

Towards a Sustainable New Zealand: Measures to minimise solid waste

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Office of the Minister for the Environment

Cabinet Policy Committee

Proposal

1. This paper proposes a package of measures for improving waste minimisation to achieve full implementation of the New Zealand Waste Strategy and contribute to the move towards greater sustainability. Some measures in this package are already under way. Some measures have already been decided or announced, and this paper provides detail on how they will be implemented. Other measures in this paper are new, and are designed to complement the rest of the proposed package.
2. It is proposed that new waste legislation is enacted to consolidate some waste-related provisions in existing legislation, and to implement other measures proposed in this paper that need to be given effect through regulation.

Executive summary

3. This paper is one of a set of seven papers providing further detail on the government's package of sustainability initiatives, announced in February. These papers will be considered in May 2007, and are linked together by *Towards a Sustainable New Zealand: Overview Paper* [POL (07) 84].

4. This paper proposes the following package of measures to improve waste minimisation, implement fully the government's waste strategy, and contribute to greater sustainability:

- **Funding:** a national levy on solid waste disposal, with revenue divided equally to support local authorities' activities to minimise waste and a contestable fund for waste minimisation projects
- **Product stewardship:** new legislation on product stewardship. This will provide accreditation processes and regulatory back-up for industry-led schemes for a range of products, and set out a process for government and industry to develop schemes for 'priority products' that cause particular environmental harm or pose disposal problems

- **Public recycling facilities:** new measures to provide a network of public recycling facilities in larger cities and tourist destinations; and to assist with provision of recycling facilities at major public events
- **Reporting:** new powers to require operators of disposal facilities and resource recovery facilities to report on the trends over time of recycling and waste disposal and to enable other waste-related data collection and reporting requirements to be imposed in the future and ongoing work to promote reporting across public and private sector organisations
- **Governance:** review and consolidation of councils' roles and functions; new responsibilities for the Minister and Ministry for the Environment; and establishment of a new waste advisory board
- **Integration with other initiatives:** measures outlined in this paper will be integrated with other sustainability initiatives (such as the 'enhanced eco-verification' initiative) and existing government initiatives (such as the Govt³ programme and support for voluntary private and public sector initiatives).
- **Engagement:** measures to raise people's awareness of the need to minimise waste, and to encourage them to play their part.

5. The package of measures outlined in this paper represents a change of focus for waste minimisation activities – from the current, largely voluntary approach, to increased use of regulatory back-up and price-based mechanisms. The package will empower central and local government agencies to take a stronger lead on waste minimisation, and to achieve more consistent performance on waste minimisation from region to region. It will provide better incentives and rewards for people, businesses and organisations who are 'doing the right thing' to minimise waste. It will help ensure that the cost of a product reflects the full costs of its social, economic and environmental impacts. It will also help all those involved in minimising waste – from producers through to consumers and waste facility operators – to better understand their role in minimising waste, and play their part more effectively.

6. New waste legislation is needed to implement new measures proposed in this paper that need to be given effect through regulation, and to consolidate council functions currently contained in Part 31 of the Local Government Act 1974. The Waste Minimisation (Solids) Bill currently before the Local Government and Environment Select Committee offers a vehicle to achieve this, although amendments to the current Bill would be needed.

Background

7. On 22 January 2002, the Cabinet Business Committee approved release of *The New Zealand Waste Strategy: towards zero waste and a sustainable New Zealand* ('the 2002 waste strategy'). At this time, the Committee also invited the Minister for the Environment to report back on the effectiveness of a waste levy as a means of facilitating the objectives of the strategy; and invited the Minister for the Environment to report back on the implementation of specific measures in the strategy [CBC Min (02) 1/8 refers].

8. The 2002 waste strategy was released in March 2002. It promotes a range of actions to move New Zealand from a focus on managing waste disposal to a new

focus on waste prevention. It aims to break the link between the amount of waste we produce and our rate of economic growth – so that economic wealth is not achieved by trading off our environmental capital.

9. In November 2006, Cabinet noted the need for funding to develop an effective resource recovery infrastructure, and measures to address specific wastes (such as electronic waste) that are increasing in volume and that, by their nature, pose high risks to people and the environment. Cabinet agreed (among other things) that increased effort on waste minimisation is desirable, and invited me to report back with detailed legislative proposals on waste funding [CAB Min (06) 42/5 refers].

10. Cabinet also agreed to strengthen product stewardship schemes, which encourage producers, retailers and consumers of manufactured products to accept responsibility for the environmental impacts of those products at the end of their useful life [CAB Min (06) 42/5 refers].

11. Cabinet agreed on 12 February 2007 that a set of initiatives to elevate sustainability be refined, including an initiative based around waste minimisation and management [CAB Min (07) 4/1A refers]. On 13 February 2007 the Prime Minister's Statement at the opening of Parliament set out the government's proposals to improve waste management: funding of public recycling facilities, some form of waste levy, and improved product stewardship (with the latter two to be pursued through refinements to the Waste Bill).

Recent developments that underpin proposals in this paper

12. The 2006 review of targets in the 2002 waste strategy (*Targets in the New Zealand Waste Strategy: 2006 review of progress*) affirms that foundations for minimising and managing waste in New Zealand have been laid, and that good progress has been made on meeting the strategy's objectives. Progress against the strategy's targets has been variable, and more work needs to be done. It also finds that some of the targets are out of date or unmeasurable and need to be changed. To ensure the strategy remains relevant and is fully implemented, some targets will need to be reviewed.

13. The 2007 OECD Environmental Performance Review of New Zealand has found that we still face waste management challenges to decouple waste generation from GDP. Our fragmented legislative and institutional framework has stymied efforts to take a cradle-to-grave approach to materials management. The report comments that the current policy mix remains focused on regulatory and voluntary approaches, with economic instruments under-used. The report also notes that the economic viability of recycling is limited by our distance from larger markets, and that recycling initiatives are therefore vulnerable to collapse. In addition, the report finds that information on waste management is insufficient to enable strategic planning to occur.

14. The government's package of sustainability measures, the waste targets review, and the OECD's review of New Zealand's environmental performance inform, and provide added impetus to, the proposals contained in this paper.

Opportunity to implement measures

15. The Waste Minimisation (Solids) Bill, a Member's Bill introduced by Nandor Tanczos of the Green Party, was referred to the Local Government and Environment Select Committee in 2006. The Bill offers a vehicle to implement new measures proposed in this paper that need to be given effect through legislation or regulation, although amendments to the current Bill would be needed to achieve this.

16. Prior to introduction of Mr Tanczos' Bill, the government had its own product stewardship legislation scheduled for consideration through the standard legislation timetable.

Comment

17. There has been good progress in implementing the actions and realising the aims of the 2002 waste strategy, but some key challenges persist. Performance by local authorities in minimising waste is variable, and the quality of information about waste streams and trends remains generally poor. Despite rising participation by the private sector in waste minimisation (either directly or in partnership with local authorities), we have yet to put in place measures that will lead to optimal outcomes and a sustainable approach to waste minimisation.

18. There is a growing perception by many New Zealanders – and by many of our overseas visitors and commentators – that central and local government agencies should take more effective action to minimise waste. Research shows that most people are ready and willing to play their part, but that they often face barriers to taking action.

19. I consider that the package of measures outlined in this paper will:

- ensure that the 2002 waste strategy is implemented fully
- support the other elements in the government's package of sustainability initiatives, and take us further along the path towards a sustainable future for New Zealand
- generate adequate funding for activities to minimise waste
- achieve more consistent performance on waste minimisation from region to region, in line with national performance standards and objectives
- allow New Zealanders to capture the economic benefits of minimising waste – including through creation of new markets for, and new products from, recovered materials
- maintain a premium value on New Zealand's 'clean green' image
- encourage producers, brand-owners, retailers, consumers, government agencies, and the waste industry (collectors and recyclers) to share responsibility for the environmental and disposal problems of manufactured products
- reduce environmental effects (such as greenhouse gas emissions) from extracting, transporting and processing virgin materials, by reducing the use of virgin materials
- encourage innovative solutions to waste disposal problems
- deliver waste recovery and disposal services that better meet the expectations of New Zealanders and international visitors
- help identify and generate information needed to target future waste minimisation activities

- clarify and strengthen the roles and responsibilities of central government, local government, businesses, and individuals in minimising waste.

A package of measures for improving waste minimisation

20. This paper proposes the following measures to improve waste minimisation:

- **Funding:** a national levy on solid waste disposal, with revenue divided equally to support local authorities' activities to minimise waste and a contestable fund for waste minimisation projects
- **Product stewardship:** new legislation on product stewardship. This will provide accreditation processes and regulatory back-up for industry-led schemes for a range of products, and set out a process for government and industry to develop schemes for 'priority products' that cause particular environmental harm or pose disposal problems
- **Public recycling facilities:** new measures to provide a network of public recycling facilities in larger cities and tourist destinations; and to assist with provision of recycling facilities at major public events
- **Reporting:** new powers to require operators of disposal facilities and resource recovery facilities to report on the trends over time of recycling and waste disposal and to enable other waste-related data collection and reporting requirements to be imposed in the future and ongoing work to promote reporting across public and private sector organisations
- **Governance:** review and consolidation of councils' roles and functions; new responsibilities for the Minister and Ministry for the Environment; and establishment of a new waste advisory board
- **Integration with other initiatives:** measures outlined in this paper will be integrated with other sustainability initiatives (such as the 'enhanced eco-verification' initiative) and existing government initiatives (such as the Govt³ programme and support for voluntary private and public sector initiatives)
- **Engagement:** Measures to raise people's awareness of the need to minimise waste, and to encourage them to play their part.

21. New waste legislation is needed to consolidate council functions currently contained in Part 31 of the Local Government Act 1974, and to implement new measures proposed in this paper that need to be given effect through regulation.

22. The Waste Minimisation (Solids) Bill currently before the Local Government and Environment Select Committee offers a vehicle to achieve this, although amendments to the current Bill would be needed.

Funding through a national levy

23. The 2002 waste strategy signalled that work would be carried out by the Ministry for the Environment and the Ministry of Economic Development on options for a waste levy, to be applied at the national or local level. In approving the 2002 waste strategy for public release (on 22 January 2002), the Cabinet Business Committee invited the Minister for the Environment to report back by 31 January 2003 on the effectiveness of a waste levy as a means of facilitating the objectives of the strategy

[CBC Min (02) 1/8 refers]. Timing for this report back was subsequently deferred until the end of 2006 [CAB Min (04) 31/5 refers], and the following proposal satisfies the report back requirement.

24. The February Cabinet paper on the sustainability package also discussed the use of a waste levy to fund waste minimisation projects [CAB (07) 15 refers], and the Prime Minister announced the government's intention to legislate for a levy at the opening of Parliament on 13 February. A levy will deliver the higher level of investment required to reach objectives under the government's 2002 waste strategy.

25. Activities to minimise waste are currently funded from a mix of public and private sources – but mainly from local rates. In addition to rates, councils receive revenue to fund their waste minimisation activities from the sale of recovered materials, user charges, and profits from council-owned facilities (such as landfills) and other council-run services. Businesses typically fund their own waste minimisation activities – although they can sometimes participate in kerb-side schemes funded by rates. Product stewardship schemes – such as advance disposal fee systems or container deposit schemes – are another source of funding for waste minimisation.

26. The Ministry for the Environment estimates that, on average, councils spend less than \$20 per capita per annum on waste minimisation – primarily on the kerbside collection of paper, plastic, glass and metal. Much greater investment is needed to deliver on the objectives of the waste strategy.

Levy design options

27. I have considered a number of options for raising more revenue to fund waste minimisation activities – including maintaining current funding arrangements, increasing funding from general government revenue, providing for optional local levies, and introducing a national waste levy.

28. My preferred option is to introduce a national waste levy, to be applied to any material that goes to landfill. I believe that this will create appropriate incentives, and reward efforts, to divert material from landfill: the more waste a person or organisation can divert, the less they will pay. I also believe that a national waste levy is the best approach because:

- It begins to place a cost on waste to recognise the social, economic, and environmental costs of waste on people and the environment
- It will generate a secure revenue stream
- It carries low administration costs
- Benefits will flow to those who pay the levy, in the form of improved waste minimisation services
- Revenue can be applied in a flexible way in response to emerging needs or trends, including the development of new product stewardship schemes.

29. A national waste levy is proposed in the current Waste Minimisation (Solids) Bill, and a levy on waste disposal has support from a number of key stakeholders.

30. Careful design of a national waste levy is needed to minimise costs, ensure that funding is distributed where it is needed, secure long-term benefits, and avoid perverse incentives.

Collecting the levy

31. The levy will be collected regularly by the Ministry for the Environment from the operators of defined waste disposal facilities. As a priority, facilities subject to the levy should be landfills that are lawfully established under the Resource Management Act 1991 and that are permitted to accept municipal solid waste for disposal. Empowering regulations will enable the definition of facilities subject to the levy to be changed over time, in response to changes in waste disposal patterns.

32. Facility operators will be required to record and provide information to the Ministry on the amount of material disposed of at the facility. The levy will be collected according to the weight of material disposed of at the facility.

33. Over time, facilities will be required to have weighbridges to facilitate this. A transitional period will be specified for introduction of weighbridges, during which time other proxy measures of 'volume disposed of' will be used.

Setting and adjusting the levy

34. I propose to set the national waste levy at an initial rate of \$10 per tonne of waste or other material sent to landfill. Based on current rates of disposal to landfill, a \$10 levy per tonne of waste disposed of would generate \$31 million per annum.

[Note: Information received during the first 6 months of operation of the waste disposal levy (July - December 2009) indicates that based on current rates of disposal to landfill, the \$10 per tonne waste disposal levy will generate approximately \$24 million per annum.]

35. Setting the levy at an initial level of \$10 per tonne is a conservative approach. It will help us to avoid perverse changes in people's waste minimisation behaviour and allow us to identify the precise impacts of setting a levy. It will also provide an appropriate level of revenue during a time of transition, as businesses and councils build their capacity to design and implement quality projects to be funded by levy revenue.

36. The adequacy and effectiveness of the levy and its allocation will be reviewed regularly by the responsible Minister, to ensure that the levy is generating an appropriate level of revenue without causing any unwanted behaviours. If it is decided that the level of the levy needs to be increased, this could be achieved in stages – which is an approach that has been suggested by the New Zealand Business Council for Sustainable Development.

37. The responsible Minister will have powers to make regulations to adjust the levy. Any adjustment of the levy will need to be confirmed by Order In Council.

Material subject to the levy

38. As a general rule, there will be no exemptions from the levy. Any material disposed of at a facility subject to the levy (ie, any material that goes to a landfill) will be levied. Allowing exemptions may encourage avoidance of the levy, undermine the levy base, and add significant administrative costs. However, the responsible Minister will have the power to make regulations for appropriate exemptions, such as for waste generated from disaster recovery operations and (to a very small extent, if at all) for material necessary for operation of the facility (eg, landfill filter material). Other exemptions may be considered in future.

39. Empowering legislation will allow for the introduction of different levy rates for different types of disposal facility, for example, cleanfills, to ensure flexible responses to changing waste disposal patterns in the future.

Offences and penalties

40. I propose that the empowering legislation provides for offences where disposal facility operators fail to keep a record of the amount of waste received, fail to report the amount of waste received, submit false or misleading information, or fail to pay the levy on waste that they dispose of. Penalty fees should be capped at \$100,000. Prison sentences should not be set as penalties, and penalties should apply equally to individuals and corporate offenders.

41. I propose that the Ministry for the Environment should have powers to:

- Make estimates of unpaid levies
- Audit and inspect the records and premises of waste disposal operators whose facilities are subject to the levy
- Enforce payment of levy monies as a summary judgement debt, with the penalty rate for late payment of levies to be set at the same rate of interest as for unpaid summary judgement debts.

Allocating the proceeds of the levy

42. I propose that the revenue generated by the levy be allocated as follows:

- 50% of the gross revenue to be allocated to territorial authorities, on a population basis, to be used for implementing waste minimisation activities specified in territorial authorities' waste management plans
- The remainder (net of administrative costs) to be used for a contestable fund for waste minimisation projects that further the government's policy on waste.

43. In relation to 'per capita' funds, there is a risk that some councils will divert general council funds for waste minimisation projects into other projects when the levy revenue starts reaching them. I therefore propose to require annual reporting by councils on how they are spending their 'per capita' revenue. The Ministry for the Environment will evaluate the effectiveness of this spending in the context of national performance standards and objectives (based on requirements of the 2002 waste strategy). The responsible Minister will have the power to withhold a council's 'per capita' payments (and divert such payments into the contestable fund) if the Minister determines that the council is not meeting its legal obligations in relation to minimising waste. If a council determines that its 'per capita' payments are not sufficient to allow the council to meet its legal obligations – or achieve its objectives – in minimising waste, the council can apply for funding from the contestable fund for new projects, or seek special funding from central government.

44. Criteria for allocating the contestable fund will be consistent with criteria for prioritising waste minimisation activities set out in the 2002 waste strategy. I anticipate that the types of projects likely to be funded as a priority will include proposals to:

- Establish appropriate domestic reprocessing infrastructure for recovered materials, such as improved plastics washing and sorting facilities
- Assist communities that face disproportionate demands for waste minimisation relative to their ability to raise funds, such as in high tourist areas
- Introduce recycling and recovery services for new materials or in areas that currently lack them. Such services could include kitchen waste and green waste processing facilities
- Increase the recovery of wastes targeted by the 2002 waste strategy where progress has been poor, such as for construction and demolition waste
- Research and develop new and innovative approaches for minimising problem wastes and markets for recycled and recovered material
- Establish regional or super-regional waste minimisation projects where the nature of waste problems requires such an approach
- Enhance monitoring and measuring systems where these are needed to improve data on waste
- Assist small and medium-sized businesses to reduce the costs of waste from their operations.

45. As a condition for approval, people or organisations that carry out projects funded through the contestable fund will be required to report on the effectiveness of the project in achieving improved waste minimisation.

46. An advisory board (see paragraph 123) will provide input on the allocation of contestable funding, including priorities for expenditure. The Minister will make final decisions on the allocation of contestable funding, following advice from the Ministry for the Environment.

Product stewardship

47. Product stewardship schemes require people and organisations involved in designing, producing, manufacturing, transporting, selling, using, collecting, recovering and disposing of a product to share responsibility for the environmental impacts of that product arising at the end of the product's useful life. People or organisations that introduce a product to market will carry the key responsibility for ensuring that the objectives of specific product stewardship schemes are met – but others in the product chain will also be required to play their part.

The need for a more effective approach to product stewardship

48. By and large, New Zealand businesses support product stewardship schemes and are quick to see the advantages of participating in them. However, there is no legal requirement for businesses to take responsibility for problems arising at the end of a product's useful life, which means that the success or uptake of product stewardship schemes has been limited to date. Where a scheme is in place for a particular product, the following problems often arise:

- There is 'free-riding' by people or organisations within the product chain who benefit from the scheme, but do not play an effective role (or any role at all) under the scheme
- Waste minimisation targets and performance under product stewardship schemes are lower than they might be, due to a lack of effective incentives or

regulatory requirements for others to come on board and play their part effectively

- Consumers are not provided with sufficient information to allow them to participate effectively in the scheme.

49. A new approach to product stewardship is needed, to ensure that businesses that support and implement product stewardship schemes gain appropriate advantage and reward – including government endorsement and greater brand recognition – for ‘doing the right thing’.

50. A new approach is also needed to ensure effective management of products that cause particular environmental harm or disposal problems at point of recovery or disposal (such as computer equipment or used oil). Often, businesses are able to implement effective product stewardship schemes using non-regulatory measures to deal with these products – but not always. In November 2006, Cabinet agreed that backstop legislation for product stewardship is necessary when industry is not able to develop voluntary product stewardship schemes for these products within reasonable timeframes [CAB Min (06) 42/5 refers].

Approach to product stewardship

51. I propose to legislate to provide legislative back-up for new, stronger partnerships between the government and businesses on product stewardship. The new legislation will:

- Provide accreditation processes to encourage schemes to be developed by industry or through partnerships between government and industry thereby rewarding businesses that are taking steps to minimise environmental impacts from the manufacture, use and disposal of their product
- Provide legislative back-up for schemes developed by industry or through partnerships between government and industry, to help make schemes effective (e.g. addressing the problem of ‘free-riding’)
- Set out a process for government and industry to develop schemes for ‘priority products’ that cause particular environmental harm or pose disposal problems.

52. Under the new schemes, householders and businesses will have the opportunity to dispose responsibly of certain products that are at the end of their useful life – such as aluminium packaging, glass packaging, some construction and demolition materials, computer equipment, agri-chemical containers, televisions, used oil, silage plastic, or tyres. Manufacturers or retailers may collect such products directly, or collection points may be offered locally – for example, through council transfer stations, stores, or private disposal depots.

Design of the proposed new product stewardship legislation

53. The new legislation will be designed to:

- Encourage greater levels of waste minimisation, diversion, recovery and recycling – including improved targets
- Increase the effectiveness of schemes throughout the life-span of products covered by the schemes

- Improve consumers' and communities' understanding of waste minimisation, and how they can play their part
- Increase benefits for businesses that propose and participate in schemes – such as increased brand value for those businesses and products
- Provide for effective coordination of schemes, and of the process for putting them in place.

54. The following principles will inform, and be reflected in, the new legislation:

- To the extent possible, those who are closely involved during the life-span of the product (from manufacture through to disposal) will take the lead in designing and proposing a product stewardship scheme for that product
- Regulatory measures are only applied when needed to make schemes effective – usually when requested by stakeholders or following expert advice
- Measures to implement the scheme do not constrain innovation in minimising waste in relation to the product covered by the scheme
- A life-cycle approach underpins schemes. This means that every party in a product chain will play their part in minimising waste from the manufacture, marketing, use or recovery of that product (or its constituent materials)
- Schemes involving 'take back' of products are easy and cost-effective for householders and businesses to participate in
- Schemes are designed in a collaborative way through wide, timely consultation processes.

Process for identifying priority products to be covered by product stewardship schemes

55. The new legislation will ensure effective management of products that cause particular environmental harm or disposal problems at the end of their useful life. To achieve this, the legislation will:

- Specify criteria for use in identifying 'priority products'. These products must then be managed under a customised scheme
- Prescribe a process for design and accreditation of schemes for priority products.

56. The legislation will require that, in order for a product to be identified as a 'priority product' that must be managed under a scheme, the Minister for the Environment must be satisfied that the following criteria have been met:

- Significant environmental harm arises at the end of the product's useful life, or there is the potential for significant harm following disposal of the product; or
- There is significant public concern about problems arising at the end of the product's useful life; or
- There are net benefits to society from the recovery, recycling, or reuse of the materials subject to a scheme; and
- Consultation with stakeholders and the public has identified a desire for action to address those problems; and
- It has been determined that the product could be managed effectively through a product stewardship scheme.

57. The legislation will not specify products (or their constituent parts) that must be managed under schemes, but will set out a process and criteria for these products to be identified.

58. Once a product has been identified as a priority product, it will be published in the Gazette and added to a list of priority products that the Ministry for the Environment will maintain.

59. The new waste advisory board (see paragraph 123 below) will provide advice on priority products that should be managed or regulated under product stewardship schemes, and appropriate measures for giving effect to those schemes, where needed.

60. Priority products identified through the process specified in the new legislation might include: aluminium packaging, glass packaging, some construction and demolition materials, computer equipment, agri-chemical containers, televisions, used oil, silage plastic, or tyres.

Process for designing product stewardship schemes

61. Once a priority product has been identified, the legislation will require that a product stewardship scheme is developed for that product.

62. Industry groups or individual businesses may also opt to develop schemes for non-priority products. Such schemes could apply to a specified brand, or several brands of the same product. Proponents may be motivated to develop such schemes with a view to seeking:

- accreditation for the scheme, and the benefits that attach to this (see paragraphs 72-74 below)
- some other form of government endorsement (such as recognition under the government's new 'enhanced eco-verification' initiative)
- regulatory back-up for their scheme, using one of the regulatory measures specified in the legislation.

63. The process for designing a scheme will be the same for both priority and non-priority products.

64. The Ministry for the Environment will work with businesses or industry groups, and other parties involved at various stages in the life-span of a product, to design product stewardship schemes for priority products or product types. If invited, they may also work alongside businesses or industry groups to design schemes for non-priority products. In each case, the aim will be for as many parties as possible to work together on the scheme, as this will be the most effective way to avoid free-riding. However, one or many schemes may be developed for each brand, product or product type – depending on specific requirements in each case.

65. The design process could involve the appointment of a representative advisory group or a lead organisation for each product or product type.

66. The producer is likely to play a key role in the design of a scheme. Depending on the product, the producer will be:

- the maker, distributor or seller of a product within a product category under their own brand
- a person who is the owner or licence holder of a trademark under which a product is sold
- the importer of the product for sale or distribution.

67. The parties involved in designing the scheme will identify the best means for giving effect to the scheme. Schemes may be given effect using one or more measures from a list of legislative and voluntary measures specified in the legislation (see paragraph 75 below).

68. There will be potential competition and international trade implications within markets where product stewardship schemes are imposed. It will be important that the design and implementation of a scheme are not used to restrict competition (for example, by creating barriers for potential entrants to markets), and that the scheme treats foreign and domestic products equally. These issues can be addressed through careful design of the scheme, and in criteria used for accrediting schemes.

Process for accrediting schemes

69. Once a proposed scheme is agreed by the Ministry for the Environment and the relevant parties, and has been through a consultation process (to be prescribed in the new legislation), it will be put forward to the responsible Minister for accreditation.

70. The legislation will provide for a scheme to be accredited if the scheme:

- will achieve the outcome specified for the product (or products) in a reasonable time
- provides for reduction in environmental impacts of the product when it becomes waste or when waste is produced as a by-product (eg, packaging). This could be through the collection and management of the product and its packaging at the end of their useful life, or by other methods of reduction throughout the product's life-span – such as redesigning the product to avoid the harm, or ensuring that recovery of the product is economically viable
- proposes a registration system to enable relevant parties to know which products are covered by the scheme
- does not result in less competition in the market for the product covered by the scheme
- provides for enforcement and compliance
- makes clear the role of retailers, local authorities, recyclers and all others who have a role in the selling, distribution or recovery of a product
- provides for making consumers aware of the scheme and how to manage the product in a safe way
- provides for assessing and reporting performance of the scheme
- will not cause breaches of other domestic or international laws.

71. In accrediting the scheme, the Minister will also consider infrastructural requirements for the scheme and opportunities for the scheme to 'piggy-back' on existing schemes or infrastructure – such as community drop-off points or joint take-back facilities.

Benefits of accreditation

72. The accreditation process outlined above will accelerate industry-led action on a wider range of product types, and motivate free-riders to participate in industry-led schemes for non-priority products.

73. Accreditation will confer a competitive advantage for producers who are party to the scheme. They will be able to label and promote their product as being 'government-endorsed', in relation to the scheme's specific waste minimisation requirements.

74. Products covered by accredited schemes will be purchased on a preferential basis by government agencies participating in the government's 'sustainable procurement' initiative. Accreditation may also confer on parties to a scheme, an advantage in seeking financial support for further or ongoing waste minimisation activities – eg, through the waste levy contestable fund.

Measures for giving effect to product stewardship schemes

75. Product stewardship schemes will be implemented using one or more measures from a list of legislative and voluntary measures. The list of measures will include:

- Establishing waste minimisation, recovery and recycling objectives for industry, and responsibilities for meeting these objectives
- Disposal bans – to prevent certain materials being disposed of in landfills, cleanfills and/or incinerators
- Material controls – to restrict the use of specified materials in certain products or processes
- Ministerial powers to specify provisions in councils' waste management plans. This could require councils to support particular product stewardship schemes by:
 - providing drop off space at transfer stations for the products
 - collecting the products through existing collection services or facilities
- Take back schemes – where producers, brand-owners, importers and/or retailers accept a product back for recovery or disposal at the end of the product's useful life
- Advance disposal fees – where the costs of disposal are paid when a product is purchased
- Deposit/refund schemes – where a consumer receives a refund of a deposit when they return the product for recycling or disposal at the end of its useful life
- Labelling – this could be used to inform consumers about: the environmental harm caused by the product during its life-cycle and how to avoid or reduce that harm; provisions for recycling (including codes to aid separation); or safe disposal of the product at the end of its useful life
- Recycling standards – standards on the quality of materials or products delivered by collectors and recyclers for reuse in the same, or a different, form
- Product design – requirements specified at point of design to reduce the waste produced and encourage recycling.

76. Most of these measures could be mandated by regulations or be implemented on a voluntary basis, as required in each case – although sales restrictions, disposal bans and material controls would need to be imposed via regulations. Some measures may be part of a scheme on the basis of a voluntary agreement between

parties (for instance, advanced deposit fees), whereas in other cases the presence of free-riding may require measures to be given effect through regulations. I propose to legislate to provide new powers to enable the above measures to be imposed, where necessary to give effect to a product stewardship scheme.

77. The legislation will provide that a scheme can only be given effect to by regulations if:

- It is reinforced by other waste minimisation activities (such as education campaigns)
- The responsible Minister considers there has been adequate consultation with the stakeholders
- The responsible Minister considers the measure is necessary and will be effective in the circumstances
- The responsible Minister considers the objectives of the scheme cannot be met otherwise
- The responsible Minister considers that there will be a net benefit from use of the regulatory mechanism
- Councils, businesses and consumers have been given adequate notice of the proposal for regulations
- Regulations are consistent with international trade obligations.

78. Any regulations will require a Regulatory Impact Assessment to be prepared.

79. Regulations will be implemented through an order in council, on the recommendation of the responsible Minister.

Compliance, enforcement and penalties

80. A compliance, enforcement and penalty regime is needed to provide sanctions that are sufficient to deter businesses and others from ignoring the regulations.

81. Offences and penalties will apply for specified breaches of a measure under a scheme, where that measure is given effect through regulation.

82. Overall monitoring and enforcement of schemes will be the responsibility of the Ministry for the Environment. The Ministry will work with all parties to ensure environmental objectives under accredited schemes are met, and to ensure that parties' roles and responsibilities are implemented and maintained. With the exception of disposal bans, the Ministry will be responsible for ensuring compliance with any measures that are imposed by regulations. The relevant territorial authority will be responsible for ensuring compliance with regulations imposing disposal bans.

83. The maximum fine for any offence empowered by this legislation will be \$100,000 per offence. For repeat offences an additional pecuniary penalty will apply, commensurate with the commercial gain resulting from the offence.

84. All offences will be summary offences and no offences shall be punishable by imprisonment.

85. The legislation will specify that it will be an offence for:

- producers to sell, or offer for sale, a priority product in New Zealand without it being covered by an accredited scheme. This will be a strict liability offence.

- retailers to knowingly sell, or offer for sale, a priority product in New Zealand without it being covered by an accredited scheme.
- people disposing of waste, transporters of waste and/or operators of disposal facilities to knowingly dispose of, transport or accept waste that is subject to regulations imposing a disposal ban.
- producers and/or retailers to knowingly sell, or offer for sale, products that contravene regulations relating to material controls.
- producers and/or retailers to breach regulations requiring take-back of products. This will be a strict liability offence.
- those collecting, distributing and accepting disposal fees to breach regulations establishing an advanced disposal fee scheme. This will be a strict liability offence.
- those collecting, distributing and accepting fees to breach regulations setting up a deposit/refund scheme. This will be a strict liability offence.
- collectors and/or recyclers to knowingly breach recycling standard regulations.
- those party to an accredited scheme to fail to provide prescribed information, fail to make a report, or to knowingly make a false report.

86. Failure to achieve waste minimisation, recovery and recycling objectives will not be an offence. If a party does not achieve an objective, the responsible Minister may modify the accredited scheme, including by introducing new or additional measures from the range of measures discussed in this paper.

87. Failure by territorial authorities to comply with a Ministerial direction for waste management plans will not be an offence. If a council does not comply with a direction, the responsible Minister may withhold government funds, including funds delivered through the proposed waste levy.

88. No offences or penalties will apply in relation to design standards.

89. More detail on the elements of offences and available defences will be outlined in a LEG paper and draft supplementary order paper. An example of offences related to a product stewardship measure could be, in the case of deposit/refund schemes:

- failure of the retailer to collect the deposit and/or administration fee and pass it on to the central administering agency
- failure of the retailer or recycler to refund the deposit when the product is returned for recycling
- failure of the central administering agency to refund the retailer or recycler for deposits paid out and administration costs.

90. Legislation will provide for customs import data collected from importers of regulated products to be provided by Customs to the enforcement agency, for enforcement purposes. This will be subject to the items being identifiable under the New Zealand tariff codes.

91. The legislation will provide for enforcement officers to be appointed, and define their powers, including the right to enter places of sale and to require disclosure of information relating to the sale, collection or recovery of priority products for purposes of determining compliance with regulations.

Administration

92. Administration of the product stewardship programme will be the responsibility of the Ministry for the Environment. This will involve:

- Developing and maintaining the list of priority products
- Working with businesses on the design of proposed product stewardship schemes
- Providing advice to businesses and the responsible Minister on proposed schemes, and the appropriateness of measures proposed for giving effect to them
- Coordinating consultation on proposed schemes
- Submitting schemes to the responsible Minister for accreditation
- Servicing the ministerial approval process for schemes and any regulatory instruments used
- Monitoring schemes and undertaking enforcement of regulations.

Public space recycling

93. On 13 February 2007, the Prime Minister announced in her Statement at the opening of Parliament that the Government would be funding the construction of more recycling facilities for use in public places. I propose to introduce, in partnership with local government, a network of public recycling facilities in larger cities and major tourism destinations; and to promote greater provision of recycling facilities at major public events.

94. Both these measures contribute towards the promotion of good recycling practice away from home. Consistent branding nationwide will therefore be used to increase public awareness of such facilities and how to use them.

Network of public recycling facilities

95. I propose that a network of public recycling facilities – compartmentalised bins in public areas with high foot traffic or tourist numbers – be installed over three years in New Zealand's larger cities and major tourist destinations. Bins will be installed in a few centres in 2007/08 before expanding to other parts of the country. This initiative will extend the waste minimisation services already implemented by most councils, such as kerbside recycling. Some councils have trialled public recycling, but for many it is a low priority due to the cost.

96. The main purpose of the public recycling initiative is to help New Zealanders to make sustainable choices, by supporting and reinforcing good domestic recycling behaviour. The initiative also helps with international perceptions of New Zealand's waste management performance. Tourism industry surveys of overseas visitors' experiences report that the lack of good public waste disposal facilities is one of the most common criticisms. A visible, easily identifiable network will help to improve the visitor experience.

97. The initiative has implications for the perception of New Zealand internationally and links closely to the aims of the nationwide household sustainability programme (also agreed to by Cabinet in February), so it is appropriate for central government to take the lead on some aspects. Central government will meet the capital costs of commissioning and installing the bins throughout the country and provide a contribution towards the operating costs for up to three years. Some initial support

with operating costs is necessary because the recycled materials to be collected currently have a low re-sale value, which is unlikely to meet the cost of emptying and maintaining the bins and processing the materials. This support will enable a timely roll-out and ensure nationwide consistency for public space recycling in New Zealand.

98. I will be pursuing partnerships with city and district councils that want to establish public space recycling, but are unable to implement it without further support. In the first year, the Ministry for the Environment will work to develop partnerships with at least three councils, one in a metropolitan area and one major tourist destination in each of the North and South Islands. Councils in other target locations, and that wish to participate, will be brought into the scheme in years two and three.

99. At the end of the three year period, local authorities will take over responsibility for fully funding the initiative. Local authorities will be encouraged to manage ongoing operational costs through their own financial planning programmes and/or through commercial relationships (eg, sale of advertising on bins). The Ministry for the Environment will also investigate whether it is possible or helpful for central government to broker alternative funding sources such as nationwide sponsorship.

100. The ability to deliver successful public recycling facilities is dependent on adequate central government funding to purchase bins and assist local authorities with the bulk of the operational costs in the establishment period. There has been limited consultation with local government on the proposal, and it is important that councils see the initiative as providing concrete support from central government rather than a central government imposition of further financial costs on ratepayers.

Provision of recycling facilities at major public events

101. Another key component in the development of a comprehensive and well integrated recycling infrastructure for New Zealand will be to ensure that there is a standard approach to recycling waste at major public events such as festivals, large outdoor concerts, fireworks displays, or sporting events. Ensuring recycling is extended to such events will provide additional opportunities for New Zealanders to 'do the right thing', and reinforce New Zealand's environmental credibility.

102. In developing comprehensive recycling infrastructure at home, in public and at public events, it is important that there is consistency between what can be recycled and branding of recycling facilities, so that the public can easily recognise collection bins. Another important issue for public events will be to ensure that promoters provide food and beverage packaging that is easily recyclable in the first place.

103. Some events managers already provide recycling facilities at major public events. Many councils also provide recycling facilities at events that they run. The Ministry for the Environment supports work through the New Zealand Packaging Accord to promote recycling at events; recent examples include the 'Coca-Cola Christmas in the Park' concerts in Auckland and Christchurch, the annual Ellerslie Flower Show, and the WOMAD (World of Music and Dance) festival held last month in Taranaki. Where members of the Packaging Accord sponsor major events, they are encouraged to use their influence to require recycling. Guidelines for 'Recycling at Events' have been developed under the Packaging Accord to support event organisers.

104. However, there is a need to improve the co-ordination of these activities and to ensure a more standardised approach to recycling at major public events that will be compatible with the proposed public space recycling initiative described above. In particular I have asked the Ministry for the Environment to:

- Promote the uptake of the guidelines for 'Recycling at Events' produced under the Packaging Accord with major event sponsors and local councils
- Develop a consistent national "brand" for public recycling infrastructure to ensure it is readily identifiable by the general public
- Require event recycling initiatives as a condition of local authority approvals for events
- Work through the Packaging Accord to ensure that fully recyclable packaging alternatives are available for products sold at public events; and to ensure that major brand owners and event sponsors are aware of these alternatives
- Develop comprehensive guidance for events organisers and local government on what sort of recycling facilities they could provide, and where these might be sourced
- Require event recycling initiatives as a condition of any support given by central government for major events. In particular, the Ministry for the Environment will assist the Ministry of Economic Development in planning for event recycling as part of overall planning for the Rugby World Cup 2011.

Implementation and monitoring

105. To implement the public recycling initiative, the Ministry for the Environment began informal preliminary discussions during April 2007 to identify councils that may wish to take part in the first year. These discussions will be followed with discussions with other councils in target areas, councils that have already trialled similar schemes, recycling operators and non-governmental organisations with an interest in waste. These discussions will identify implementation issues, and provide input into most appropriate bin type, size requirements, design, and consistent branding for the bins. I expect that the first bins will be installed in the final quarter of 2007.

106. The Ministry for the Environment will be responsible for monitoring and reporting on the public recycling initiative. It will track numbers and distribution of the bins, and may also undertake some surveying to monitor people's awareness of and use of the facilities. The Ministry for the Environment will consult further with local authorities to determine whether it is feasible to track data on the volumes and types of material being recovered.

Reporting on waste minimisation

107. In its 2007 review of New Zealand's environmental performance, the OECD recommended that we "strengthen monitoring of air and water quality, and waste generation and treatment, assuring baseline consistency of methods used at a local level to facilitate data aggregation and periodic reporting of key environmental indicators at national level".

108. A lack of comprehensive national data on waste disposal and recovery rates makes it difficult to measure our progress towards targets, benchmark our

performance against other countries', and identify action needed to address gaps in the infrastructure for minimising waste.

109. More standardised reporting of waste data will help the government undertake its programme of regular reporting on the state of New Zealand's environment [CAB Min (06) 40/2A refers]. In February 2007, I agreed to a core set of national environmental indicators against which data will be collected and reported. One of these indicators is for waste (trends in the volume and composition of solid waste to landfill).

110. The 47 core public sector agencies in the Govt³ programme are required to report on waste minimisation. As noted earlier in this paper, the Ministry for the Environment is investigating options to expand the Govt³ programme to the wider public sector and local government. The 2002 waste strategy already requires councils to report on their progress in minimising solid waste – and many councils do so. Core government departments will also track their greenhouse gas emissions associated with waste to landfill through the carbon neutral public service initiative.

111. Many private sector organisations also report on their actions to minimise waste. Such reports are voluntary, in response to market drivers and consumer demand.

112. To strengthen actions by public and private sector organisations, there is a particular need for mandatory reporting by operators of disposal and resource recovery facilities on the trends over time of recycling and waste disposal. I propose to legislate to require mandatory reporting operators of disposal and resource recovery facilities.

113. By and large, summarised information (such as quarterly or annual returns) from the various operators will be sufficient to provide the long term information required. More detailed data will need to be held by all private operators to meet their day to day operational requirements. Individual businesses should therefore not incur significant costs in providing summarised information. Requiring that operators provide summarised (and not detailed) information will help address some operators' concerns about the commercial sensitivity of information that they hold about their activities.

114. I also propose to legislate to enable other waste-related data collection and reporting requirements to be specified in the future. The monitoring and reporting requirements under individual product stewardship schemes may be sufficient to provide the required information on priority products. Further work is needed, and is under way, to identify specific data requirements.

115. The outcomes of this work will inform future proposals for new regulations on additional waste-related data collection and reporting requirements.

Governance

116. I propose that legislation is enacted to consolidate and strengthen existing provisions for governance of waste.

117. The Local Government Act 1974 is the principal Act for the governance of waste. This is supplemented by more generic provisions in the Resource

Management Act 1991 the Environment Act 1986 and the Hazardous Substances and New Organisms Act 1996. These Acts specify a range of roles and functions for central government, local government, businesses and individuals in relation to governance and management of waste.

Review and consolidation of councils' role and functions

118. I believe that existing provisions relating to council roles are generally comprehensive, but would benefit from being consolidated within new waste legislation. This could be achieved by transferring the functions specified in Part 31 of the Local Government Act 1974 into new waste legislation.

119. I further propose that council roles and functions should be reviewed and clarified, where necessary, as part of work to consolidate them under the one act.

Enhanced role and functions for the Ministry for the Environment

120. I propose that the new legislation should specify enhanced roles and functions for the Ministry for the Environment in relation to waste minimisation. Currently, the Ministry administers the Environment Act, the Resource Management Act and the Hazardous Substances and New Organisms Act. The Ministry is responsible for:

- Providing leadership for development of general waste-related policy
- Providing policy advice on specific waste issues such as management of hazardous wastes, clean-up of contaminated sites, waste water management, management of impacts on air and water quality, management of climate change impacts, and 'waste to energy' proposals
- Developing national environmental standards for waste
- Providing technical guidance on ways to minimise waste
- Ongoing monitoring of implementation of the Resource Management Act and the Hazardous Substances and New Organisms Act.

121. I propose that the Ministry should be the administering agency for the proposed new waste legislation. This would confer additional responsibilities for other measures proposed in this paper that need to be given effect through legislation. A new waste office is being set up within the Ministry for the Environment to deliver on these responsibilities, which will include:

- Administering the national waste levy
- Providing advice on priority products that should be managed or regulated under product stewardship schemes, and maintaining a list of these products
- Developing, monitoring and enforcing product stewardship schemes
- Providing advice on materials and products that should be subject to disposal bans and material controls
- Supporting the Minister responsible for the legislation in delivering their functions
- Providing administrative support for an independent advisory board on waste minimisation (discussed below)

Minister responsible for waste

122. I propose that the Minister responsible for the new waste legislation is the Minister for the Environment. This would mean that the Minister for the Environment would have functions in relation to the new measures proposed in this paper that need to be given effect through regulation. The Minister for the Environment would also take up functions currently carried out by the Minister of Local Government in relation to councils' responsibilities for minimising waste.

New waste advisory board

123. I propose that a new waste advisory board be established to advise the Minister responsible for waste on provisions and functions under the new legislation. The new legislation will set out a public process for setting up the board, and will specify criteria for appointment of its members. The board will be appointed by the Minister, and supported by the Ministry for the Environment. The Ministry for the Environment will develop terms of reference for the board. The board's functions will include advising the Minister and Ministry on:

- The appropriate level of the national waste levy, or the need for future adjustments
- Priority products that should be managed or regulated under product stewardship schemes
- Projects that should be supported through the contestable fund set up to allocate half of waste levy funds, and priorities for expenditure through the fund.

Integration with other initiatives

124. The proposals in this paper set out the detail of the waste initiative in the sustainability package agreed to by Cabinet in February 2007. These waste proposals link to all of the other sustainability initiatives and some other related government work programmes; and some of the other sustainability initiatives will actively contribute to the government's waste objectives.

Sustainable procurement

125. Sustainable procurement provides a way for businesses and householders to minimise waste (and avoid or reduce other environmental harms), by purchasing products that have low environmental impacts during their manufacture and useful life, and that can be easily recycled, re-used or disposed of at the end of their useful life. The key to effective sustainable procurement is provision of appropriate, accessible information to purchasers about the environmental and ethical effects that a product has at various stages of its life cycle. This information allows purchasers to compare and choose between different products available on the market.

126. The 'sustainable government procurement' initiative, which is being developed by the Ministry of Economic Development, involves development of a government procurement policy that requires sustainably produced goods and services to be used whenever possible. The parallel 'enhanced eco-verification' initiative will help procurement officers to identify sustainable products, and procurement officers will receive training to improve their knowledge and skills in relation to sustainability.

127. These two initiatives in the sustainability package build on activities under the Govt³ programme led by the Ministry for the Environment, to promote sustainable practices by government agencies. The Ministry for the Environment is investigating options for expanding the Govt³ programme to the wider public sector and local government.

128. In addition to measures by the public sector, many businesses already undertake voluntary sustainable procurement in response to market drivers and consumer demand. Examples include financial institutions offering discounts on environmental products as an incentive for consumers to purchase their financial products.

129. I believe the new 'sustainable government procurement initiative', the existing Govt³ work programme and voluntary private sector measures comprise an effective and appropriate policy on the waste minimisation aspects of sustainable procurement. I do not propose any further measures in this area at this time. The measures described above do not need to be given further effect through legislation.

Links to other sustainability initiatives

130. Waste management and minimisation is one of the areas of focus in the 'household sustainability' programme. This programme offers an opportunity to engage the public much more actively on waste issues, as it will raise the awareness of households about waste issues, help households to take practical steps to reduce their waste, and aim to increase people's motivation to make their day-to-day lives more sustainable. The programme will also support and promote organisations that are engaged at the local level with household-related waste issues.

131. The 'carbon neutral public service' and 'business partnerships for sustainability' initiatives will assist with targeting waste in the government and business sectors. The 'carbon neutral public service' initiative requires government departments to account for and reduce the emissions associated with waste to landfill, while the business partnerships initiative will help to provide businesses with guidance on reducing waste as part of broader business development programmes.

132. The 'enhanced eco-verification' initiative may also offer an opportunity to link product stewardship schemes into the government's broader sustainability objectives, by effectively 'accrediting' industry-led product stewardship schemes. Accredited schemes would be included in a database of verified environmental standards. I propose that this opportunity is explored further by the Ministry for the Environment and Ministry of Economic Development as the product stewardship aspects of this paper are further developed.

Engaging people in activities to minimise waste

133. Measures to raise people's awareness of the need to minimise waste, and to encourage them to play their part, will be addressed as part of the communications work programme for the sustainability package as a whole. Measures proposed in this paper, particularly in relation to product stewardship, have been designed to provide greater opportunities for businesses, communities, councils and individuals

to engage in the development and implementation of government-led initiatives for minimising waste.

Consultation

134. The following agencies have been consulted on previous drafts of this paper: the Treasury, Department of Prime Minister and Cabinet, Ministry of Economic Development, New Zealand Customs Service, Department of Internal Affairs, Department of Building and Housing, State Services Commission, Inland Revenue Department, Ministry of Transport, Te Puni Kōkiri, Ministry of Justice, Ministry of Foreign Affairs and Trade, and Ministry of Agriculture and Forestry. External groups have not been consulted on this paper. Due to timing constraints, departments did not have an opportunity to submit comments on a final draft of this paper.

Financial implications

135. Government would incur increased administration costs through the increased responsibilities for waste minimisation proposed for the Ministry for the Environment, including work related to administration of a waste levy and product stewardship schemes. It is estimated that these new functions will cost a total of \$2 million set up costs, and \$1.4 million ongoing administration costs per annum over and above the Ministry's current baseline funding for waste-related activities. This can be broken down as follows:

- Waste levy: set-up costs (estimated at \$1 million per year for the first two years) and ongoing administration costs (estimated at \$0.5 million per annum or 1.6% of total levy revenue per annum). These costs would be funded from levy revenue (ie, with neutral fiscal impact on the Crown)
- Advisory board: \$0.2 million per annum of new money to meet the costs of servicing the advisory board and paying board members' fees
- Product stewardship schemes: \$0.7 million per annum above baseline for developing, accrediting, and enforcing product stewardship schemes.

136. The Ministry for the Environment will meet the costs of implementing the new functions outlined in this paper in 2007/08 from baseline. I will seek the additional funding of \$0.9 million per annum required to implement policies in this paper, for 2008/09 and outyears, in the 2008 Budget.

137. Budget 2007 contains \$4.575 million over three years in Vote: Environment to fund the public recycling initiative. This does not include funding for any new measures for provision of recycling facilities at major public events.

Human rights

138. The proposals in this paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The paper proposes to include additional strict liability offences in the Waste Management (Solids) Bill. Strict liability offences can raise an issue of inconsistency with section 25(c) of the Bill of

Rights Act (presumption of innocence). The Ministry for the Environment will work with the Ministry of Justice to ensure that the final Bill is consistent with the rights and freedoms affirmed in that Act.

Legislative implications

139. This paper proposes that new waste legislation is enacted to consolidate councils' solid waste functions, which are contained in Part 31 of the Local Government Act 1974. The legislation will also give effect to new measures proposed in this paper, where required. The Waste Minimisation (Solids) Bill currently before the Local Government and Environment Select Committee offers a vehicle to achieve this, although amendments to the current Bill will be needed.

140. The new measures proposed in this paper that would need to be given effect through new waste legislation are:

- A national waste levy
- Identification of priority products to manage products that cause environmental harm or disposal problems
- Requirements for, and accreditation of, product stewardship schemes
- Regulation making powers to implement measures to support implementation of product stewardship schemes, such as disposal bans
- Mandatory reporting by operators of recycling and disposal facilities; and provision for other data collection and reporting requirements
- Enhanced functions for the Ministry for the Environment, as administering agency for the new waste legislation
- New functions for the Minister for the Environment, as Minister responsible for the new waste legislation

141. The Ministry for the Environment has been appointed as advisor to the Select Committee considering the Waste Bill. The Ministry will advise the Select Committee on changes to the Bill – or on the content of a supplementary order paper to amend the current Bill – as needed to implement Cabinet decisions in response to this paper.

142. Regulations that give effect to product stewardship schemes will need to be compliant with international agreements, including those connected to the World Trade Organisation (WTO), which relate to trade and regulations that affect trade. These agreements do not preclude use of regulation for product stewardship but they do affect what regulations can be used. The WTO Agreement on Technical Barriers to Trade (TBT) requires that foreign produced "like products" must be treated no less favourably than domestic "like products". It is possible that some product stewardship regulations may need to be notified to the WTO's Technical Barriers to Trade Committee.

Regulatory impact analysis

143. Two Regulatory Impact Statements accompany these policy proposals.

Regulatory Impact Statement on the waste levy and proposals other than product stewardship

144. A Regulatory Impact Statement (RIS) was prepared on the waste levy and proposals other than product stewardship, and the Ministry for the Environment considers it to be adequate. Prior to this paper being considered by the Cabinet Policy Committee, the RIS was circulated for departmental consultation but, due to timing constraints, the Regulatory Impact Analysis Unit did not have time to consider its adequacy.

145. In response to direction provided by the Cabinet Policy Committee on 16 May, the RIS has since been reviewed, in consultation with the RIAU, to provide further detail about the waste levy proposals – specifically:

- Whether the levy is designed primarily as: an economic instrument for changing people's behaviour; or a means to generate new revenue for waste minimisation activities
- Why the level of the levy is proposed at \$10/tonne
- What changes householders will see arising from the levy
- What activities will be funded from levy revenue
- What criteria will be used for allocating levy revenue.

Regulatory Impact Statement on product stewardship proposals

146. A second RIS was prepared covering the product stewardship proposals and the Ministry for the Environment also considers this to be adequate. Any use of a regulatory instrument that is provided for in the legislation will be subject to its own regulatory impact analysis and regulatory impact statement at the time. In response to direction provided by the Cabinet Policy Committee on 16 May, the RIS has since been reviewed, in consultation with the RIAU, to provide further detail about criteria for assessing both priority products and regulatory measures to support product stewardship schemes.

147. The Ministry for the Environment notes that while the proposal differs in some respects from the option consulted on in 2005 the bulk of the regulatory instruments were discussed then and have been subject to submissions to the Select Committee on the Waste Minimisation (Solids) Bill. The proposal to empower the responsible Minister to direct provisions in councils' waste management plans has not been consulted on by the Ministry and as it is not in the Bill, it has not be consulted on by the Select Committee.

Gender implications

148. There are no gender implications arising from this paper.

Disability perspective

149. There are no disability implications arising from this paper.

Publicity

150. The Prime Minister's 2007 Statement to Parliament announced the government's intention to enact effective legislation for some form of waste levy to help fund better waste minimisation infrastructure. Stakeholders are aware that the government is using the select committee process around the Waste Minimisation (Solids) Bill to consider views on all waste management issues.

Recommendations

The Minister for the Environment recommends that the Committee:

Background

1. **Note** that in January 2002, the Cabinet Business Committee invited the Minister for the Environment to report back on the effectiveness of a waste levy as a means of facilitating the objectives of the New Zealand Waste Strategy [CBC Min (02) 1/8 and CAB Min (04) 31/5 refer]
2. **Note** that, in November 2006, Cabinet: noted the need for funding to develop an effective resource recovery infrastructure, and measures to address specific wastes that are increasing in volume and that, by their nature, pose high risks to people and the environment; agreed that increased effort on waste minimisation is desirable; invited the Minister for the Environment to report back with detailed proposals on waste funding; and agreed to strengthen product stewardship schemes [CAB Min (06) 42/5 refers]
3. **Note** that Cabinet agreed on 12 February 2007 that a set of initiatives to elevate sustainability be refined, including an initiative based around waste minimisation and management [CAB Min (07) 4/1A refers]

National waste levy

4. **Agree** that a national waste levy will be imposed on waste disposal (i.e. material that is not reused, recovered or recycled) to recognise that waste has social, environmental, and economic costs, and to raise revenue for waste minimisation
5. **Note** that I have considered a number of options for raising more revenue to fund waste minimisation activities, and my preferred option is to introduce a national waste levy, to be given effect through regulation

Collecting the levy

6. **Agree** to legislate to enable a duty to pay the levy to be imposed on operators of waste disposal facilities; and empower regulations to be made to prescribe which disposal facilities are subject to the levy
7. **Agree** that regulations under recommendation 6 be developed for landfills that are lawfully established under the Resource Management Act 1991 and that are permitted to accept municipal solid waste for disposal

8. **Agree** to legislate to require disposal facility operators to pay the levy on every tonne of material disposed of at their facility (other than material that is exempt from the levy under regulations) to the Ministry for the Environment, and to empower regulations specifying the method of payment

9. **Agree** to legislate for regulations that require disposal facility operators to keep an accurate record of the amount of materials disposed

10. **Agree** to legislate for regulations that require disposal facility operators to provide information to the Ministry for the Environment on the amount of materials disposed

Setting and adjusting the levy

11. **Agree** that the levy will be set at an initial rate of \$10 per tonne of waste or other materials disposed

12. **Agree** to legislate for regulations to vary the level of the levy and that these regulations will be subject to approval by Order In Council

13. **Agree** to legislate for regulations to apply different levy rates to different types of disposal facilities

14. **Note** that the adequacy and effectiveness of the levy and its allocation will be reviewed regularly

Material subject to the levy

15. **Agree** that the levy will apply to all waste and other material disposed of in facilities to which the levy applies, except for those materials exempted from the levy by regulation

16. **Agree** to legislate for regulations to be made for exemptions from the levy for disposal of materials from disaster recovery operations and for some material used for operational purposes at the disposal facility

Offences and penalties

17. **Agree** that legislation will provide for it to be a strict liability summary offence for a disposal facility operator to:

17.1 Fail to keep an accurate record of the amount of waste and other materials disposed of

17.2 Fail to report the amount of waste and other materials disposed of to the Ministry for the Environment

18. **Agree** that it will be a defence to prosecution for the offences in recommendation 17 if the defendant proves that the action or event was due to an event that was beyond the defendant's control and could not have been reasonably foreseen or prevented by the defendant

19. **Agree** that legislation will provide for it to be an offence for a disposal facility operator to knowingly submit false or misleading information on the amount of waste and other materials disposed of

20. **Agree** that legislation will set maximum fines for the offences in recommendations 17 and 19 of up to \$100,000

21. **Agree** to legislate to empower the Ministry for the Environment to estimate unpaid levy amounts where information has not been provided and to charge operators accordingly; and to empower regulations specifying the method for estimating the unpaid levy

22. **Agree** to legislate to empower the Ministry for the Environment to inspect and audit waste disposal facilities and records held by their operators

23. **Agree** to legislate to empower the Ministry for the Environment to enforce payment of levy monies as a summary judgement debt

24. **Agree** to legislate to provide for financial penalties for late payment of the levy, with the penalty rate for late payment of levies to be set at the same rate of interest as for unpaid summary judgement debts

Allocating the proceeds of the levy

25. **Agree** that 50% of the levy will be allocated to territorial authorities, on a population basis, to be used for implementing waste minimisation activities specified in the authorities' waste management plans

26. **Agree** that the remainder of the levy (net of the administrative costs) will be used for a contestable fund for waste minimisation projects that further the government's policy on waste

27. **Agree** that councils will be required to report annually on how they are spending the 'per capita' revenue allocated to them through the waste levy, and that ongoing funding will be contingent on councils meeting appropriate performance standards for spending of 'per capita' levy funds from year to year

28. **Note** that the new waste advisory board (see recommendations 63 and 64) will provide input on the allocation of contestable funding, including priorities for expenditure, but that final allocation decisions will be made by the Minister (on advice from the Ministry)

Product stewardship

29. **Note** that, in November 2006, Cabinet agreed that backstop legislation for product stewardship is necessary when industry is not able to develop voluntary product stewardship schemes within reasonable timeframes. Cabinet also agreed (among other things) to strengthen product stewardship schemes, which encourage producers, retailers and consumers of manufactured products to accept responsibility for the environmental impacts of those products at the end of their useful life. [CAB Min (06) 42/5 refers.]

30. **Agree** that new legislation will be enacted to:

30.1 provide accreditation processes to encourage schemes to be developed by industry or through partnerships between government and industry thereby rewarding businesses that are taking steps to minimise environmental impacts from the manufacture, use and disposal of their product

30.2 provide regulatory back-up for schemes developed by industry or through partnerships between government and industry, to help make schemes effective (e.g. addressing the problem of 'free-riding')

30.2 set out a process for government and industry to develop schemes for 'priority products' that cause particular environmental harm or pose disposal problems.

31. **Agree** that new legislation will be enacted to establish a process to identify 'priority products' (or types of product) that cause particular environmental harm or disposal problems at the end of their useful life or where there are benefits to society from the recovery, recycling or reuse of the materials subject to a scheme.

32. **Note** that the Ministry for the Environment will maintain a list of 'priority products'.

33. **Agree** that the list will be promulgated and updated by Gazette notice and a copy will be published on the Ministry for the Environment's website.

34. **Agree** that criteria for identifying priority products to be covered by a product stewardship scheme will be:

34.1 Significant environmental harm arises at the end of the product's useful life, or there is the potential for significant harm following disposal of the product; or

34.2 There is significant public concern about problems arising at the end of the product's useful life; or

34.3 Where there are net benefits to society from the recovery, recycling or reuse of the materials subject to a scheme; and

34.3 Consultation with stakeholders and the public has identified a desire for action to address those problems; and

34.4 It has been determined that the product could be managed effectively through a product stewardship scheme.

35. **Agree** that the new legislation will require product stewardship schemes to be implemented for each priority product identified.

36. **Agree** to enact legislation to enable the following measures to be imposed as required to give effect to product stewardship schemes:

36.1 Establishing waste minimisation, recovery and recycling objectives

36.2 Disposal bans

36.3 Material controls

36.4 Territorial authority waste management plans

36.5 Take back schemes

36.6 Advance disposal fees

36.7 Deposit/refund schemes

36.8 Labelling

36.9 Recycling standards

36.10 Product design.

37. **Note** that many of these measures can be used on a voluntary basis.

38. **Agree** that the legislation will provide that the responsible Minister may accredit a product stewardship scheme if the scheme:

38.1 will achieve the outcome specified for the product (or products) in a reasonable time

38.2 provides for reduction in environmental impacts of the product when it becomes waste or when waste is produced as a by-product (eg, packaging).

38.3 proposes a registration system to enable relevant parties to know which products are covered by the scheme

38.4 does not result in less competition in the market for the product covered by the scheme

38.5 provides for enforcement and compliance

38.6 makes clear the role of retailers, local authorities, recyclers and all others who have a role in the selling, distribution or recovery of a product

38.7 provides for making consumers aware of the scheme and how to manage the product in a safe way

38.8 provides for assessing and reporting performance of the scheme

38.9 will not cause breaches of other domestic or international laws.

39. **Note** that schemes will have to comply with other legal obligations (such as the Commerce Act).

40. **Agree** that industry can submit product stewardship schemes for non-priority products to the responsible Minister for accreditation.

Offences and penalties

41. **Agree** that offences and penalties will apply for specified breaches of a measure under a scheme, where that measure is given effect through regulation.

42. **Agree** that the maximum fine for any offence will be \$100,000 per offence; and that, for repeat offences, an additional pecuniary penalty will apply, commensurate with the commercial gain resulting from the offence.

43. **Agree** that all offences will be summary offences and no offences shall be punishable by imprisonment.

44. **Agree** that the legislation will make it an offence for:

44.1 producers to sell, or offer for sale, a priority product in New Zealand without it being covered by an accredited scheme. This will be a strict liability offence

44.2 retailers to knowingly sell, or offer for sale, a priority product in New Zealand without it being covered by an accredited scheme

44.3 people disposing of waste, transporters of waste and/or operators of disposal facilities to knowingly dispose of, transport or accept waste that is subject to a disposal ban regulation

44.4 producers and/or retailers to breach regulations requiring take back of products. This will be a strict liability offence

44.5 producers and/or retailers to knowingly sell, or offer for sale, a product that contravenes regulations relating to material controls

44.6 those collecting, distributing and accepting disposal fees to breach regulations establishing an advanced disposal fee scheme. This will be a strict liability offence

44.7 those collecting, distributing and accepting fees to breach regulations setting up a deposit/refund scheme. This will be a strict liability offence

44.8 collectors and/or recyclers to knowingly breach recycling standard regulations

44.9 those party to an accredited scheme to fail to provide prescribed information, fail to make a report, or to knowingly make a false report.

45. **Agree** that failure to achieve waste minimisation, recovery and recycling objectives will not be an offence.

46. **Agree** that failure by territorial authorities to comply with Ministerial directions in relation to their waste management plans will not be an offence.

47. **Agree** that no offences or penalties will apply in relation to design standards.

48. **Agree** that the legislation will provide for customs import data collected from importers of regulated products to be provided by Customs to the enforcement agency, for enforcement purposes.

49. **Agree** that legislation will provide for appointment of enforcement officers, and will define their powers.

Reporting

50. Agree to legislate to require reporting to the Ministry for the Environment:

50.1 by operators of cleanfill and landfill disposal facilities, on tonnages disposed

50.2 by operators of resource recovery facilities, on tonnages recovered

51. Agree to legislate to enable other waste-related data collection and reporting requirements to be specified in the future

New waste legislation

52. **Agree** that new waste legislation will be enacted to:

52.1 consolidate, and amend as required, councils' solid waste functions as contained in Part 31 of the Local Government Act 1974

52.2 give effect to the following new measures:

52.2.1 A national waste levy

52.2.2 Requirements for, and accreditation of, product stewardship schemes

52.2.3 Identification of priority products to manage products that cause environmental harm or disposal problems

52.2.4 Regulation making powers to implement measures to support implementation of product stewardship schemes, such as disposal bans

52.2.5 Mandatory reporting by operators of recycling and disposal facilities; and provision for other data collection and reporting requirements

52.2.6 Enhanced functions for the Ministry for the Environment, as administering agency for the new waste legislation

52.2.7 New functions for the Minister for the Environment, as Minister responsible for the new waste legislation.

53. **Note** that the Waste Minimisation (Solids) Bill currently before the Local Government and Environment Select Committee offers a vehicle to implement new waste legislation, but that amendments to the Bill will be needed.

54. **Agree** that the Minister for the Environment will instruct the Parliamentary Counsel Office to draft a supplementary order paper to amend the current Bill, in line with the recommendations in this paper.

55. **Invite** the Minister for the Environment to report back to the Cabinet Legislation Committee in July 2007 with the supplementary order paper.

56. **Agree** that the Ministry for the Environment will administer the new waste legislation.

57. **Agree** that the Minister for the Environment will be the Minister responsible for the new waste legislation.

Public recycling facilities

58. **Note** that, in her Speech to Parliament on 13 February 2007, the Prime Minister announced the government's intention to provide funding for the construction of more public recycling facilities

59. **Note** that there is funding of \$4.575 million in Vote: Environment in Budget 2007 to develop and implement the public recycling initiative

60. **Agree** to the development of a network of public recycling facilities in larger cities and major tourist destinations

61. **Direct** the Ministry for the Environment to enter into discussions with relevant territorial authorities and stakeholders to implement the network of public recycling facilities in partnership with territorial authorities

62. **Note** that the Ministry for the Environment has work under way, in partnership with members of the Packaging Accord, councils, and other events organisers, to promote the provision of recycling facilities at major public events.

New waste advisory board

63. **Note** that the Minister for the Environment will appoint a new advisory board to advise the responsible Minister and the Ministry for the Environment on provisions and functions under the new waste legislation

64. **Note** that the advisory board will be supported by the Ministry for the Environment. The Ministry will develop terms of reference for the board's functions

Integration with other initiatives

65. **Note** that the sustainable government procurement initiative agreed to by Cabinet in February 2007, existing Govt³ programme and voluntary private sector initiatives comprise an effective and appropriate policy on the waste minimisation aspects of sustainable procurement

66. **Note** that waste is one of the areas of focus for the household sustainability programme agreed to by Cabinet in February 2007

67. **Direct** the Ministry for the Environment and Ministry of Economic Development to investigate whether industry-led product stewardship schemes should be brought within the 'enhanced eco-verification' initiative agreed to by Cabinet in February 2007.

Engaging people in activities to minimise waste

68. **Note** that measures to raise people's awareness of the need to minimise waste, and to encourage them to play their part, will be addressed as part of the communications work programme for the sustainability package as a whole; and that the design of proposals outlined above will provide greater opportunities for businesses, communities, councils and individuals to engage in government-led initiatives for minimising waste.

Financial implications

69. **Note** that an additional \$0.9 million per annum will be needed to fund the new functions outlined above

70. **Note** that the Ministry for the Environment will meet the costs of implementing the new functions outlined above in 2007/08 from baselines

71. **Note** that the Ministry for the Environment will be seeking additional funding of \$0.9 million per annum from 2008/09 in the 2008 Budget to continue implementation of measures proposed in this paper.

Hon David Benson-Pope
Minister for the Environment