



# Changes to the Waste Minimisation Act

## Orders in Council engagement material Severe Weather Integrated Response June 2023

A temporary law change is being proposed through four Orders in Council under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA), to assist waste disposal facilities and territorial authorities in managing the impacts of the severe weather events of early 2023.

Communities, whānau and councils in the North Island are faced with an unprecedented amount of waste arising from the 2023 severe weather events. The Waste Minimisation Act 2008 (WMA) currently doesn't account for circumstances like this.

## Orders in Council

From June 2023 onwards, laws are anticipated to be changed on a range of issues to help communities continue to recover from the effects of the recent severe weather events. The mechanism that will be used to do this is a piece of secondary legislation called an Order in Council.

Orders in Council add flexibility to the Government's response to the recent severe weather, allowing quick regulatory changes to respond to issues as they arise. They enable the Ministry for the Environment to amend legislation we are responsible for.

## Proposals

To provide more flexibility, the Government has agreed to use the Order in Council process to make changes to the WMA and associated regulations, to introduce the following proposals:

- **Proposal 1:** an exemption from the waste disposal levy for waste created by the severe weather events. The exemption would apply to all regions that were directly or indirectly affected by the severe weather events (as listed in the SWERLA).<sup>1</sup> The aim is to help reduce disposal costs for people

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<sup>1</sup> Auckland Council, Carterton District Council, Far North District Council, Gisborne District Council, Hamilton City Council, Hastings District Council, Kawerau District Council, Manawatu District Council, Napier City Council, Ōpōtiki District Council, Ōtorohanga District Council, Rangitikei District Council, Tararua District Council, Taupo District Council, Waikato District Council, Waipa District Council, Waitomo District Council, Western Bay of Plenty District Council, Whangarei District Council

and disposal facilities who need to dispose of the significant amount of waste generated by the severe weather events.

- **Proposal 2:** discretion for the Secretary for the Environment to waive or extend payment and reporting deadlines for the levy. This proposal is limited to Te Matau-a-Maui (Hawke's Bay) and Tairāwhiti. The aim is to help reduce administrative burdens on disposal facilities.
- **Proposal 3:** a 'wash-up' provision to allow reconciliation of data/levy obligations. This proposal is limited to Te Matau-a-Maui (Hawke's Bay) and Tairāwhiti. The aim is to ensure that data is accurate and disposal facilities are invoiced correctly.
- **Proposal 4:** discretion for the Secretary for the Environment to distribute the levy to councils that have not met their planning obligations due to the severe weather events. This proposal applies to territorial authorities who are due to review their Waste Management and Minimisation Plans in the 2023 and 2024 calendar years. The aim is to reduce the administrative burden and financial risk for councils.

## **Proposal 1: Exemption from levy for cyclone and flood waste**

The Waste Minimisation Act and regulations require a levy to be paid on all waste received at class 1 and 2 facilities, which is passed on to users as part of the landfill's fee.

- Class 1 facilities are municipal disposal facilities which accept general waste, such as household waste.
- Class 2 facilities accept materials such as construction and demolition waste, as well as clean fill type material such as soil, clay, rock and gravels.

### **Levy rates**

- The current rate of levy is \$30 per tonne at a class 1 and \$20 a tonne at a class 2 landfill.
- As of 1 July 2023, a levy of \$10 per tonne will also be in place for class 3 and 4 landfills, which only accept inert waste material that won't break down from construction, demolition, earthworks or site remediation.
- On the same date the levy will also increase at class 1 facilities to \$50 per tonne.

## **Why is the proposed Order in Council needed?**

Imposing the levy places a financial burden on people who are trying to dispose of waste generated by the severe weather events and may lead to an increase in illegal dumping. Waste that has been disposed of illegally frequently has greater impacts on the environment and human health. Additionally, since the waste was generated by the severe weather, the aim of the levy to incentivise waste minimisation does not apply.

Section 29 of the WMA provides for levy charges to be waived at the discretion of the Secretary for the Environment in exceptional circumstances, on a case-by-case basis and the Ministry has received and approved a number of applications in light of the severe weather events. However, we consider that the proposed exemption is more appropriate to provide people with certainty.

## **What would the proposed Order in Council do?**

To address this issue urgently, the proposed Order in Council would exempt cyclone and flood waste from the associated levy rate by amending the WMA and the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009.

## **Where would it apply and when?**

The proposed Order in Council would apply to all regions that were affected by the severe weather events (see footnote 1).

The Order in Council would come into force 28 days after *Gazetta* (which is expected to be 25 July 2023) and expire on 8 January 2025. Until the Order in Council is in place, waivers can be sought on a case-by-case basis as noted above.

## **Proposal 2: Discretion to waive or extend payment and reporting deadlines for the levy**

Waste disposal facilities are required to register and report on waste quantities regularly, and the Ministry for the Environment uses these reports to bill facilities which are liable for the levy. There are statutory timeframes applying to payment and interest can apply where payments are not made on time.

## **Why is the proposed Order in Council needed?**

- The unprecedented amount of waste generated by the severe weather events means new facilities need to be established rapidly, and existing facilities are receiving much higher quantities of waste than usual.
- The existing provisions under the WMA to relax timeframes for reporting and payment obligations are onerous and inflexible. Facility operators must apply for an extension by a certain time, in advance of the reporting or payment deadline, and only extends the deadline requirements by one month.
- These provisions are not agile enough for these circumstances. They present an unreasonable administrative and cost burden on waste facilities that may be struggling to manage business-as-usual during recovery from the severe weather events.

## **What would the proposed Order in Council do?**

The proposed Order in Council would amend the WMA, the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009, and the Waste Minimisation (Information Requirements) Regulations 2021. The amendments would enable the Secretary for the Environment to use discretion to waive or defer reporting obligations for both levied and non-levied sites, payment of the levy, and charging of interest. This would apply to new or existing sites.

The proposed Order in Council would include the following criteria to assist the Secretary for the Environment in using his or her discretion:

- the Secretary can modify timeframes (either waiving or extending timeframes) for reporting and payment obligations where the Secretary considers it ‘reasonably necessary’; and
- the disposal facility can demonstrate it was affected by the severe weather events; and
- the effects have implications for the disposal facility’s ability to meet reporting or payment obligations under the WMA.

To support disposal facilities to demonstrate that they meet the criteria, the Ministry for the Environment will develop an application process and associated guidance. The Ministry will also engage with councils and private facility operators to build a picture of newly established disposal facilities, to help with compliance and reporting obligations going forward.

We do not consider that the proposal will result in the lowering of environmental protection or standards.

## **Where would it apply and when?**

The proposed Order in Council would apply to both levied and non-levied sites in Te Matau-a-Māui (Hawke’s Bay) and Tairāwhiti regions. Disposal facilities in these regions have been impacted the most by the severe weather events due to damage to disposal facility infrastructure (such as weighbridges) and significant increases in waste to be disposed of.

The Order in Council would come into force 28 days after *Gazetta* (which is expected to be 25 July 2023) and expire on 8 January 2025.

## **Proposal 3: Introduction of a ‘wash-up’ provision to allow reconciliation of data**

Some waste disposal facilities have suffered damage to weighbridges and other infrastructure due to the impact of the severe weather events, meaning some have had to revert to manual processes such as issuing paper dockets and logbooks for waste volumes. This means that established recording and reporting processes were disrupted resulting in high volumes of manual recording and possible inaccuracies in calculating and reporting waste tonnage, which could and should be rectified later.

## **Why is the proposed Order in Council needed?**

Reporting of inaccurate records means the levy collector may issue incorrect invoices for waste levy payments, so some disposal facilities may pay more or less of the levy than required. If the incorrect amount of levy is collected, this could have flow-on impacts on councils and their communities, as there may be less levy funding available for waste minimisation efforts.

If data records are incorrect and do not reflect the true quantity of waste disposed, this will impact the evidence base for future action on waste. Accurate data is also important for forecasting of future natural disasters and the amount of waste that can be generated by disasters.

Regulations under the WMA do not provide flexibility to update waste tonnage information after the reporting deadline has passed (except for facilities that have been approved to report annually).

## **What would the proposed Order in Council do?**

The proposed Order in Council would amend the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009 and the Waste Minimisation (Information Requirements) Regulations 2021. The Order in Council would:

- enable affected disposal facilities to submit updated data when they are under less pressure and have the means to accurately measure or re-calculate the waste tonnage.
- enable the levy collector to issue invoices or credit notes to reflect the updated data, including where an invoice has been issued as a result of an estimate by the levy collector.

By providing an express reconciliation provision, affected facilities will be able to finalise their data and ensure accuracy, while having flexibility as to submission timing. Data reconciliation will also ensure the correct amount of levy is collected.

We do not consider that the proposal will result in the lowering of environmental protection or standards.

## **Where would it apply and when?**

As with proposal 2, this proposed Order in Council would apply to both levied and non-levied sites, in Te Matau-a-Maui (Hawke's Bay) and Tairāwhiti regions.

The Order in Council would come into force 28 days after Gazetted (which is expected to be 25 July 2023) and expire at the end of the 2024 financial year (30 June 2024).

## **Proposal 4: Discretion to distribute the levy to councils that have not met their planning obligations due to the severe weather events**

The distribution of the levy is a statutory process with clear requirements set out in the WMA. One of those requirements is that the territorial authorities must review their Waste Management and Minimisation Plans (**WMMPs**) at least every 6 years. The WMMP review process requires territorial authorities to prepare a detailed waste assessment under section 51. Territorial authorities undertake public consultation as part of the review as well.

If the WMMP review is not undertaken when required, the Secretary for the Environment must retain that territorial authority's share of the levy distribution. There is no provision for flexibility. Even if territorial authorities complete the reviews soon after the deadline, the WMA does not currently allow back pay. Instead, withheld funds must go 'back into the pot' for distribution to councils which have complied with the requirements. Further, levy that is distributed must still be spent in accordance with the WMA.

## Who receives the levy?

Territorial authorities receive a share of the levy based on their population size, from a pool of 50 per cent of the total levy intake.<sup>2</sup> This is allocated on a quarterly basis and represents an important part of the funding territorial authorities have for waste minimisation efforts.

## Why is the proposed Order in Council needed?

- Nineteen territorial authorities in the affected regions are due to review their WMMPs in 2023. The review process takes at least one year.
- Some territorial authorities are already having to consider starting the review process now, including consultation with their severe weather-affected communities who may need to focus on recovery efforts instead of being consulted on waste priorities.
- These territorial authorities may struggle to meet the statutory requirements and therefore would not receive their allocation of the levy.
- Flexibility is required to allow territorial authorities and the public to focus on the recovery and rebuild without worrying about losing access to funding.

## What would the proposed Order in Council do?

The proposed Order in Council would amend the WMA to provide the Secretary for the Environment discretion to:

- pay the levy to territorial authorities despite failure to comply with WMMP review requirements
- back pay the levy once WMMP requirements are met
- extend the timeframe to review WMMPs.

The Order in Council would include the following criteria to help the Secretary for the Environment use their discretion:

- the Secretary can distribute levy allocation to territorial authorities that have not met planning obligations due to the severe weather, events where the Secretary considers it 'reasonably necessary'; and
- the relevant territorial authority can demonstrate to the Secretary for the Environment that it has insufficient capacity to undertake the steps for the review because of the severe weather event; and
- that the waste assessment, if undertaken, would not properly reflect the waste situation and properly inform the future WMMP.

To support affected territorial authorities in demonstrating they meet the above criteria, the Ministry for the Environment will develop a straightforward application process and guidance.

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<sup>2</sup> The other 50% is made available to anyone in NZ through the contestable Waste Minimisation Fund.

## Where would it apply and when?

The proposed Order in Council would be limited in scope to those territorial authorities listed in the SWERLA which are due to review their WMMPs in the 2023 and 2024 calendar years.<sup>3</sup>

The Order in Council would come into force 28 days after *Gazetta* (which is expected to be 25 July 2023) and expire on 8 January 2025.

## Meeting the purpose of the Severe Weather Emergency Recovery Legislation Act

Each of the proposals meet the purpose of the SWERLA section 3(1), as they will assist communities and councils to focus on planning, rebuilding, and recovery, including:

- to support rebuilding of land, infrastructure, and other property (specifically by supporting the removal of cyclone and flood waste)
- the development of infrastructure (specifically, waste disposal infrastructure)
- facilitating the restoration and resilience of the environment (by reducing costs to dispose of cyclone and flood waste appropriately).

The proposals also meet the purpose of the SWERLA section 3(2) by ensuring waste management activities normally undertaken by people and agencies interacting with government agencies and local authorities can continue to be undertaken after the severe weather events, by enabling the WMA to operate more flexibly.

## How to provide feedback and next steps

We invite you to provide feedback on these proposals, which will be provided to the review panel considering these Orders in Council under the Severe Weather Emergency Recovery Legislation Act 2023.

Please email your feedback to [severeweather@mfe.govt.nz](mailto:severeweather@mfe.govt.nz)

Feedback must be received by 5pm, Thursday 15 June.

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<sup>3</sup> Auckland Council, Carterton District Council, Far North District Council, Gisborne District Council, Hamilton City Council, Hastings District Council, Kawerau District Council, Manawatu District Council, Napier City Council, Ōpōtiki District Council, Ōtorohanga District Council, Rangitikei District Council, Tararua District Council, Taupo District Council, Waikato District Council, Waipa District Council, Waitomo District Council, Western Bay of Plenty District Council, Whangarei District Council.