



Waste Minimisation Act 2008

# Compliance, Monitoring and Enforcement Strategy



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

**New Zealand Government**

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# Introduction

## About the Ministry for the Environment

The Ministry for the Environment (the Ministry) was established under the Environment Act 1986 (the Act) and is the Government's primary adviser on environmental matters. We are a public service agency, serving the government of the day.

The Act requires us to think broadly – to consider the intrinsic values of ecosystems, the values that people place on the environment, the principles of the Tiriti o Waitangi, the sustainability of natural and physical resources, and the needs of future generations.

We want to see a flourishing environment for every generation. The Ministry's 2020 Strategic Framework reflects the growing emphasis on supporting implementation and delivery. Compliance monitoring and enforcement is a critical aspect of this new focus.

## About the strategy

The Ministry is responsible for overseeing Aotearoa New Zealand's environmental management system. This is a **stewardship role**, supported by the Ministry's compliance strategy (2017).

We also have a direct **regulatory role** in compliance, monitoring and enforcement (CME) of the Waste Minimisation Act 2008 (the WMA) and associated regulations that is unique across the organisation. To address how we perform this role, the CME strategy specifically:

- sets out our approach to CME under the WMA
- explains how we achieve compliance and interact with our regulated communities.

The CME strategy recognises that good regulatory practice is fundamental to meeting the WMA's objectives. It guides our decisions to ensure we give appropriate effect to the good regulation principles and regulatory stewardship responsibilities, within our resources and mandates. Our internal operational procedures guide the Ministry's officers in carrying out the strategy.

# Our principles

The Ministry aims to be a modern and effective regulator that exercises its statutory authority fairly and credibly.

We will take appropriate action based on the following principles:

- › **Transparent**

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- › **Consistent**

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- › **Fair, reasonable, and proportional**

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- › **Informed and evidence based**

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- › **Collaborative**

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- › **Lawful, ethical and accountable**

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- › **Targeted**

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- › **Responsive and effective**

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For full details on the principles see appendix 1.

## Good regulatory practice

The Government has, over time, developed views about what makes a good regulatory system and what is good stewardship practice for a regulatory agency. These views have been consolidated, updated and released as the 2017 Government Expectations for Good Regulatory Practice (the 2017 expectations).

This updated publication sets out the expectations for regulatory stewardship by government agencies, identifying the actions they should take to discharge their obligations including 'good regulator practice'. These are enshrined in law in the principles in [section 12 of the Public Service Act 2020](#).

The 2017 expectations draw significantly on, but now formally replace, all earlier expectations. They incorporate key elements from the 2009 Government Statement on Regulation and the 1997 Code of Good Regulatory Practice. They also update and extend the scope of the 2013 Initial Expectations for Regulatory Stewardship to more clearly include regulatory implementation and practice.

# Roles and responsibilities

## The Waste Minimisation Act 2008

The Waste Minimisation Act 2008 came into force in September 2008.

The following regulations also apply:

- Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009
- Waste Minimisation (Plastic Shopping Bags) Regulations 2018
- Waste Minimisation (Microbeads) Regulations 2017.<sup>1</sup>
- Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2021
- Waste Minimisation (Information Requirements) Regulations 2021

Together, the WMA and regulations require the Ministry to:

- **Collect** the waste disposal levy from disposal facility operators.<sup>2</sup>
- **Distribute** levy money:
  - to territorial authorities for waste minimisation initiatives<sup>3</sup>
  - for Waste Minimisation Fund projects.
- **Monitor:**
  - territorial authorities' spending of the levy money<sup>4</sup> and review of their waste management and minimisation plans<sup>5</sup>

- disposal facility operators paying the levy on waste disposed of at their facility, and recording and reporting that waste as outlined in the levy regulations
  - organisations which are paid levy money from the Waste Minimisation Fund
  - the levy collector, if someone other than the Secretary for the Environment
  - managers or participants in regulated product stewardship schemes<sup>6</sup>
  - product bans such as the plastic bag ban.
- **Investigate** alleged breaches of the WMA and associated regulations administered by the Ministry.

To maximise its compliance activities, the Ministry works with other government agencies and stakeholder groups. Some of these keep resources and databases that the Ministry can use to monitor compliance and investigate alleged breaches.

## Auditors and enforcement officers

The WMA provides for the appointment of individuals to exercise a variety of powers for compliance, monitoring and enforcement. Depending on the role, the Ministry's auditors and enforcement officers have powers of entry, and to require information to be given.

<sup>1</sup> Administered by the Environmental Protection Authority

<sup>2</sup> In accordance with s28

<sup>3</sup> In accordance with s31

<sup>4</sup> In line with statutory requirements in accordance with s32

<sup>5</sup> In accordance with statutory timeframes in accordance with s50

<sup>6</sup> In accordance with s88

# Our approach

## Risk-based

The Ministry will take a responsive and risk-based approach to compliance. This helps us make informed decisions, focusing on the biggest risks to the environment and human health, and target those businesses and people least likely to comply.

To ensure our strategy for determining relative risk remains fit for purpose, we will consider our methodologies regularly as part of a **Performance Monitoring Framework**.

We will set the level of risk based on:

- information on past audits
- industry-wide trends in compliance
- engagement with internal and external stakeholders
- engagement with our regulated community
- amount of financial allocation
- information from other sources.

## Capacity and capability

The 2017 expectations and the New Zealand community require our frontline workforce to have the knowledge, skills, tools and support to act with integrity, and review and improve their professional practice.

To meet these expectations, all audits will comply with the New Zealand Standard (NZS) and International Organization for Standardization (ISO) standard AS/NZS ISO 19011:2019 Guidelines for auditing management systems.<sup>7</sup>

To ensure we use best practice audit principles and standards, staff will have accredited auditor training. The aim is to develop a system based on recognised standards, that will provide objective assessment and stand up to scrutiny by external parties.

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<sup>7</sup> AS/NZS ISO 19011:2019 is identical to and reproduced from the international auditing standard [Guidelines for Auditing Management Systems \(ISO 19011:2018\)](#) and applies to all organisations that need to plan and conduct internal or external audits of management systems or manage an audit programme.

# Implementation

There are five important pillars to an effective compliance system.

The Ministry will carry out its compliance role by:



- 1 **Education, engagement and incentives** to promote voluntary compliance.
- 2 **Monitoring** the activities of our regulated communities to deploy pro-active programmes and identify potential breaches promptly.
- 3 **Investigating** alleged breaches.
- 4 **Taking appropriate action** when a breach occurs.
- 5 **Performance monitoring** of our strategy.

We administer our compliance programmes in line with these five pillars, including careful separation of functions where appropriate, such as audit and investigation.

# 1.



## Education, engagement and incentives

Providing information to our regulated communities encourages voluntary compliance.

The Ministry will promote compliance by:

- removing barriers to compliance (eg, lack of knowledge about legislative requirements and how to comply) and promoting the purposes of the WMA
- overcoming factors that encourage non-compliance (eg, lack of public support for, and misunderstanding of, the purposes behind the laws and regulations for waste minimisation)
- raising awareness of the benefits of complying, and the potential consequences of not complying.

## 2.



# Monitoring

## The Ministry uses three types of monitoring.

Monitoring compliance with waste legislation is an essential part of the Ministry's role. It helps us to:

- determine the level of compliance and trends for regulated activities
- detect possible breaches and identify where action may be required to avoid or mitigate the impact of non-compliance
- identify the need for and type of education campaigns
- assess the effectiveness of the Ministry's work and identify opportunities for improvement.

### Proactive and regular monitoring

These activities may detect possible breaches, and include using publicly available information, aerial photography and high-resolution satellite imagery.

### Audit

The Ministry conducts audits to verify compliance with the WMA.

### Reports of possible breaches

We receive reports of alleged breaches from external sources, including members of the public, local councils and other government agencies. We record, assess and consider for action all such breaches in accordance with this strategy.

# 3.



## Investigating alleged breaches

We prioritise all alleged breaches for investigation, using risk management in line with the New Zealand Standard.<sup>8</sup> This is the most efficient allocation of our resources.

For all alleged breaches, we make an initial desktop assessment by:

- reviewing the Ministry's records for previous compliance investigations and any other documentation on the site or business, as well as the people who may be involved
- assessing the likely harm, impacts on others and on the integrity of the regulatory system.

If further investigation is warranted, we may inspect the site and collect information from involved parties.

During an investigation, enforcement officers will gather evidence of the incident to establish whether an offence has occurred, and the identity of those who may be responsible. The evidence may include videos, photographs, samples and physical evidence, witness statements and records of interview.

Enforcement officers will act in a professional manner that is:

- fair and impartial
- consistent with the presumption of innocence
- within their delegated authority
- in accordance with the law
- respectful of individuals.

<sup>8</sup> AS/NZS ISO 31000:2009 Risk Management – Principles and guidelines

# 4.



## Taking appropriate action

If, after investigation, we consider there has been a breach, we follow a process to ensure our actions are:

- fair, appropriate and proportional
- targeted at the greatest risk to the purpose of the WMA.

The Ministry has an Enforcement Decisions Group (EDG) to make these decisions, guided by an Enforcement Decisions Policy.

The EDG will consider:

- the degree of harm or potential harm resulting from the breach
- the severity of the breach
- the integrity of the regulatory system, such as:
  - avoiding a poor precedent being set
  - an unreasonable or extreme interpretation of the law

- the public interest, for example:
  - if action would be seen as counter-productive by bringing the law into disrepute
  - the level of public concern
  - the need for either general or specific deterrence
  
- any aggravating factors, for example whether:
  - an individual is culpable (eg, they are aware or should be aware that they are committing a breach and continue regardless)
  - an individual has a history of breaches where the Ministry has taken action
  - the breach is ongoing
  
- any mitigating factors, for example whether the individual:
  - had acted in line with Ministry advice
  - is not culpable
  - is willing to cooperate, and the extent to which they have already done so.

## Prosecution

In deciding to start a prosecution or civil proceedings, we will consider whether this best serves the public interest, and whether the gravity of the offence makes prosecution the appropriate response.

In all prosecutions we are involved in, the burden of proof to secure a conviction rests with the Ministry.

All offences under the WMA are criminal in nature. Therefore, the standard of proof to enable a court to find that an offence has been proved, is proof 'beyond reasonable doubt', as to the elements of the offence.

The Ministry uses a range of measures in response to breaches such as warning letters, and prosecution. A table of options, as available under the Ministry's legislation, is set out in [appendix 2](#).

# 5.



## Performance monitoring

The Ministry is committed to applying the CME strategy in a transparent and accountable manner. We will review and report on our implementation of this strategy annually.

Over time we will review the strategy to take into account our experiences. If our findings mean we need to amend the strategy, we will update it on the Ministry's website.

# Ethical conduct

The Ministry is bound by the Public Services Commissioner's Standards of Integrity and Conduct, which all our officers must comply with.

We make compliance decisions in line with the Standards of Integrity and Conduct and to the highest ethical and professional standards.

Any approaches to bribe, influence or engage officers in corrupt or unlawful behaviour will be reported immediately and investigated by the appropriate authority.





# Appendix 1

## Principles

**Transparent** – We will provide clear information and explanation about the standards and requirements for compliance. We will ensure that the community has access to information about performance where possible, as well as actions we take to address non-compliance.

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**Consistent** – Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. We will ensure that our staff have the necessary skills and are appropriately trained, and that there are effective systems and policies to support them.

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**Fair, reasonable, and proportional** – We will apply regulatory interventions and actions appropriate to the situation. We will use our discretion justifiably and ensure that:

- our decisions are appropriate to the circumstances
  - our interventions and actions will be proportionate to the risks to people and the environment, and the seriousness of the non-compliance.
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**Informed and evidence based** – Our decisions will be informed by a range of sources, including sound science, and information from other regulators, members of the community, industry and interest groups.

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## Principles

**Collaborative** – We will work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our regions. We will engage with the community, those we regulate, and the government to explain and promote legislative requirements, and achieve better community and environmental outcomes.

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**Lawful, ethical and accountable** – We will conduct ourselves lawfully and impartially and in accordance with these principles and relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.

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**Targeted** – We will focus on the most important issues and problems to achieve the best environmental outcomes. We will target our regulatory intervention at poor performers and illegal activities that pose the greatest risk to the environment. We will apply the right tool for the right problem at the right time.

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**Responsive and effective** – We will consider all alleged non-compliance to determine the necessary interventions and action to minimise impacts on the environment and the community, and maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

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# Appendix 2

The Ministry may use the following enforcement tools.

## Enforcement tools

### GENERAL

Education/engagement

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Formal warning

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### **Procedural offences relating to obstruction of enforcement officer under section 65(3) of the WMA**

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Prosecution for criminal offences under the Crimes Act 1961, such as:

- Section 111 – False statement or declarations (imprisonment up to 3 years)
- Section 228 – Dishonestly using a document (imprisonment up to 7 years)
- Section 240 – Obtains by deception.

## Enforcement tools

### SPECIFIC

#### Waste levy compliance

- **Civil proceedings to recover unpaid levy under section 36 of the WMA.**
- **Prosecution for offence under the WMA.**
  - Penalties can include fine of up to \$100,000 under section 65(1)(e) and (f) of the WMA.
  - Seek court order for commercial gain resulting from breach of the WMA under section 67 of the WMA.

#### Territorial authorities

- Secretary for the Environment must retain levy money where requirements of section 33 of the WMA are not met.
- Minister may direct Secretary to retain payment to territorial authority (TA) under section 37 if the TA has not met the requirements of section 32 of the WMA.

#### Plastic bag ban

- Prosecution for offence under the WMA. Penalties can include fine of up to \$100,000 under section 65(1)(d) of the WMA.

#### Waste Minimisation Fund

- Enforce contractual conditions.

#### Product stewardship

- Revocation of scheme accreditation under section 18 of the WMA.
- For regulated product stewardship only: prosecution for offence under the WMA. Penalties can include fine of up to \$100,000 under section 65(1)(a) and (c) of the WMA.

# Glossary

<b>Audit</b>	A systematic, independent and documented inspection to verify compliance with the WMA and associated regulations.
<b>Auditor</b>	A person appointed under section 87(1) of the Waste Minimisation Act 2008 to carry out an audit.
<b>CME</b>	Compliance, monitoring and enforcement.
<b>Disposal facility</b>	A landfill or other area for disposing of waste, at which the waste disposed of includes household waste, and which operates at least in part as a business.
<b>Enforcement Decisions Group</b>	A group convened to make decisions on significant enforcement actions according to a set process and considerations. The group has a director as chair, a representative from Legal and the Manager of Waste Operations, an investigator and subject matter experts as required.
<b>Enforcement Decisions Policy</b>	Sets out the process for making decisions on significant enforcement actions, including the composition of the Enforcement Decisions Group.
<b>Enforcement officer</b>	A person appointed under section 76(1) or (2) of the Waste Minimisation Act 2008 to take actions on breaches of the WMA.

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<b>Investigation</b>	<p>A process of seeking information about an alleged, apparent or potential breach of the law, involving possible judicial proceedings. It aims to:</p> <ul style="list-style-type: none"><li>→ establish the facts</li><li>→ identify any breaches of the law</li><li>→ recommend an appropriate response</li><li>→ understand the causes of the action and any lessons learned.</li></ul>
<b>Performance Monitoring Framework</b>	<p>The approach to measuring the effectiveness of our actions to implement the WMA.</p>
<b>Product stewardship</b>	<p>A mechanism under the WMA supporting producers to become responsible for disposing of waste products that would otherwise go to landfill, such as electronics.</p>
<b>Regulated communities</b>	<p>People who are subject to the WMA and associated regulations, such as disposal facilities and territorial authorities.</p>
<b>Territorial authorities</b>	<p>The second tier of local government, below regional councils.</p>
<b>WMA</b>	<p>The Waste Minimisation Act 2008.</p>

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