
Secretary	Between \$1 million and \$10 million
Deputy Secretary	Below \$1 million

45 **agreed** that local government can use levy funds for any activity that falls within the overall controls noted in paragraph 38 and is provided for in their WMMP;

46 **agreed** that waste levy payments will be withheld from non-compliant territorial authorities and that this tool will be used at the discretion of the regulator;

Drafting of the bill and delegated authority

47 **agreed** to delegate power to the Minister for the Environment and Associate Minister for the Environment to take decisions on further policy decisions to be made on points of detail and incidental matters during the drafting process;

48 **agreed** to delegate the authority to make final decisions on definitions to the Minister for the Environment and Associate Minister for the Environment, in consultation with other relevant Ministers;

49 **agreed** to delegate power to the Minister for the Environment to make decisions on consequential amendments to other legislation, in consultation with the relevant Minister;

50 **authorised** the Minister for the Environment to make further policy decisions, consistent with the proposals in this paper, and issue drafting instructions to provide for those decisions;

51 **invited** the Minister for the Environment to issue drafting instructions to Parliamentary Counsel Office in relation to the proposed waste bill, based on Cabinet's decisions on the set of papers for the new legislation;

52 **authorised** the Minister for the Environment to further clarify and develop matters relating to the proposals in this Cabinet paper in a manner consistent with the policy decisions contained in this paper, and develop commencement, savings, transitional and any other provisions with Parliamentary Counsel Office, through the drafting process;

53 **authorised** the Parliamentary Counsel Office to make technical or drafting changes that arise during the drafting of the legislation;

Further report

54 **invited** the Minister for the Environment to report back to ENV by 30 June 2023 with:

54.1 a summary of the financial and economic implications across the suite of papers in a single document, including the impact on central government, local government, industry, businesses and individuals;

54.2 a robust investment strategy to support the Waste Management Fund, including:

- 54.2.1 clear quantification of the future functions and funding sources;
- 54.2.2 clarity that all waste investment needs will be funded from the levy revenue and will not be eligible for funding from Budget or the Climate Emergency Response Fund;
- 54.3 options for hypothecation of the levy to mitigate the risks, including:
 - 54.3.1 sunset clause for the central government portion of the levy revenue to be reconsidered after a set number of years ensuring value for money; and/or
 - 54.3.2 embedding a formal role for the Minister of Finance in setting the investment plan priorities and level of funding set aside to achieve these, to ensure alignment with the government's fiscal strategy; and/or
- 54.4 placing stronger expectations around how the levy revenue will be used at local government level;
- 54.5 options for using the waste levy to support the medium to long term emergency waste management response.

Rebecca Davies
Committee Secretary

Present:

Hon Kelvin Davis
Hon Dr Megan Woods (part of item)
Hon Michael Wood (part of item)
Hon Willie Jackson
Hon Damien O'Connor
Hon David Parker (Chair)
Hon Kieran McAnulty (part of item)
Hon Willow-Jean Prime
Jo Luxton, MP

Officials present from:

Office of the Prime Minister
Officials Committee for ENV