

In Confidence

Office of the Associate Minister for the Environment

Chair - Cabinet Environment, Energy and Climate Committee

Waste legislation 7: outstanding policy decisions

Proposal

1. This paper seeks your agreement to further policy proposals related to new waste legislation that will replace the Waste Minimisation Act 2008 and Litter Act 1979. In particular:
 - 1.1 cost recovery provisions for the waste licensing scheme and waste tracking system;
 - 1.2 establishing a regulator for environmental performance standards;
 - 1.3 enabling some technical and administrative details relating to national waste standards to be gazetted by the Minister for the Environment (rather than set by regulation);
 - 1.4 subsequent amendments to the general duties of care and the statutory role of Keep New Zealand Beautiful.

Relation to government priorities

2. The proposals in this cabinet paper advance:
 - 2.1 Labour's 2020 Election Manifesto plans to prevent, reduce, and recycle waste;
 - 2.2 the Cooperation Agreement between the New Zealand Labour Party and the Green Party of Aotearoa New Zealand, in particular the commitment to take action to minimise waste and problem plastics;
 - 2.3 implementation of the circular economy and waste-related commitments in the Emissions Reduction Plan 2022;
 - 2.4 implementation of the new Aotearoa New Zealand Waste Strategy agreed by Cabinet on 28 November 2022 [ENV-22-MIN-0053 refers];
 - 2.5 legislative context to support the implementation of standardised kerbside recycling and food waste services as agreed by Cabinet in November 2022 [ENV-22-MIN-0058 refers];

- 2.6 new waste legislation that will replace the Waste Minimisation Act 2008 and Litter Act 1979 [ENV-23-MIN-0002, -0004, -0005, -0006, and DEV-23-MIN-0080 refer].

Executive Summary

3. In March and May 2023, Cabinet agreed that the Waste Minimisation Act 2008 and Litter Act 1979 be repealed and replaced with one new piece of legislation to be enacted. Cabinet has agreed many components of the new legislation already [ENV-23-MIN-0002, -0004, -0005, -0006, and DEV-23-MIN-0080 refer].
4. I seek additional decisions on matters that Cabinet sought further advice on and some additional matters that have arisen, including:
- 4.1 further decisions on national licensing in waste and resource recovery and the waste tracking system, including cost recovery (decisions 29 and 30 ENV-23-MIN-0005) and parties in scope;
- 4.2 identifying the Ministry for the Environment (MfE) for policy functions and the Environmental Protection Authority (EPA) as the compliance monitoring and enforcement agency of environmental performance standards (decisions 32, 36 and 36 ENV-23-MIN-0004);
- 4.3 enabling some technical and administrative details relating to national waste standards to be gazetted by the Minister for the Environment, rather than set by regulation (additional item);
- 4.4 changes to streamline the duties of care requirements agreed by Cabinet (decisions 4, 5, 6 and 7 ENV-23-MIN-0005) (additional item);
- 4.5 discontinuing the statutory role of Keep New Zealand Beautiful (additional item).

Background

5. The paper *Waste Legislation 1: Overview and overarching provisions* [ENV-23-SUB-0002 refers] provides background to this legislative reform. Public consultation on the Aotearoa New Zealand Waste Strategy and legislation took place between October and December 2021. Additional information about each part of the proposed reform is provided in the relevant sections below.

Part 1: Waste licensing and waste tracking

6. In March 2023 Cabinet agreed that the new waste legislation should contain regulation-making powers to develop a waste tracking system and a national licensing scheme. Both systems have common but differentiated needs for cost recovery powers to support their establishment and ongoing function. This section delineates them and addresses the financial model of both proposals.
7. Cabinet has already agreed that MfE officials will establish a Technical Advisory Group (TAG) from local government and the waste and resource recovery sector to guide the development of the national licensing scheme in waste and

resource recovery.¹ Details regarding cost recovery (how cost recovery provisions are applied, who pays, how much they pay, and how long the licence is for) will be developed as part of the process of developing regulations for licensing.

8. However, I recognise that to enable Cabinet to agree to cost recovery provisions in the Bill, it is important to have a general understanding of how they may be applied.
9. The Office of the Auditor-General guidance on cost recovery provides that the principles of equity, efficiency, justifiability and transparency should guide administration of the charging of fees or levies.² This guidance confirms that equity means administering fees in a way that is administratively fair, efficiency means structuring fees in a way that closely reflects the costs of the good or service, justifiability means that the costs recovered through fees reasonably relate to the goods or services charged for, and transparency is about accountability to Parliament and the public through clear processes. The Treasury guidelines for setting charges will also guide how the scheme is designed to recover costs fairly and efficiently, whilst balancing burden with ease and affordability for the sector.
10. I also note that legislated cost recovery frameworks may provide for charges to be waived or refunded. I consider such provisions are appropriate for this Bill. I note that, for example, voluntary organisations who may wish to run 'waste collection fundraisers' may be deterred due to the costs associated with gaining the necessary approvals and it may be appropriate for these costs to be waived in full or in part.
11. I note that this is the approach applied to waivers and refunds in the National Built Environment Bill and by the EPA, the Ministry for Primary Industries and New Zealand Customs.

Waste licensing – cost recovery and scope

12. Cabinet agreed to provide for a national licensing scheme in waste and resource recovery within the new waste legislative framework. The intention of national licensing in waste and resource recovery is to provide for flexible regulation of a wide variety of parties and to achieve end to end stewardship of waste from producer to either recycling or permanent disposal. Cabinet agreed to the scope of parties³ that would be subject to specified obligations developed through regulations [ENV-23-MIN-0005 refers]. This paper seeks a further decision to enable a discretionary clause to be inserted to expand the scope of the scheme where appropriate.

¹ Decision 28, ENV-23-MIN-0005.

² [Setting and administering fees and levies for cost recovery: Good practice guide \(oag.parliament.nz\)](https://oag.parliament.nz/publications/setting-and-administering-fees-and-levies-for-cost-recovery-good-practice-guide)

³ Disposal facilities, including cleanfills and industrial monofills; disposal operators; transfer stations; resource recovery facilities; recycling operators; waste storage facilities, including hazardous waste; composting operators (commercial); importers and import brokers; exporters and export brokers; transporters.

13. Cabinet also noted that the Minister for the Environment intended to come back to Cabinet to seek agreement for any cost recovery mechanisms for a waste licensing scheme once further design work has been undertaken [ENV-23-MIN-0005 refers].
14. In agreeing design principles for the scheme, Cabinet agreed the costs of the licensing scheme would generally be met through cost recovery from participants, not the wider public [ENV-23-MIN-0005 decision 20.4 refers]. Cabinet also agreed the potential that levy funds could be used to fund the start-up costs for schemes and systems, such as the licensing scheme, if those costs cannot be met through the scheme itself [ENV-23-MIN-0002 decision 41.4 refers].
15. Costs incurred in the development of the national licensing scheme and waste tracking system will include further policy development, initial communications, consultation and initial engagement. These costs will be met from existing agency baselines.
16. Costs incurred in the implementation of the national licensing scheme and waste tracking system, such as establishing IT systems and process development reasonably related to delivering the schemes will be cost recovered (where there is alignment with cost recovery principles). Should future scheme revenue (ie, from participants) not be proportionate to the costs of implementing the schemes, the waste disposal levy could be considered.
17. The costs of the licensing scheme fall into three broad categories:
 - 17.1 costs to the participants themselves;
 - 17.2 costs to the regulator in carrying out the permitting and compliance functions that can be recovered from participants; and
 - 17.3 costs for establishment and maintenance of the scheme that may not be able to be fully recovered from participants.
18. Costs to the participants of the licensing scheme include the development and maintenance of an appropriate control environment, which also includes appropriate training for staff and building of IT systems. These costs will be borne by the participants themselves.
19. Different participants will have different levels of capacity to meet these costs, and part of managing the distributional impacts of the scheme is to ensure costs are appropriately scaled and there are provisions to reduce or waive them where appropriate.
20. The costs to the regulator of national licensing include establishment of systems and maintenance of permitting and compliance functions. In order to ensure the costs of the licensing scheme are borne by the participants, the regulator of the permitting and compliance function (the EPA) will need to be able to recover costs as appropriate.

21. Those will be the actual and reasonable costs of processing and compliance activity incurred by the EPA such as assessing licence applications including variations. However when setting the cost recovery framework and looking at the public benefit, it may be that some of the compliance costs are better covered by the Crown via baseline or levy funding. The full details of the cost recovery framework, including any public benefit and the flow on effect for funding, will need to be designed and determined through a subsequent regulation making process.
22. Suspension and revocation of a license would generally be carried out as a compliance response. Cost recovery powers would need to extend to recovery of costs incurred based on a reactive response and cover activities such as monitoring, incident response and investigation.
23. I am seeking agreement that cost recovery powers should be included in the new legislation to enable the recovery of actual and reasonable costs from participants in the national licensing scheme in waste and resource recovery. I also note that legislated cost recovery frameworks may provide for charges to be waived or refunded. I propose that the new legislation also include the ability for charges to be waived or refunded.

Parties in scope of waste licensing

24. The development of national licensing in waste and resource recovery will be a significant undertaking and will likely cover hundreds of disposal facility operators and many other sites providing waste and resource recovery services. Cabinet has approved that the regime be rolled out in a phased manner [ENV-23-MIN-0005 refers]. The phasing will help to spread costs over time for all parties involved.
25. Cabinet has agreed the scope of waste licensing provisions, including parties that are within scope. This broadly covers the waste 'supply chain'. I consider there may also be a need to consider further parties in the future, because the way in which the sector operates changes over time, particularly with technological change. This would help support a fair system and reduce any potential unintended consequences resulting from differing obligations on parties performing similar functions in the waste sector.
26. Therefore, I propose a mechanism by which, subject to consultation and adequate scrutiny, additional parties involved in waste and resource recovery activities could also be subject to licensing obligations in the future. Being able to prescribe parties via regulation is recommended because it provides for the regime to respond to changing sector trends whilst maintaining adequate public and Parliamentary scrutiny. I propose specifying the previously agreed parties in primarily legislation and allowing for regulations to specify additional parties subject to licensing obligations.

Cost recovery for the waste tracking system

27. In March 2023, Cabinet also agreed that the new waste legislation should contain regulation-making powers to develop a waste tracking system and that its introduction would be phased.⁴
28. As with the licensing framework, there will be a range of costs associated with the tracking system, including registration and compliance costs. It will be appropriate for some of these to be cost recovered while others will need to be borne by the Crown (eg, some establishment costs).
29. Once implemented, a waste tracking system would require certain waste holders to record details of transactions as specified types of waste move through the economy (the intent is an initial focus on hazardous waste).⁵ I propose that the cost recovery provisions also apply to the waste tracking system.
30. Cabinet was advised that the development costs of the waste tracking system will be met through usual budgetary processes with the ongoing management of the system being paid for from waste management licensing fees [CAB-153-SUB-005 refers]. Cost recovery powers are required to recover costs on a clear and transparent basis from those obligated to track waste, which will include parties that may or may not be subject to the licensing scheme.
31. Cost recovery powers of the waste tracking system are likely to be similar to those required under the licensing scheme. Regulation-making powers will make clear what charges can be recovered and on what basis for each aspect of the legislation distinctly.
32. I note the waste tracking system and the waste licensing scheme will overlap but not all the parties required to track waste will necessarily be licensed (and vice versa). The same parties may be subject to fees and ongoing charges for licensing and similar cost recovery initiatives for waste tracking, in addition to having levy related obligations. To prevent actual or perceived 'double-dipping,' the most appropriate source of funding will need to be used in each instance where there is discretion. Therefore, the cost recovery provisions need to recognise this situation and be demarcated clearly in the regulation making processes.

⁴ Decisions 22 and 42 ENV-23-MIN-0005.

⁵ In making regulations for the waste tracking system, Cabinet has agreed that the Minister must be satisfied that: the regulation will achieve the purpose of the new legislation; there has been adequate consultation with persons or organisations significantly affected; adequate lead-in time is provided to meet the requirements of the regulation.

Part 2 – Regulator for Environmental Performance Standards and Information Provisions

33. The proposed new waste legislation will include enabling powers to regulate products and materials, to decrease what is eventually disposed of and increase circularity of products and materials in the economy.⁶
34. These tools will be used together to help provide incentives and limits on products and materials. Cabinet assigned responsibility for the policy and implementation of most of these powers to MfE and the compliance monitoring and enforcement to the EPA [ENV-23-MIN-004 and DEV-23-MIN-0080 refer].
35. Cabinet noted that I would consider options for the regulator of the environmental performance standards and provision of information regime, and report back to this Committee [ENV-23-MIN-0004 refers].
36. The relevant powers proposed for the waste legislation are similar to powers in the existing regime for energy efficiency standards and labelling, administered by the Energy Efficiency and Conservation Authority (EECA). In assessing options for the regulator, I have considered this similarity and have also considered the interaction between these two regimes.
37. I have looked at the possible options and propose that MfE will be responsible for the policy development and EPA responsible for the compliance and enforcement of the environmental performance standards and provision of information regime.

MfE to be responsible for policy development for environmental performance standards

38. I propose that MfE be responsible for the policy of the environmental performance standards and provision of information regulations. This will include determining the relevant environmental performance standards and provision of information requirements in regulations and developing those regulations. MfE already has responsibility for the policy development of other product and material powers in the proposed legislation. Those powers will interact closely with the proposed environmental performance standards and information provision powers.
39. The EPA, EECA, and existing product regulators within the Ministry of Business, Innovation and Employment were considered for identifying

⁶ Cabinet agreed in March 2023 to the following regulation-making powers [ENV-23-MIN-0004]:

- to control or prohibit the import, supply, sale and manufacture of specified products and materials;
- to prescribe or prohibit actions for disposal and/or recycling of products and materials;
- to prescribe environmental performance requirements that can apply at any stage, or across the full life cycle of certain products and materials and that the broad parameters of environmental performance requirements should be included in primary legislation;
- to prescribe consumer information on environmental performance requirements for specified products and materials;
- prescribe extended producer responsibility requirements.

standards and implementing regulations. They were discounted because having this regulatory function in a separate organisation from the other product and material powers would be a less efficient use of expertise and resources.

40. I consider MfE being responsible to be the most effective and efficient option, as this will allow for efficient use of information and resources between the other product and material powers and the environmental performance standards and provision of information powers.

EPA to be responsible for compliance and enforcement of environmental performance standards

41. I propose that the EPA be responsible for the compliance and enforcement of environmental performance standards and information requirements. As noted in paragraph 34, the EPA will be the compliance and enforcement agency for the other product and material regulations. Due to the interplay between those powers and the environmental performance standards and provision of information powers.
42. I consider this is the most effective and efficient option, because all compliance and enforcement powers will be held within the same agency. Both EECA and MfE were considered for this role. MfE and EECA were discounted because there would be inefficiencies having a small compliance and enforcement role in a different organisation from the rest of the new Act's compliance and enforcement functions.
43. The compliance and enforcement of products covered by an environmental performance standard will follow the same compliance and enforcement regime of the other products, as already agreed by Cabinet. I consider that the currently proposed funding under the waste levy, for EPA to enforce the product and materials powers under the future legislation, will also cover the environmental performance standards and provision of information functions.

Overlap between the environmental performance standards and the existing regime for energy efficiency standards and labelling

44. I recommend a requirement for the Minister for the Environment to have regard for the view of the Minister of Energy and Resources on the development of any environmental performance standard or labelling requirement on a product that is part of the energy efficiency standards and labelling regime.
45. I also recommend that the Minister for the Environment to have regard for how the environmental performance standard may affect energy efficiency. These requirements will ensure that there is no unintended overlap between (a) the regime for energy efficiency standards and labelling and (b) the environmental performance standards and provision of information requirements, under the new waste legislation.

Part 3 – Technical and Administrative Details Relating to Proposed National Standards

46. Cabinet agreed (decisions 33-39, ENV-23-MIN-005) that the Minister for the Environment may recommend the making of regulations to set national standards for the purpose of controlling performance matters relating to the:
- 46.1 disposal of waste: for example, operation of disposal facilities, methods of disposal, industry-specific waste reduction requirements, management of the closing of landfills;
 - 46.2 collection and transportation of waste: for example, requirements for covering waste, which waste types must be separated;
 - 46.3 resource recovery and recycling: how such operations are carried out (such as contamination limits);
 - 46.4 other waste activities: stockpiling of waste, export of waste/recycling materials, giving effect to international agreements relating to waste.
47. On reflection, I note that in some cases, it may be more appropriate to be able to specify technical details by *Gazette* (rather than in regulation). This is because:
- 47.1 flexibility is likely to be required. For example, to respond to changes in international recycling markets which may affect the national standards applicable to recycling collectors and local government,⁷ and to respond to best practice including new technologies;
 - 47.2 some standards are likely to be detailed and technical in nature, to an extent that may make regulations cumbersome and difficult to navigate;⁸
 - 47.3 some standards are largely administrative in nature and affect only a limited number of parties.
48. I propose that criteria be established to provide guidance on when standards should be set by regulation, and when they may be set by the Minister for the Environment, by notice in the *Gazette*, having regard to the scope and impact of the proposed standard, and the need for timeliness and flexibility.
49. For example, Cabinet has further agreed to carry over the provisions of standardised kerbside collection into the new legislation [DEV-23-MIN-0080 and decision 37, ENV-23-MIN-0005 refer], and that national standards are one tool for doing so. Regulations could establish a requirement for waste collectors to collect standard materials for recycling. This is a matter that would have

⁷ For example, in the past local recycling markets have been affected by changing policies by importing nations.

⁸ One such technical matter (relating to disposal of materials to land) is currently covered by sector guidelines that are 253 pages long (although not all such detail would need to be replicated in a standard).

significant impact on waste collectors' operations. Others matters, such as requirements for how operators of disposal facilities may stockpile materials or apply daily cover are more operational in nature and could be appropriate for the Minister for the Environment to set via *Gazette*.

50. I have considered similar standard-setting powers in other legislation, including the Resource Management Act 1991, Natural and Built Environment Bill, and the Water Services Act 2021, as well as in the existing WMA, and what is proposed for other parts of the new legislation.
51. Standard-setting is generally done via regulation, which provides the widest range of oversight by Parliament. However, there are also examples where technical or administrative detail is set by *Gazette*, including in the current WMA (in relation to performance standards for how territorial authorities implement their waste management and minimisation plans), and as Cabinet has previously agreed for the new legislation (for example, see decisions 13.5, 14.4, 14.5 and 15 in DEV-23-MIN-0080, relating to establishing extended producer responsibility schemes).
52. Noting that standards may have a considerable impact on how companies operate their businesses, I propose that the Minister for the Environment should be required to consult with parties who may be significantly affected before gazetting requirements. As noted, I also propose that the legislation provide guidance on what should be specified in regulation, and what detail could be specified via *Gazette*.

Part 4 – Subsequent Amendments to Duties of Care

53. In March 2023, Cabinet agreed to the overarching/general duties of care for all people in the waste legislation reform and authorised the Minister and Associate Minister for the Environment, in consultation with other relevant Ministers, to make decisions on the specific requirements that will apply to each of those duties [ENV-23-MIN-0005 refers].
54. Cabinet agreed that all landlords (both residential and commercial) will be subject to a duty to facilitate tenants' access to collection services. I consider that this duty relates to residential and commercial landlords and therefore more logically sits under the Residential Tenancies Act 1986 (for residential tenancies) and Property Law Act 2007 (for commercial leases).
55. My officials consulted with Ministry of Justice officials who administer the Property Law Act. They confirmed the Property Law Act sets out only general implied covenants (such as the requirement to pay rent, lessee's right to quiet enjoyment). It does not require landlords to provide or maintain certain facilities for tenants as this will vary from lease to lease depending on the differing nature of the land and commercial arrangements negotiated.
56. My officials have consulted with Te Tūāpapa Kura Kāinga/ Ministry of Housing and Urban Development officials who administer the Residential Tenancies Act, and they have confirmed they will collaborate with MfE officials to update the language in the Residential Tenancies Act. As a result of this further work, I

now recommend this is not progressed as a duty of care under the new waste legislation.

Part 5 – Statutory role of Keep New Zealand Beautiful

57. Section 4 of the Litter Act 1979 provides that “Keep New Zealand Beautiful Incorporated shall be the body primarily responsible for the promotion of litter control in New Zealand”. I recommend that this provision is not retained in the new waste legislation.
58. Keep New Zealand Beautiful (KNZB) is a registered charity,⁹ an incorporated society,¹⁰ and a not-for-profit organisation. It has developed and achieved brand recognition and delivered many programmes that focus on littering issues over many years. However, the scope of “litter control” includes a range of potential functions including data collection, behaviour change and compliance monitoring and enforcement. There are many other organisations, as well as KNZB, across the waste sector also carrying out these functions including Territorial Authorities, Waka Kotahi and a number of not-for-profit organisations.
59. Given the number of organisations active in promoting litter control and noting the small size of KNZB and its status and limited capacity, it is an anomaly for KNZB to be named in the legislation as “primarily responsible” for promoting litter control. ^{9(2)(h)} [REDACTED]
[REDACTED] For these reasons, I recommend that this provision of the Litter Act is not carried over to the new legislation.

Cost-of-living Implications

60. I note that the proposals enable the development of a cost recovery system for national licensing in waste and resource recovery sector and a waste tracking system. Before these will be implemented, the legislation and subsequent regulations will need to be passed. After this, the systems will need to be set up and implemented, with a staged roll-out. The earliest implementation date for licensing is likely to fall in 2026 with tracking proposed to be initiated after this.
61. The national licensing scheme and waste tracking system will increase the cost of business for waste operators and those required to track waste. Regulated parties are likely to pass on their costs through the supply chain to waste generators, such as businesses and households. The detail of these costs and other implications will be analysed as part of the regulation making process.
62. I consider that the other proposals in the Cabinet paper will not significantly impact New Zealanders’ ability to maintain their standard of living, as they are mostly administrative in nature.

⁹ KNZB’s registration number for Charities Services is CC29783.

¹⁰ KNZB’s incorporation number is 218445.

Financial Implications

63. The impact analyses for the overall reform are set out in *Waste Legislation 1: Overview and overarching provisions* [ENV-23-SUB-0002].
64. The financial implications of enabling provisions have not yet been fully established given that the details of the provisions have not yet been developed. Nonetheless, the proposal is to have a greater use of regulation-making powers to control waste, waste behaviour and products and materials over the next decade, as part of the transition to a circular economy. This will require increased administrative capacity and capability from regulatory agencies, and in-house expertise in science and communication, particularly relating to measuring and comparing the environmental impacts of waste, products and materials across their life cycle. Where possible, it is intended that additional costs will be met through cost recovery and levy funding.

Legislative Implications

65. This paper is part of an overall proposal to repeal and replace the WMA and Litter Act. I am intending to introduce this Bill in the second quarter of 2024.

Regulatory Impact Statement

66. The impact analyses for the overall reform are set out in *Waste Legislation 1: Overview and overarching provisions* [ENV-23-SUB-0002].

Climate implications

67. The climate implications for the overall reform are set out in *Waste Legislation 1: Overview and overarching provisions* [ENV-23-SUB-0002].

Population Implications

68. The population implications for the overall reform are set out in *Waste Legislation 1: Overview and overarching provisions* [ENV-23-SUB-0002]
69. Improper disposal of waste in New Zealand harms air, land, and waterways, which is offensive to mana whenua. The proposals in this paper relating to licensing will improve the evidence data to monitor the size of the waste problem in New Zealand. These proposals will help achieve the policy objective to transition, over time, to a circular economy, which will enhance the mana of our air, land, and water.
70. The Ministry for Primary Industries has indicated that if individual waste operators pulled out of the market due to licensing and tracking requirements, it is likely to have a greater impact in rural and smaller provincial towns. The scheme design process will consider any unintended consequences including impacts on rural communities or areas with limited waste service provision.

Gender Implications

71. The proposals in this paper have no gender implications.

Disability Perspective

72. The proposals in this paper have no disability implications.

Human Rights

73. None of the proposals in this paper appear to be inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Use of External Resources

74. The policy advice and text for part one of this paper was developed in part by a sole trader contractor working in a part time capacity over a four-week period. The contractor was engaged because they are an expert in cost recovery policy, which was specialist knowledge not immediately available within the agency.

Consultation

75. Officials met with the Legislation Design and Advisory Committee (LDAC) on 29 June 2023 and discussed the cost recovery for licensing duties of care and national standards proposals. This paper has taken into account LDAC's preliminary advice.
76. The following government agencies have been consulted: the Department of Internal Affairs; Environment Protection Authority; Manatū Hauora, Ministry of Housing and Urban Development; Ministry of Justice; Ministry of Business, Innovation and Employment; Ministry for Primary Industries; New Zealand Customs Service; Te Arawhiti; Te Puni Kōkiri; the Treasury New Zealand; the Ministry of Foreign Affairs and Trade; Waka Kotahi; and the Energy Efficiency and Conservation Authority.
77. The Department of the Prime Minister and Cabinet has been informed.
78. The Green Party has been consulted.
79. MfE has not discussed the changes to the statutory responsibility for promoting litter control with KNZB.

Communications

80. I do not intend to release a press release following Cabinet's decisions on this paper. I note that there was a press release following Cabinet's previous decisions on the new legislation.

Proactive Release

81. I intend to proactively release this Cabinet paper, excluding legally privileged material and subject to any redactions consistent with the Official Information Act 1982 and Cabinet Office agreement, within 30 days of decisions being made by Cabinet.

Recommendations

The Associate Minister for the Environment recommends that the Committee:

1. **note** that in March and May 2023, Cabinet made decisions to inform the development of new waste legislation that would repeal and replace the Waste Minimisation Act 2008 and the Litter Act 1979 [ENV-23-MIN-0002, ENV-23-MIN-0004, ENV-23-MIN-0005, ENV-23-MIN-0006, and DEV-23-MIN-0080 refer];
2. **note** that various matters were referred back to Cabinet, or have arisen as further analysis was undertaken;
3. **note** that further decisions are sought in this Cabinet paper to enable drafting of the new legislation by the Parliamentary Counsel Office;

Cost Recovery Powers

4. **note** that in March 2023, Cabinet agreed that the Minister for the Environment would report back on any cost recovery mechanisms for a waste licensing scheme once further design work has been undertaken;
5. **note** the details regarding cost recovery (how cost recovery provisions are applied, who pays, how much they pay, and how long the licence is for) will be developed as part of the process of developing regulations for licensing;
6. **note** that the Office of the Auditor-General guidelines on cost recovery have been used to inform the proposals and the Treasury guidelines for setting charges will guide how the licensing and waste tracking systems are designed;
7. **note** Cabinet agreed the costs of the licensing scheme would generally be met through cost recovery from participants, not the wider public and agreed that waste levy funds could potentially be used to fund the start-up costs for schemes and systems, such as the licensing scheme, if those costs cannot be met through the system itself;
8. **agree** that cost recovery frameworks for waste licensing and waste tracking systems may provide for charges to be waived or refunded;
9. **agree** that costs incurred in the development of the national licensing and waste tracking systems such as policy development, initial communications, consultation and initial engagement will be met from existing agency baselines;
10. **agree** that costs incurred in the implementation of the national licensing and waste tracking systems, such as establishing IT systems and process development reasonably related to delivering the systems will be cost recovered (where there is alignment with cost recovery principles). Should future system revenue not be proportionate to the costs of implementing the systems, the waste disposal levy could be considered;

11. **agree** that cost recovery powers should be included in the new legislation to enable the recovery of actual and reasonable costs from participants in the national licensing scheme in waste and resource recovery;
12. **agree** that cost recovery powers should extend to the regulator of the permitting and compliance function to recover the costs of national waste licensing including monitoring, incident response and investigation;
13. **note** the full details of the cost recovery framework for the waste tracking system, including any public benefit and the flow on effect for funding, will need to be designed and determined through a subsequent regulation making process;
14. **note** it will be appropriate for some of the costs associated with the waste tracking system to be cost recovered while others will need to be borne by the Crown;
15. **agree** that cost recovery powers should be included in the new legislation to enable the recovery of actual and reasonable costs from those obligated to track their waste;
16. **note** the regulation-making powers for the waste tracking system will make clear what charges can be recovered and on what basis;
17. **note** that in March 2023, Cabinet has agreed to a list of the types of parties to be in scope of a waste licensing scheme;
18. **agree** that the Minister for the Environment may specify through regulations additional parties subject to a waste licensing scheme not covered by the current scope;

Environmental performance standards and information requirements

19. **note** that in March 2023, Cabinet agreed that the Minister for the Environment would report back on the regulator for the environmental performance standards and information requirements;
20. **agree** that the Ministry for the Environment will be responsible for the policy of environmental performance standards and information requirements;
21. **agree** that the Environmental Protection Authority will be responsible for the compliance and enforcement of environmental performance standards and information requirements;
22. **agree** that the Minister for the Environment is to have regard for the view of the Minister of Energy and Resources on the development of any environmental performance standard or labelling requirement on a product that is part of the energy efficiency standards and labelling regime;
23. **agree** that the Minister for the Environment is to have regard for how the environmental performance standard may affect energy efficiency;

National Standards

24. **note** that Cabinet has agreed to include a regulation-making power to develop binding standards or technical requirements for operating waste or resource recovery services in new waste legislation [decision 33, ENV-23-MIN-0005 refers];
25. **note** Cabinet has further agreed to carry over the provisions of standardised kerbside collection into the new legislation [DEV-23-MIN-0080 and decision 37, ENV-23-MIN-0005 refer], and that national standards are one tool for doing so;
26. **agree** that the Bill establish that the Minister for the Environment can issue national standards by notice in the *Gazette* for matters that are more technical and administrative in nature, having regard to the scope and impact of proposed standards, and the need for timeliness and flexibility;

Subsequent Amendments to Duties of Care

27. **note** that Cabinet has agreed to a variety of duties of care to manage and dispose of waste or to recycle it appropriately and to assign obligations to each duty [decisions 3 - 18, ENV-23-MIN-0005 refer];
28. **agree** to remove the duty of care that all landlords (both residential and commercial) will be subject to a duty to facilitate tenants access to collection services [decision 7, ENV-23-MIN-0005 refers];

Statutory role of Keep New Zealand Beautiful

29. **note** that the Litter Act 1979 assigns a statutory responsibility to promote litter control to the non-statutory body Keep New Zealand Beautiful;
30. **agree** not to maintain the statutory responsibility for promoting litter control assigned to Keep New Zealand Beautiful in the new legislation;

Authorisation to make further decisions and issue drafting instructions

31. **authorise** the Associate Minister for the Environment to make further policy decisions, consistent with the proposals in this paper, and issue drafting instructions to provide for those decisions.

Authorised for lodgement

Hon Rachel Brooking

Associate Minister for the Environment