



# Cabinet Environment, Energy and Climate Committee

## Minute of Decision

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### Waste Legislation 4: Waste Levy Collection and Administration, Waste Data, and General Compliance Regime

Portfolio                      Environment

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

#### Part 1 – Levy proposals (collection, administration, and monitoring)

- 1        **agreed** that the waste disposal levy should be able to be applied to any facility for the final disposal of waste;
- 2        **agreed** that the current exclusion of all waste to energy facilities from the levy be removed, so that future governments can apply the levy to disincentivise undesirable types of waste to energy facilities;
- 3        **agreed** that the new waste legislation (the Act) should enable regulations to set:
  - 3.1      the waste disposal facilities or waste types to be subject to the levy and related information obligations;
  - 3.2      the levy rates to be paid by the facilities covered and how levy obligations are calculated;
  - 3.3      the administrative processes levy and information obligated facilities must follow;
  - 3.4      processes to be followed where failures to report and pay occur including for the recovery of levy.
  - 3.5      exemptions and processes for waivers;
- 4        **agreed** that regulations setting the rate of the levy will be a confirmable instrument;
- 5        **agreed** to the Environmental Protection Authority being identified as the Levy Collector and discharging the required functions including:
  - 5.1      to collect the levy and associated information;
  - 5.2      to administer any permitting or application-based processes related to the collection of the levy and associated reporting obligations;

5.3 to estimate and recover levy, inclusive of recovery as debt;

6 **agreed** that the Environmental Protection Authority will have the responsibility of collection, administration, and monitoring of the waste levy including permitting and compliance functions;

7 **agreed** to a rollover of Part 3 of the Waste Minimisation Act 2008 (WMA) which applies specifically to the levy and the compliance related processes that underpin it, rolling the above provisions over into the proposed legislation, varied by exception to give effect to:

7.1 any approved policy changes;

7.2 any modernisation of language and expression;

7.3 any other changes to ensure efficacy and effectiveness of levy provisions;

8 **authorised** the Minister for the Environment to make further decisions on the transitional arrangements to carry over existing regulations into the new regime, in order to maintain stability in the existing levy regime. This would apply to all secondary legislation at the time of royal assent;

9 **authorised** the Minister for the Environment to further develop the details of proposed levy collection, administration and monitoring regime during the drafting process, including matters relating to the transition of the existing system to the new one proposed;

10 **authorised** the Minister for the Environment to further develop the details of the levy regime during the drafting process;

## Part 2 – Improved record-keeping and reporting provisions

11 **noted** the importance of waste and resource recovery data for designing and evaluating effective policy, and for compliance monitoring and enforcement;

12 **agreed** that the new waste legislation will establish parties who may have regulated record-keeping and reporting obligations; the types of information that may be required of these parties; and the purposes for which information can be required;

13 **agreed** that primary legislation includes regulation-making provisions for record-keeping and reporting obligations to be placed upon:

13.1 disposal facility operators (for records and information on waste and materials and site management, to enable monitoring of obligations under the Act and gain understanding of environmental impacts);

13.2 waste facility operators (for records and information on waste and materials, transported, managed or disposed of, and site management, to provide information on the circulation of materials within the economy, to enable monitoring of obligations under the Act, and gain understanding of environmental impacts);

13.3 territorial authorities (for records and information on waste management and minimisation services, facilities and activities; spending of levy money; performance against performance standards set by the Minister; and to report on progress; to enable monitoring of obligations under the Act, and to enable planning of services, facilities and activities);

- 13.4 any class of person regulated under the new legislation (for records and information relating to regulated obligations, to assist with monitoring of obligations under the Act);
- 13.5 any class of person (for information required for the prescribed purposes, including the circulation of materials within the economy and their status and fate, to allow the Secretary to compile statistics to: assess progress at meeting the purpose of the Act; report on the state of New Zealand's environment and circularity of the economy; assess New Zealand's performance in waste minimisation and decreasing waste disposal; and identify improvements needed in infrastructure for waste minimisation);
- 14 **authorised** the Minister for the Environment to further develop the details of proposed record-keeping and reporting obligations during the drafting process, including matters relating to the frequency of reporting obligations, any provisions necessary to ensure the effective management and sharing of data, and the circumstances under which the Government Statistician should be consulted;
- 15 **authorised** the Minister for the Environment to further develop the details of the proposed national waste report during the drafting process;

### **Part 3 – Compliance regime – a modern and effective framework to support a circular economy**

- 16 **agreed** to the four key design principles to support the development of the compliance regime which are:
- 16.1 undertaking evidence-led regulatory design;
  - 16.2 ensuring just distribution of costs and benefits;
  - 16.3 maintaining stability through non-regression;
  - 16.4 maintaining consistency across the regime wherever possible;
- 17 **agreed** that compliance provisions including Part 3 of the WMA are rolled over to the proposed legislation, varied by exception to give effect to:
- 17.1 any proposed changes in policy intent;
  - 17.2 any proposed changes to relevant regulation making powers;
  - 17.3 any modernisation of language and expression;
  - 17.4 any other changes to ensure efficacy and effectiveness of levy provisions;
- 18 **agreed** to allocating the Minister for the Environment delegated decision-making power to propose any consequential changes to other legislation to enable the decisions to be operationalised, including:
- 18.1 the role of the EPA;
  - 18.2 the role of other agencies with duties in or adjacent to the regime;
  - 18.3 any other matters;

- 19 **agreed** to a broad warranting power which is disaggregated, enabling officers and others charged with enforcement duties to be conferred all or some of the powers under the proposed legislation and for these to be geographically as appropriate (e.g., to public land in the case of litter wardens);
- 20 **agreed** to the proposed legislation containing a suite of compliance-related functions explicitly defined to ensure ongoing prioritisation of the regulatory role. These functions include that the agency/agencies must:
- 20.1 discharge the compliance monitoring and enforcement role;
  - 20.2 steward and keep under review the regulations and processes associated with the regime (see for example Financial Markets Authority Act 2011);
  - 20.3 report on compliance activities at least annually;
  - 20.4 cooperate with other agencies including via a presumption of information sharing while ensuring appropriate protection of privacy;
- 21 **agreed** that warranted officers under the proposed legislation (where provided for in the scope of their specific warrant) can exercise:
- 21.1 a general power of information gathering to determine compliance with the proposed legislation, regulations, or associated instrument (e.g., national standard);
  - 21.2 a general power of entry to private land for the purposes of determining compliance with the proposed legislation, regulations, or associated instrument (e.g., national standard, deed of funding) excluding dwelling houses and marae;
  - 21.3 the power to apply for a search warrant where the officer has ‘reasonable grounds to suspect an offence has been or is being committed’;
- 22 **agreed** to the following framework elements for the compliance framework within the legislation, being:
- 22.1 the inclusion of a mix of criminal and civil approaches to recognise the significance of the policy objectives that underpin waste legislation, including to bring about the avoidance of harm to society;
  - 22.2 to contain a mix of strict liability offences and offences that reflect a mens rea element where they are most serious to ensure egregious behaviour can be proportionally and effectively addressed but that the public interest in environmental protection is assured regardless of intent;
  - 22.3 to address corporate offending effectively with robust vicarious liability provisions;
  - 22.4 to include a limitation period of two years for criminal offences, and six years for civil approaches, consistent with policy decisions made for the draft Natural and Built Environment Act (NBA) to be appropriate in this instance;
- 23 **agreed** to the development of a four-tier compliance regime to maintain consistency and coherence across a complex suite of interventions;

- 24 **agreed** to the inclusion of the following tools in the compliance regime to address offending (as outlined in Appendix 2 to the paper under ENV-23-SUB-0006):
- 24.1 formal warning;
  - 24.2 directive notice;
  - 24.3 infringement fee;
  - 24.4 enforceable undertaking;
  - 24.5 adverse publicity order;
  - 24.6 monetary benefit order;
  - 24.7 pecuniary penalty;
  - 24.8 prosecution;
  - 24.9 license suspension;
  - 24.10 license revocation;
- 25 **agreed** that the above tools will be subject to a right of appeal, apart from:
- 25.1 formal warnings;
  - 25.2 enforceable undertakings;
- 26 **noted** that delegated decision-making powers are sought to enable detailed decisions to be made on the above tools, including in relation to appeal rights, in alignment with the Legislation Design Advisory Committee Guidelines;
- 27 **agreed** to the following fine maximums for individuals:
- 27.1 infringement fees (up to \$1,000) – with an internally tiered framework set in regulation with the ability to serve them per day for continuing offences (\$300 per day);
  - 27.2 pecuniary penalty (\$250,000);
  - 27.3 prosecution (\$250,000);
  - 27.4 continuing offence (\$10,000/day);
- 28 **agreed** to the following fine maximums for non-natural persons:
- 28.1 infringement fees (\$3,000) - with an internally tiered framework set in regulation;
  - 28.2 pecuniary penalty (\$1,000,000);
  - 28.3 prosecution (\$1,000,000);
  - 28.4 continuing offence (\$10,000/day);
  - 28.5 continuing offence (\$10,000/day);

- 29 **agreed** to a rollover provision for the compliance related aspects of the existing Act. These include:
- 29.1 section 67: additional penalty for contravention involving commercial gain (which will be largely supplanted by monetary benefit orders);
  - 29.2 section 68: strict liability;
  - 29.3 section 69: defences;
  - 29.4 section 70: liability of principals for acts of agents;
  - 29.5 section 71: limitation period (with modifications as set out in the paper under ENV-23-SUB-0006);
  - 29.6 section 72: injunctions;
  - 29.7 sections 73-75: infringement offences (with modifications as set out in the paper under ENV-23-SUB-0006);
  - 29.8 sections 86-88: regulation-making powers for keeping records, and the basis of the auditing programmes (with modifications as set out in the paper under ENV-23-SUB-0006);
- 30 **agreed** that the above provisions be rolled over in the proposed legislation, varied by exception to give effect to:
- 30.1 any approved changes to policy;
  - 30.2 any modernisation of language and expression;
  - 30.3 any other changes to ensure efficacy and effectiveness of levy provisions;
- 31 **authorised** the Minister for the Environment to further develop the details of proposed compliance regime during the drafting process, including matters relating to the transition of the existing system to the new one that is proposed;
- 32 **authorised** the Minister for the Environment to further develop the details of the compliance regime during the drafting process;

### **Provisions for emergency situations**

- 33 **noted** that the WMA provides for only very limited flexibility in emergency situations, such as natural disasters;
- 34 **noted** that officials are still working through the best provisions should apply to emergency situations and how to provide for this in the new waste legislation;
- 35 **agreed** to delegate authority to the Minister for the Environment to make policy decisions and issue drafting instructions on emergency provisions;

**Legislative implications**

- 36 **invited** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs, as part of the Responsibility for Reducing Waste Bill;
- 37 **authorised** the Minister for the Environment to further clarify and develop matters relating to proposals in the paper under ENV-23-SUB-0006, in a manner consistent with the agreed policy decisions, and develop commencement, transitional and any other provisions with Parliamentary Counsel Office, through the drafting process;
- 38 **authorised** the Parliamentary Counsel Office to make technical or drafting changes that arise during the drafting of the legislation.

Rebecca Davies  
Committee Secretary

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**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