

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Legislation Committee

Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2021 and Waste Minimisation (Information Requirements) Regulations 2021

Proposal

- 1 I propose that the Cabinet Legislation Committee authorise the submission of the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2021 and the Waste Minimisation (Information Requirements) Regulations 2021 (the Regulations) under sections 41 and 86 of the Waste Minimisation Act 2008 (the Act) to the Executive Council.
- 2 This paper follows Cabinet's decisions to increase and expand the waste disposal levy (waste levy) in June 2020 [CAB-20-MIN-0264.01 refers] and confirmation of the implementation dates in March 2021 [CAB-21-MIN-0039 refers].

Executive Summary

- 3 The existing Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009 govern the record-keeping and reporting requirements for disposal facilities and the methods for calculation and payment of the waste levy. The waste levy is currently \$10 per tonne (excluding GST) on all landfills that take household waste.
- 4 In June 2020 [CAB-20-MIN-0264.01 refers], Cabinet agreed to changes to improve the effectiveness of the waste disposal levy by:
 - increasing the rate of the waste levy (from \$10 per tonne progressively up to \$60 per tonne);
 - expanding its coverage to additional landfill sites, including those that take construction and demolition materials (the waste levy currently applies only to municipal sites that take household waste) and managed and controlled fill sites, with these additional levied landfill sites subject to the same data reporting obligations as existing sites; and
 - expanding record-keeping requirements to industrial monofills, cleanfills and transfer stations.
- 5 The purpose of increasing and expanding the waste levy is to create a stronger economic incentive to reduce waste and raise more revenue for investment in promoting and achieving waste minimisation. Reducing waste to landfills will also play a role in reducing New Zealand's carbon emissions.

These changes also bring New Zealand closer in line with similar economies in other jurisdictions.

- 6 Cabinet noted in June 2020 that they would review the implementation dates of the increase and expansion of the waste levy in light of the economic conditions at the time. Cabinet has now agreed to implementation dates as set out in Table 1 [CAB-21-MIN-0039 refers].

Table 1: Levy rates for phased implementation (per tonne of waste)

Landfill class	Waste types	1 July 2021	1 July 2022	1 July 2023	1 July 2024
Municipal landfill (class 1)	Mixed municipal wastes from residential, commercial and industrial sources	\$20	\$30	\$50	\$60
Construction and demolition fill (class 2) *note that reporting requirements come into effect 1 January 2022 (see Table 2 on page 7)	Range of wastes from construction and demolition activities, including rubble, plasterboard, timber, and other materials	-	\$20	\$20	\$30
Managed fill (class 3) and controlled fill (class 4) *note that reporting requirements come into effect 1 January 2023 (see Table 2 on page 7)	Contaminated but non-hazardous soils and other soils and inert materials (eg, rubble)	-		\$10	\$10

- 7 Cabinet also agreed to impose new information-gathering requirements on levied disposal facilities and other waste-related facilities in order to measure progress and assess waste management and minimisation in New Zealand.
- 8 To implement these decisions it is necessary to amend existing regulations and create new regulations for information-gathering purposes through sections 41 and 86 of the Act.
- 9 The Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2021 set out:
- 9.1 new disposal facilities for the purposes of the Act under section 41(1) (a), creating a range of disposal facilities to which the levy applies, including construction and demolition fill disposal facilities and managed or controlled fill disposal facilities
 - 9.2 new levy rates for different categories of disposal facilities under section 41(1)(d) and (e) of the Act
 - 9.3 information needed for accurate collection of the waste disposal levy.

- 10 The Waste Minimisation (Information Requirements) Regulations 2021 set out a requirement for information to be provided under section 86 of the Act; specifically, information for measuring progress with waste management and minimisation, including assessing performance in waste minimisation and other matters contemplated by subsection (1)(b), including:
- 10.1 requiring operators of industrial monofills and cleanfills to keep, and provide to the Secretary for the Environment (the Secretary), information on the tonnage of waste disposed of at and diverted from the site
- 10.2 requiring operators of transfer stations to keep and provide to the Secretary, information on the tonnage of waste received at the transfer station, the tonnage of waste sent from the transfer station to a landfill for disposal, and the tonnage of waste diverted, commencing from 1 January 2022.
- 11 The Waste Minimisation (Information Requirements) Regulations 2021 establish the first tranche of a range of planned improvements to waste data. I am bringing further policy proposals to the Cabinet Environment, Energy and Climate Committee in April 2021.
- 12 The Act establishes that the waste levy can be changed by regulations, and changes to the Act are not required. Regulations have been drafted under section 41 (waste disposal levy) and section 86 (records, information and reports).
- 13 The Act sets out consultation requirements under sections 42(2) and 86(2). Consultation on the policy proposals was undertaken from 25 November 2019 to 3 February 2020. The former Associate Minister for the Environment also obtained and considered the advice of the Waste Advisory Board in accordance with these sections, and consulted with the Government Statistician as required by section 86(3). A cost-benefit analysis of the proposals was also considered by the then Associate Minister.
- 14 Regulations are proposed to be gazetted in late March/early April 2021, taking effect 28 days from gazettal. The increases to the levy will take effect progressively from 1 July 2021.
- 15 This paper seeks Cabinet approval to authorise the submission of the Regulations to the Executive Council.

Policy

- 16 New Zealand's waste levy was introduced in 2009 under the Act, with a dual purpose¹:
- raise revenue for promoting and achieving waste minimisation; and

¹ The consultation document (*Reducing waste: a more effective landfill levy*) referred to a 'landfill levy.' Following consultation feedback, 'waste levy' is now being used, to focus attention on the problem we want to manage (ie, waste rather than landfills).

- increase the cost of waste disposal to recognise that disposal imposes costs on the environment, society and the economy.
- 17 New Zealand's waste production and disposal to landfills has increased in the last decade – both in absolute and per capita terms. Waste disposed of at municipal landfills that take household waste grew by 48 per cent between 2009 and 2019. Our waste and recycling systems now face major challenges, exacerbated by the global and domestic impact of COVID-19:
- changing international markets have limited our ability to export recycling commodities, placing stress on collection systems and raising costs for councils and recycling operators;
 - New Zealand has limited onshore waste minimisation and recycling infrastructure. An independent report commissioned from Grant Thornton identified potential infrastructure funding needs of approximately \$2.1 to \$2.6 billion and other enabling service funding needs of approximately \$0.9 billion over the next 10 years.
- 18 At the same time, public interest and expectations for reducing and better managing waste continue to increase.
- 19 The levy is currently set at \$10 per tonne and only applies to landfills that take household waste. Reviews to date indicate it is not effective at achieving its purposes, due to its low rate and limited coverage.
- 20 Expanding the levy to cover more types of landfill and setting a higher levy rate will provide a greater financial incentive to minimise waste, and will also make resource recovery options (recycling, composting, reuse) more competitive. The revenue raised can be invested in a wider range of waste minimisation activities including onshore infrastructure for waste minimisation and recycling.
- 21 Therefore, the regulations will enable the waste levy to be expanded to additional landfill sites, including those that take construction and demolition materials, and set differential levies for landfill sites based on differing levels of environmental harm and waste minimisation potential, while progressively increasing the rate of the existing levy which currently only applies to landfills that take municipal waste. These changes are summarised in Table 1.
- 22 Additionally, most submitters agreed that waste data needs to be improved. Improved waste data will assist with identifying gaps and opportunities in waste minimisation activities, measure progress, assist with monitoring and compliance, and also help more accurately estimate and target interventions to reduce greenhouse gas emissions produced by the waste sector. In order to effectively administer the levy, Cabinet agreed that landfills, transfer stations and cleanfills would report to the Ministry on the quantities of waste disposed of at and diverted from their facility.
- 23 Data reporting requirements associated with levy collection (ie for classes 2, 3 and 4) will come into effect progressively in advance of those sites becoming subject to the levy. Other data reporting requirements for non-levied sites, to assist with the aspects noted in the above paragraphs, will come into effect

progressively over the next two years. These dates are all summarised in Table 2.

- 24 I have made some minor and technical amendments throughout the drafting of the regulation in accordance with Cabinet's decision [CAB-20-MIN-0264.01 refers], specifically:
- 24.1 in order to give fully effect to Cabinet decisions 1.3 and 1.4, regulation 11(3)² of the existing regulations will need to be deleted to ensure diverted waste is properly recorded; currently, this regulation allows facilities to not record material that is immediately diverted from their facility, which is inconsistent with Cabinet's decisions
- 24.2 operators of facilities that include multiple types of disposal facility need to be able to separate out their tonnage by facility type on their return, to enable them to pay different levy rates as appropriate; therefore, the return requirements in regulations 6 and 7 of the existing regulations have been amended to enable the return to provide tonnage information for more than one type of disposal facility and include the physical address of the facility. Through targeted consultation with stakeholders, officials understand it is possible for operators to differentiate and report on different facility types.
- 24.3 the regulations prescribe additional landfill types as 'disposal facilities', in order for them to be made subject to a levy. This process has included further defining the materials that can be accepted into different disposal facilities (so that it is clear what the facility type is, and therefore what levy rate should be payable). In particular, while the current definition of class 1 landfills focuses on acceptance of household waste, the amended regulations also clarify that landfills that take commercial, industrial and institutional waste (ie, waste from educational facilities, hospitals and so on) would also be considered to be class 1 landfills. This is consistent with the approach put forward during consultation, but may result in some sites not currently subject to a levy being introduced into the levy regime.

² 11 Gross tonnage and diverted tonnage must be measured

(1) The operator of a disposal facility must measure, in accordance with regulation 12 or 13,—

(a) the tonnage of waste or diverted material that enters the disposal facility (**gross tonnage**); and

(b) the tonnage of waste or diverted material that is reused or recycled at the disposal facility, or is removed from the facility, not later than 6 months after entering the facility (or any later time that the Secretary has agreed to in writing) (**diverted tonnage**).

(2) However, subclause (1) is modified by subclauses (3) and (4).

(3) The measurement of gross tonnage may exclude waste or diverted material that, immediately after entering the facility, is separated out for reuse or recycling, or for removal from the facility, as long as it would otherwise have been measured as diverted tonnage later.

(4) The measurement of diverted tonnage must—

(a) include only waste or diverted material that was previously measured as gross tonnage, and not include anything else (such as anything that is not waste or diverted material or any waste or diverted material that entered the disposal facility before the commencement of these regulations); and

(b) include waste or diverted material that is deliberately burnt at the facility to recover energy from it (subject to paragraph (a)); but

(c) not include waste that is deliberately burnt at the facility to destroy it, but not to recover energy from it.

Table 2: Dates new reporting obligations are proposed to take effect

Site	Current reporting requirements (under the Act)	New reporting requirements	Record of waste disposal sites	Waste levy expansion reporting to start
Municipal landfill (Class 1)	Tonnage of waste disposed of at and diverted from the site	No change	1 July 2022 (applies to all sites that aren't already reporting this information)	N/a (already in place)
Industrial monofill (Class 1)	None	Weight of received & diverted material		1 January 2023
Construction and demolition fill (Class 2)	None	Weight of received & diverted material		1 January 2022
Managed and controlled fill (Class 3 and 4)	None	Weight of received & diverted material		1 January 2023
Cleanfill (Class 5)	None	Weight of received & diverted material		1 January 2023
Transfer station	None	Weight of received & diverted material		1 January 2022

- 25 The Ministry for the Environment is responsible for administering the Waste Minimisation Act 2008, including the levy funds, and is developing decision-making and administrative systems and the supporting capability, to enable the benefits of the increased levy funds to be maximised.
- 26 When the levy rates set out in Table 1 are put into regulation, the revenue from the waste levy will increase substantially – from around \$36 million per annum at present up to around \$276 million per annum. Cabinet has agreed to a pathway for the effective investment of waste disposal levy revenue [CAB-21-MIN-0039 refers].
- 27 The current Waste Minimisation Act 2008 will continue to govern the use of levy funds during the transition. Territorial authorities will continue to receive 50 per cent of levy funds (distributed on a population basis) in 2021 and 2022. The distribution of levy funds in subsequent years will depend on what decisions are made during the review of the Waste Minimisation Act 2008). Territorial authorities must spend levy funds to promote or achieve waste minimisation, and in accordance with their waste management and minimisation plans.

Timing and 28-day rule

- 28 The Regulations will enter into force 28 days after being notified in the Gazette.
- 29 Table 1 and Table 2 respectively set out the dates when the levy increase and expansion will take effect for different classes of landfill, and the dates when

the information requirements will take effect for different classes of landfill and transfer stations.

- 30 There will continue to be challenges with the enforcement and monitoring of these regulations, because the offences and penalties regime under the Waste Minimisation Act 2008 is not currently fit-for-purpose. In January 2021, I submitted a legislation bid to repeal the Waste Minimisation Act 2008 and Litter Act 1979 and replace them with a single new piece of legislation. I anticipate the offences and penalties regime (and therefore the compliance, monitoring and enforcement challenges) will be addressed through the upcoming legislation review.

Compliance

- 31 The regulations comply with:
- 31.1 Treaty of Waitangi principles
 - 31.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
 - 31.3 the principles and guidelines set out in the Privacy Act 2020
 - 31.4 relevant international standards and obligations
 - 31.5 the Legislation Guidelines (2018 ed).
- 32 The development of a new waste strategy to guide the spending of revenue raised from the waste levy will provide an opportunity for incorporation of Māori principles and mātauranga Māori. The move towards a more mindful and circular approach to the use of the planet's finite resources is in keeping with these principles. The Ministry is working with a Māori expert group to develop a conceptual framework for the new strategy that incorporates mātauranga Māori along with circular economy concepts.
- 33 The Act imposes statutory prerequisites for regulations prescribing new disposal facilities and prescribing levy rates under s 41, and for regulations in relation to records and information. These requirements have been met as follows:
- 33.1 The former Associate Minister for the Environment obtained and considered the advice of the Waste Advisory Board
 - 33.2 Consultation with persons and organisations who may be significantly affected was carried out from 27 November 2019 to 3 February 2020. In addition, an exposure draft process was undertaken with a limited group of affected persons to ensure workability of the proposed regulations.
 - 33.3 The former Associate Minister for the Environment considered the costs and benefits expected from implementing the regulations.

33.4 The former Associate Minister for the Environment also consulted with the Government Statistician, as is required for regulations requiring the keeping of records and providing of information.

- 34 Regulations prescribing waste levy rates are confirmable instruments under section 47B of the Legislation Act 2012 and must be confirmed by an Act of Parliament. An annual Subordinate Legislation Confirmation Bill is introduced to ensure that confirmable instruments are appropriately confirmed each year, and these regulations can be confirmed as part of this annual process – this is a standard procedural step that applies to a number of regulations.

Regulations Review Committee

- 35 I do not consider there to be any grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 36 The draft regulations have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

- 37 The Regulatory Impact Assessment was submitted with the June 2020 Cabinet paper [CAB-20-MIN-0264.01 refers]. A joint review panel with representatives from Treasury's Regulatory Quality Team, the Ministry for the Environment and the Ministry for Primary Industries reviewed the Regulatory Impact Assessment (RIA) "Increase and Expansion of Waste Disposal Levy" produced by the Ministry for the Environment and dated 26 May 2020, and it met the Quality Assurance criteria.
- 38 The Climate Implications of Policy Assessment (CIPA) requirements apply to these policy proposals and the assessment carried out was considered by Cabinet in June 2020 [CAB-20-MIN-0264.01 refers].

Publicity

- 39 Officials will ensure the new regulations are communicated to regulated parties through a range of communications and any press releases as appropriate.

Proactive release

- 40 I intend to proactively release this paper on the Ministry for the Environment's website, subject to withholding of information where appropriate, consistent with the Official Information Act 1982.

Consultation

- 41 Public consultation on the waste levy proposals occurred from 27 November 2019 to 3 February 2020 and 479 submissions were received. The Ministry

also discussed the proposals at a number of meetings and webinars and by phone call. Letters were sent to all known landfill and cleanfill operators (around 400 in total) to notify them of the consultation.

- 42 Relevant government agencies were consulted on the development of the waste levy policy, and pursuant to section 86(3) of the Act, the Government Statistician has been consulted on the data reporting proposals. The former Associate Minister for the Environment obtained and considered the advice of the Waste Advisory Board in accordance with sections 42(2) and 86(2) of the Act.
- 43 There were varying opinions about levy rates for the different landfill classes. Most submitters felt the levy rate should continue to increase beyond 2023 (ie, beyond the time period of the current proposals). Valuable feedback was also received on the data proposals, principles for levy investment, and other areas (eg, areas to include in any future review of the Act).
- 44 In January and February 2021, officials shared an exposure draft of the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2021 and the Waste Minimisation (Information Requirements) Regulations 2021 with a select group of stakeholders, including industry experts, landfill operators and a local and a regional council.
- 45 Stakeholders provided useful feedback around the classifications of different disposal facilities and transfer stations, and other feedback relating to the workability of the regulations as drafted.
- 46 The following government agencies were consulted on this paper: Ministry of Housing and Urban Development, Te Arawhiti, Te Puni Kokiri, Waka Kotahi New Zealand Transport Agency, Statistics NZ, Kainga Ora, Department of Internal Affairs, Ministry of Social Development, Ministry of Health, Inland Revenue Department, Environmental Protection Authority, Ministry of Transport, Ministry of Justice, Ministry of Foreign Affairs and Trade, Ministry of Business, Innovation and Employment, Ministry for Primary Industries, Department of Prime Minister and Cabinet, Treasury and Department of Conservation. Agencies were supportive of the changes to the waste disposal levy and had no substantive feedback on the drafting of the regulations or the Cabinet paper.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that the former Associate Minister for the Environment
 - 1.1 obtained and considered the advice of the Waste Advisory Board
 - 1.2 is satisfied adequate consultation took place with those that may be significantly affected by the regulations
 - 1.3 considered the costs and benefits of the regulations in accordance with sections 42(2) and 86(2) of the Act
 - 1.4 consulted with the Government Statistician as required by section 86(3)
- 2 note that in June 2020 Cabinet agreed to increase and expand the waste disposal levy, and to require operators of landfills to keep and provide information that is required to collect the levy and to measure progress with waste management and minimisation. Specifically, note that the regulations being submitted will:
 - 2.1 prescribe additional classes of landfills as disposal facilities and prescribe the rates (excluding GST) that will apply for each landfill class (per tonne of waste) and the dates on which these rates will take effect (as outlined in table 1)
 - 2.2 require levied sites to start reporting data on waste disposed of 6 months before the levy takes effect – construction and demolition sites will start reporting data from 1 January 2022, and managed and controlled fill sites will start reporting data from 1 January 2023 (as outlined in table 1)
 - 2.3 require operators of industrial monofills (class 1) and cleanfills (class 5) to keep and provide to the Secretary information on the tonnage of waste disposed of at and diverted from the sites on a quarterly basis commencing from 1 January 2023
 - 2.4 require operators of transfer stations to keep and provide to the Secretary information on the tonnage of waste received at the transfer station, the tonnage of waste sent from the transfer station to a landfill for disposal, and the tonnage of waste diverted, commencing from 1 January 2022
 - 2.5 require operators of sites to keep and provide to the Secretary, their contact details and landfill classification commencing 1 July 2022.
- 3 note that the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2021 and the Waste Minimisation (Information Requirements) Regulations 2021 will give effect to the decisions referred to in paragraph 2 above;

- 4 authorise the submission to the Executive Council of the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2021 and the Waste Minimisation (Information Requirements) Regulations 2021;
- 5 note that the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2021 and the Waste Minimisation (Information Requirements) Regulations 2021 come into force on 28 days after notification in the New Zealand Gazette.

Authorised for lodgement

Hon David Parker

Minister for the Environment

Proactively released

Appendix 1: Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Amendment Regulations 2021 and the Waste Minimisation (Information Requirements) Regulations 2021

Proactively released