



**Te Kāwanatanga o Aotearoa**  
New Zealand Government



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

# Waste Minimisation Act regulatory performance monitoring framework

INAUGURAL REPORT 2020/21



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# Abbreviations

CME	compliance monitoring and enforcement
CRS	container return scheme
FINNZ	Fishserve Innovations New Zealand
MRIT	Modern Regulator Improvement Tool
OWLS	Online Waste Levy System
RPASs	remotely piloted aircraft systems
TAs	territorial authorities
WMA	Waste Minimisation Act 2008
WMF	Waste Minimisation Fund
WMMP	Waste Minimisation and Management Plan



# Foreword

Aotearoa New Zealand is embracing the challenge of transitioning to a circular economy, with a growing number of regulatory and non-regulatory initiatives. A critical component of that transition is effective compliance monitoring and enforcement. Effective compliance monitoring and enforcement is critical to achieving environmental outcomes, ensuring public confidence and maintaining a level playing field for regulated communities. I am pleased to present the first performance monitoring report from the Waste Operations team at the Ministry for the Environment Manatū Mō Te Taiao.

This report sets out and reports on the Ministry's various CME responsibilities under the Waste Minimisation Act 2008. It is also an important element of our overall programme of communications around these responsibilities with a view to ensuring our regulated communities are clear on their obligations, who they apply to and how they can be met. Communicating the results of our regulatory activities provides critical transparency and helps the regulated communities we administer understand how their performance compares with that of other similar parties.

The Waste Operations team has introduced new compliance programmes, recruited a team of regulatory specialists, and become responsible for enforcing new regulations over the past year. As the transformation of New Zealand's waste system progresses, we will increasingly rely on the energy and expertise of our compliance team.

The responsible management of waste and resource recovery in New Zealand needs improvement. The current review of the Waste Minimisation Act 2008 provides a crucial opportunity to review and redefine roles and responsibilities, strengthen compliance and enforcement tools, powers and sanctions, and ensure our legal system supports our wider goal of transitioning to a circular economy. As a ministry, our capacity and capability to be an effective and credible regulator is a significant part of the puzzle.

Sam Buckle

Deputy Secretary | Tumuaki Tuarua  
Waste and Resource Efficiency, Water and Land Use Policy  
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# Executive summary

**The Regulatory Performance Monitoring Framework tracks the implementation of the compliance functions of the Waste Minimisation Act 2008 (WMA) to drive continuous improvement of process and outcomes, and to communicate findings and outcomes to our internal and external stakeholders.**

The WMA is the primary legal instrument to address waste and the transition to a circular economy in Aotearoa New Zealand. The Ministry for the Environment Manatū Mō Te Taiao is the primary regulator under the WMA, holding both system stewardship and direct regulatory responsibilities. In this role, the Ministry undertakes a wide range of activities, with multiple regulated communities.

The regulatory performance monitoring framework covers the regulatory implementation of the WMA and demonstrates our alignment with frameworks such as the Government Expectations of Good Regulatory Practice.

The 2020/21 year has been busy for the Ministry's Waste Operations team. Our staff numbers have increased, and the size and scale of our regulatory role is set to grow much more. We have worked to improve our systems and processes to ensure the way we work is fit for purpose and scalable as the levy expands and new regulatory requirements are introduced (such as further product bans).

Across disposal facilities and territorial authorities, we have conducted 82 formal audits and launched five investigations. The sector has generally welcomed the Ministry's refreshed approach to compliance, and we continue to build effective relationships with operators, councils and the wider public. Significant outcomes this reporting year include:

- the launch of the compliance monitoring and enforcement strategic framework, including a new WMA compliance strategy and refreshed prosecutions policy, and the development of a clear and structured decision-making framework for enforcement
- an overhaul of internal processes and procedures to ensure we are working consistently and keeping excellent records
- the launch of comprehensive audit programmes for territorial authorities and disposal facility operators, which have yielded critical insights for both our work and the legislation reform process
- a successful compliance project implementing the plastic bag ban, which involved a nationwide retailer survey, spot checks and responding to complaints.

The Ministry still has challenges in resourcing its role, and will need to invest in information technology, new models of regulation and enhancing its communications approach. Our regulated communities are varied and growing, so it will be a challenge to continue to operate effectively in this evolving environment.

A lack of data on historical compliance has meant we have worked hard to establish quality baseline information; this report forms an important part of this. As regulatory requirements change and increase over the coming years, these annual reports will provide important transparency, and help us to be accountable as a credible regulator. The revised waste legislation provides a great opportunity to enhance the tools available to us in carrying out our role.

# Part 1: Overview

## Introduction

Waste is a systemic environmental issue in Aotearoa New Zealand. Law and policy like the Waste Minimisation Act 2008 (WMA) control waste production behaviours, where waste can be disposed of, and the responsibilities of people and organisations involved. Significant elements of a shift towards a more circular economy include ensuring waste is responsibly managed, the levy paid appropriately, and distributed money is spent in accordance with the WMA.

The Ministry for the Environment Manatū Mō Te Taiao is responsible for the central government compliance monitoring and enforcement (CME) of the WMA. Our compliance workstreams interact with many regulated parties, and it is important the public has confidence we are effective and efficient in our role. This report presents a full year of data for our compliance activities and helps with our transparency in these areas.

CME is complex, and we face choices about where to put limited resources every day. We have a large range of compliance programmes, a small number of people and growing regulatory requirements, making risk management and prioritisation a core part of our work. Lack of data on historical compliance measures makes it more difficult to know which parts of our system need the most effort. As our datasets grow and we learn from our activities, we aim to become more targeted, more efficient and exemplify the qualities of a risk-based regulator.

Implementing our regulatory role is about ensuring the behaviour of others is consistent with the WMA's requirements. It can sometimes be difficult to know if we are being effective, because CME is only one variable contributing to the environmental outcomes.

The money from the levy is designated for a specific purpose under the WMA. It is payable on all waste deposited at qualifying sites ('disposal facilities'), except where it is diverted for recycling purposes.

The levy has generated nearly \$37 million in revenue in the 2020/21 year. It is distributed between territorial authorities (TAs), centralised administration and recipients for waste minimisation fund projects. As the levy expands to cover more sites and increases in price (to reduce waste to landfill) that revenue will increase to a projected \$275 million in 2024/25.

As a regulator, working with new regulated communities presents many unknowns. We must be aware of the risks of many new participants being unfamiliar with our regime or those adjacent, and having limited experience of mandatory reporting, with minimal infrastructure and small operations.

Robust, user-friendly and clear processes will be critical to the rollout of the levy expansion and introduction of new initiatives like regulated product stewardship.

Our functions mean we are on the frontline of implementing the WMA, giving us unique insights for policy development and evaluation across the organisation. We must be aware of the challenges our regulated communities face in achieving compliance and feed these back to projects such as the review of the WMA and the Litter Act 1979.



### **What does it mean to be a risk-based regulator?**

Risk-based regulators focus on issues presenting the greatest risk to the public interest. To be an effective risk-based regulator we need to clearly define our approach to decision-making around risk. Risk-based approaches shift the focus from detection of non-compliance to opportunities to minimise harm. Risk-based regulatory enforcement is inherently reliant on considerable data and evidence, and it requires clear goals, accurate risk assessment and a range of tools to follow up.

Risk-based approaches require a mix of technical evidence on where risk in the community lies, and principled decision-making at each stage of the compliance process. There is a risk of poor information resulting in poor choices, with significant consequences. We are working to improve our knowledge of our regulated communities and acquire and store key intelligence to support this way of working. A successful risk-based approach relies on being agile and constantly monitoring trends and outcomes.

## **Measuring the Ministry as a regulator**

This performance monitoring framework recognises the critical nature of our regulatory role. It helps the Ministry, other government departments, our regulated communities and stakeholders to understand whether the regulatory programmes are achieving their objectives and we are making the best possible use of our resources.

A good performance monitoring framework has three main elements:

- setting clear goals for the compliance programmes we administer
- establishing an efficient and effective framework to gather information to track the implementation of those objectives
- providing insights into how the information will be used.

The value of good data increases exponentially over time, and this performance monitoring framework is designed to work through changes in legislation, institutional arrangements and personnel.

Measuring the performance of regulators is challenging, because:

- the intended outcomes of the relevant regime are usually delivered by the regulated parties rather than the regulator
- other objectives, including political ones, may crowd out or take priority over being a responsible regulator
- many relevant aspects lie outside the control of regulators, so influence can be difficult to determine
- outcomes of compliance programmes may not be evident for many years.

None of these challenges mean performance monitoring should not be carried out or be done in a sustained and efficient fashion. This report captures our main outputs, including a benchmarking exercise we conducted using the [Modern Regulator Improvement Tool \(MRIT\)](#).

## Who are we accountable to?

Under the Environment Act 1986, the Ministry is Parliament's main advisory agency on environmental matters. Our core purpose statement is 'He taiao tōnui mō ngā reanga katoa – a flourishing environment for every generation'. You can find out more about our work programme on our website and in our [Statement of Intent 2020–25](#). Broader information about the Ministry's achievements can be found in our [Annual Report 2021](#).

As a central government regulator, we are also accountable to other agencies and processes, which are designed to give New Zealanders confidence we are properly discharging our responsibilities. These include:

- Audit New Zealand and the Office of the Auditor-General
- the two business units of the Controller and Auditor-General
- an Officer of Parliament
- Official Information Act 1982
- Public Service Act 2020.

Our role is funded from the Waste Disposal Levy and Vote Environment appropriation, and accountability attached to those funds involves regular reporting to Treasury. The Ministry also undertakes formal and informal reporting, including:

- annual report
- briefings to the Minister for the Environment
- engagement with the waste sector, our regulated communities and the wider public.

## Our regulatory role

### Key objectives

The key objectives of the CME function are:

1. maximising compliance with the WMA
2. administering a best practice regulatory programme to achieve the purpose of the WMA.

### Our principles

The Ministry for the Environment aims to be a modern and effective regulator that exercises its statutory authority fairly and credibly. We will take regulatory actions that are:

- transparent
- consistent
- fair
- informed and evidence based
- collaborative
- lawful, ethical and accountable
- targeted
- responsive and effective.

## Waste Minimisation Act 2008 regulatory role

The WMA came into effect in September 2008, and includes the following regulations:

- Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009
- Waste Minimisation (Microbeads) Regulations 2017
- Waste Minimisation (Plastic Shopping Bags) Regulations 2018
- Waste Minimisation (Information Requirements) Regulations 2021.

Collectively, the WMA and regulations require the Ministry to:

- collect the waste disposal levy from disposal facility operators (DFOs)
- distribute levy money to TAs for waste minimisation initiatives
- distribute levy money for waste minimisation projects
- monitor whether and how TAs are spending levy money distributed to them
- monitor whether TAs review their waste management and minimisation plans
- carry out audits of DFOs, TAs, organisations paid levy money, the levy collector and scheme managers or participants in product stewardship schemes
- investigate and carry out enforcement action in relation to breaches of the WMA and related regulations such as for the Waste Levy and the Plastic Bag Ban.

Responsibilities for administering these procedural and regulatory requirements fall to several teams in the Waste and Resource Efficiency Directorate. This report focuses on the activities of the Waste Operations team in their CME role. The guiding document framework for Waste Operations is captured in figure 1.

**Figure 1: Waste Operations document framework**



### **Project spotlight: Operation Pepa**

Until 2020, the Ministry had an incomplete range of documentation and processes to support the compliance role. Much of what existed was not fit for purpose and would not be suitable as the team's role expanded. Operation Pepa was a systematic review of all internal guidelines and processes to ensure they are robust.

Operation Pepa gave rise to our three modernised guiding documents:

- *Compliance strategy* – an overarching strategy guiding our compliance effort and outlining our core principles and approach
- *Enforcement decision-making policy* – setting out how our compliance decision-making is carried out and by whom, to ensure it is strictly apolitical
- *Prosecutions policy* – a mandatory document to guide our approach as a public prosecuting agency, required and approved by Crown Law.

Operation Pepa also resulted in several spin-off projects, including an end-to-end review of levy administration, establishment of an audit function for Waste Minimisation Fund recipients (see [fund compliance](#)) and a product stewardship pilot auditing project.

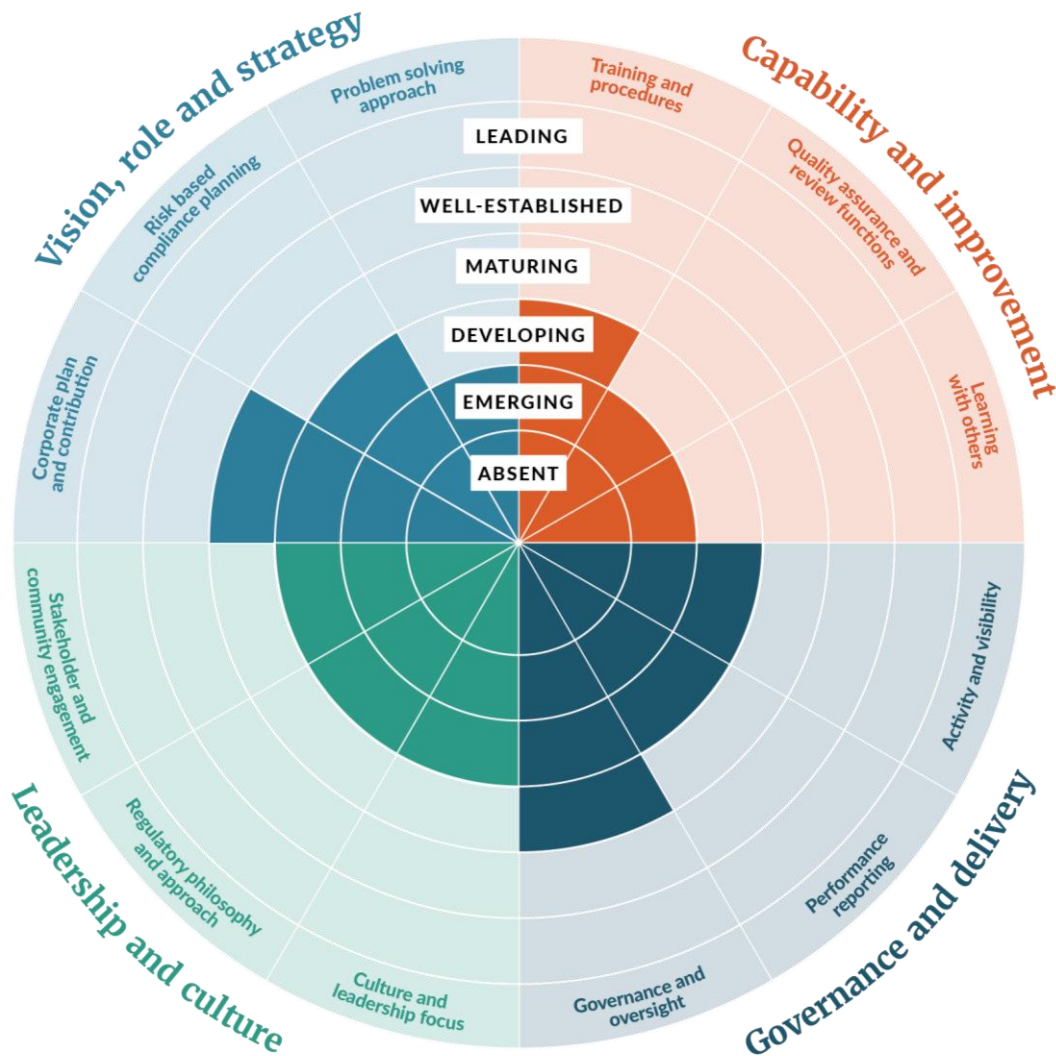
## **An overall assessment – the Modern Regulator Improvement Tool**

The Ministry for the Environment's Waste Operations team aims to be a good practice regulator. This journey has seen our team grow from two full-time equivalent roles in 2019, to a team of 11 with an expanded range of functions in 2021. This rapid increase in staffing has been complemented by increased training and development.

Several frameworks help regulators benchmark and assess their own performance. The Ministry has undertaken a self-assessment using the Modern Regulator Improvement Tool (MRIT) developed by the Australasian Environmental Law Enforcement and Regulators neTwork, an internationally recognised professional network for environmental regulators across Australasia.

Benchmarking ourselves as regulators helps us continually monitor and review our effectiveness, preserving effective approaches and changing what is not working. The MRIT sets out 12 key attributes, and agencies assess themselves against them, rating the level of maturity with which the organisation carries out its role (figure 2).

Figure 2: Waste Operations Modern Regulator Improvement Tool assessment results 2020/21



Organisational maturity can range from ‘absent’ through to ‘leading’, and the MRIT can be undertaken repeatedly to track improvements and prioritise areas where further work or investment is needed. Further details are provided in [appendix 2](#).

The MRIT is a qualitative assessment framework that helps regulators understand their progress, areas of strengths and areas for development. This is the first year the Waste Operations team have undertaken the assessment; in future we will apply the learnings to defining our strategic priorities and identifying appropriate focus areas.

We consider ourselves to be ‘developing’ in most of the attributes. Areas we scored the lowest in (‘emerging’) were ‘quality assurance and review’ and ‘learning with others’. Our nascent approaches to review will be a focus in the coming year, as will building structured and formal relationships with stakeholders and the wider community.

Areas we scored highest were ‘corporate plan and contribution’ and ‘governance and oversight’. The efforts we have made to enhance these areas over the 2020/21 year have paid off, and we have further improvements planned for the next year.

### Case study: Using drones in a compliance role

Drones (remotely piloted aircraft systems, or RPASs) can capture a large amount of information, access challenging and remote terrain, and form part of the audit inspection and compliance monitoring and enforcement (CME) function. The technology can allow the Waste Operations team to complete a survey at the beginning of a site visit, to identify areas of interest such as diverted materials and stockpiles.

Government agencies, including councils, are increasingly using drones to carry out CME functions because they offer a range of benefits. They do not replace existing systems, but by leveraging this technology, existing work can be done more efficiently and safely.

As part of pre-audit preparation, auditors currently use open-source satellite imagery to examine the site and gather information. This imagery is often out of date and does not allow auditors to determine where stockpiles and active and inactive cell locations are in a landfill. Drone technology allows auditors to identify areas of interest, so time can be well spent looking at key focus areas. They can gather information about disposal facility operators' performance by taking images, videos or measuring volumes.

Training is required to operate a drone for the Ministry's purposes. This ensures operators have a licence or certification from an approved training organisation, such as the Massey University School of Aviation. The Civil Aviation Authority regulates the use of RPASs, and Part 101 of the Civil Aviation Authority rules defines the legal rules a drone operator must comply with. When flying an RPAS, Part 101 rules must be followed by operators.

## Communicating our work

Accountability and transparency – responding to our community and doing so in a timely fashion – are important parts of our role. The data in table 1 are the best available, but numbers will be an underestimate due to limited recording of some inquiry channels. We plan to improve the depth and quality of our recording of inquiries.

**Table 1: Responses to email inquiries to Waste Operations 2020/21**

Workstream	Inquiries 2021/21	Percentage responded to
Disposal facility operators	61	100%
Territorial authorities	98	100%
Plastic bag ban	7 <sup>1</sup>	100%

Our team endeavours to respond to requests and ensure any requests we are unable to answer are quickly rerouted. Other inquiries internally and externally are outside of these channels, for which response data are not available. Our information management needs improvement, we need to better log our inquiries and steward the responses. The limited ability to track and report means we lack confidence that we are meeting our obligations as a team. The system improvements over the past year across the Ministry for the Environment will support our transparency and reporting.

<sup>1</sup> In addition to this, we received 84 reports of non-compliant bag use through an online portal.



### **Project spotlight: Emissions accounting of a nationwide enforcement role**

Undertaking a central enforcement role is challenging because our regulated communities are spread far and wide. The emissions embedded in undertaking our role are a critical consideration, and we carefully account for the vehicle use our team requires in the field.

Our role in compliance monitoring and enforcement requires travel across Aotearoa New Zealand to meet with our regulated community and inspect sites to ensure they are meeting their obligations under the Waste Minimisation Act 2008. This often means we need to travel long distances to reach them, which contributes to our emissions outputs.

One of the ways we manage this is through an emissions tracking database, which maps our trips and provides estimate emission outputs. We review this data monthly to assess our impact and identify areas for improvement. We are also able to identify synergies with other work programmes and align our travel so we can share transport and so reduce our carbon footprint.

The data we collect helps build the overall picture of the Ministry's emissions and ways we can most efficiently reduce these.

## **The future – upscaling our compliance function**

Over the coming years, the compliance function supporting the WMA and its replacement is set to grow in both size and scale. This report provides a baseline before changes are introduced, including the levy expansion, new product stewardship schemes, bans on some single-use plastic products, and the addition of further funding streams requiring audit. It outlines the work of the Waste Operations team in the current environment.

Changes imminent or proposed include:

- various new facilities subject to the levy and/or reporting requirements (several hundred more over the next three years)
- introduction of regulated product stewardship schemes, including for tyres and large batteries (including electric vehicle batteries)
- further proposed regulation of single-use plastics (for example, cotton buds).

It is vital we are prepared to meet these implementation challenges.

Building our capacity and capability as a regulator is an essential element of that preparation. Our assessment under the Modern Regulator Improvement Tool (MRIT) has identified focus areas for our strategic work programme. These include developing further quality assurance processes and establishing and improving linkages with our regulatory colleagues across the environmental sector.

We intend to report annually on the metrics in this report.

## Part 2: Our work programmes

We arrange our work programmes into eight workstreams, administered by a dedicated operational and strategic lead. The next sections of the report demonstrate performance against relevant metrics for each workstream.

- Workstream 1: Disposal facility compliance | Tautukunga wāhi para
- Workstream 2: Territorial authority compliance | Tautukunga mana wāhi
- Workstream 3: Fund compliance (auditing the Waste Minimisation Fund) | Tautukunga tahua
- Workstream 4: Product compliance (including product stewardship) | Tautukunga hanganga
- Workstream 5: Levy administration | Whakarite utu
- Workstream 6: Investigations | Ngā tūhuratanga
- Workstream 7: Strategy and policy | Te rautaki me te kaupapa here
- Workstream 8: Systems, processes and coordination | Ngā pūnaha, ngā tukanga me te reretahi

# Workstream 1: Disposal facility compliance | Tautukunga wāhi para

▶▶ More than 80 per cent of all audit findings were compliant or had only minor areas for improvement. ◀◀



## Overview of workstream

Our disposal facility audit programme in the 2020/21 financial year aimed to audit all the class 1 disposal facilities known to the Ministry for the Environment. We resourced this function with a lead auditor, assisted by Waste Operations staff. All audits to 30 June were carried out by the internal audit team or an external contractor (Deloitte carried out 10).

The scope of the audits includes seven main themes, relating to keeping records, methods of calculation, and other general landfill management aspects. All data are collated and managed by the Ministry. Audit results form the basis of our risk-based planning for subsequent audit years.

Due to a lack of baseline data, the Ministry decided to assess the compliance of all disposal facilities nationally. As of 30 June 2021, there are 36, which can vary over the year as facilities open and close, affecting planning. The information from these assessments will inform a more risk-based approach in the future, which will be particularly important as the regime expands and auditing across a greater number and range of facilities is required.

The team scheduled 36 audits this year and 34 were carried out (table 2). Three of the 36 are not included within this dataset. Three members of the regulated community were either not audited (for health and safety reasons or due to information the facility had closed (later deemed inaccurate)), were not subject to a full audit, or results had not been processed by the end of the financial year. The data from those facilities are therefore not included but will form part of the analysis next year.

**Table 2: Total audit figures for 2020/21 and projected audit goal for 2021/22**

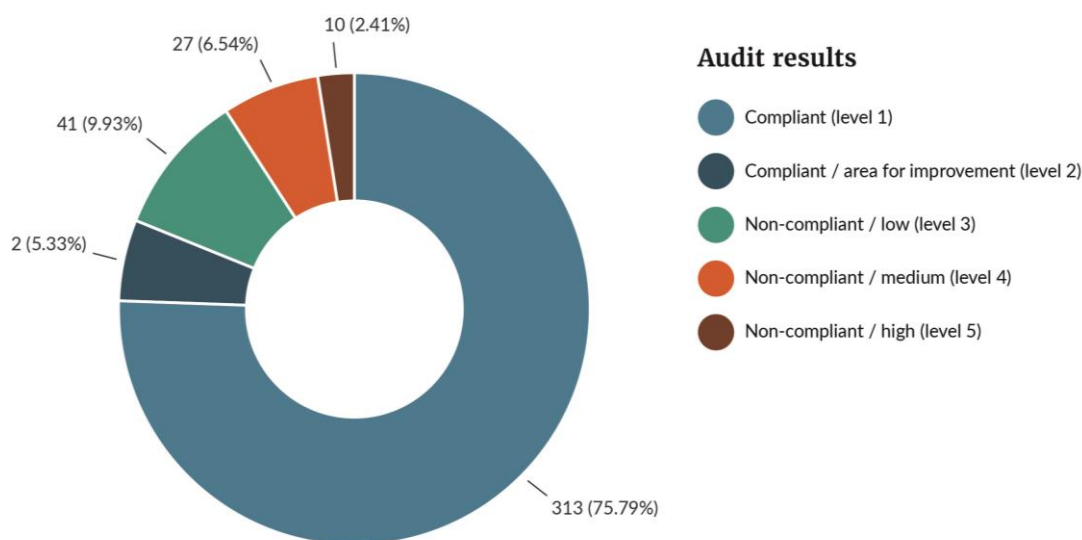
Audited 2020/21	Scheduled to audit 2021/22	Facilities closed 2020/21	Facilities opened 2020/21
34	30	3	0

## What we found

More than 80 per cent of all audit findings were compliant or had only minor areas for improvement. Non-compliance is tiered by degree of associated risk. Low-level compliance is typically minor and easily resolved, while high and medium non-compliance reflects concerning practice likely to be referred for investigation. Nuance in presenting degrees of non-compliance gives both the Ministry and stakeholders more information about the nature and extent of issues in the sector and helps us focus on the matters constituting greatest risk.

Medium and high levels of non-compliance made up 47 per cent of total non-compliances, indicating a range of opportunities to improve practice; doing so should be an area of priority for those facilities over the coming year.

**Figure 3: Compliance levels encountered across all points of audit**



Most findings (75.79 per cent) demonstrated a high level of compliance and a good understanding of requirements. Six facilities had no compliance issues identified at all.

### Spotlight on daily cover material

Daily cover material is used to decrease landfill odour and leachate, prevent waste material from being windblown and reduce pest animals at the disposal facility. The Waste Minimisation Act 2008 (WMA) allows material to be recorded as 'diverted' where it is reused, recycled or removed from the site within six months of arriving. The Ministry's audit programme has identified that some sites have misinterpreted the legislation and have been using inappropriate material as daily cover.

The definition of reuse in section 5 of the WMA is:

**reuse** means the further use of waste or diverted material in its existing form for the original purpose of the materials or products that constitute the waste or diverted material, or for a similar purpose.

Operators using soil or clay on site for cover material can therefore treat these materials as diverted material. However, other materials such as crushed glass, if used for cover material, is still subject to the levy. This is because the original or similar purpose of glass is not to be used as cover material.

It was also identified that the Ministry's guidance on the levy needed to be clearer. Where our auditors have noted this occurring, several corrective action requests have been issued, as well as some in-depth investigations being undertaken.

The Ministry is updating its guidance and producing a factsheet on the reuse of materials on site to provide clarity to disposal facility operators. This issue will be a main area of focus for the 2021/22 audit programme for disposal facilities.

## Responding to non-compliance

Various practices are used among the current regulated community, and our auditors identified areas of common non-compliance. Many examples of poor record keeping were addressed through education and engagement, as the regulated parties came to better understand expectations. Where non-compliance is identified, two main courses of action are available. Our auditors will issue **corrective action requests** for minor breaches and refer more serious matters for **investigation**.

Corrective action requests typically relate to how records are kept, so can sometimes be addressed through a desktop review. Most are minor and will be included in a subsequent audit, so most remain outstanding until the facility is revisited. Where there are opportunities to resolve these matters by desktop review, the auditors will do so. A register is maintained with timeframes for each request (table 3).

**Table 3: Ongoing referrals and corrective actions arising from audits**

Audit outcomes	Number issued	Matters resolved	Matters outstanding
Correction action requests	47	1	46
Referrals	9	6	3

Our Investigations team assess referrals and may choose from a range of actions to resolve the matter, including launching an investigation to gather more information. Depending on circumstances, the Investigations team may decide to address a matter through a later audit.

In the 2020/21 year, nine matters were referred for investigation. Six were resolved or returned to auditors to action and three matters remain under investigation.

## Reflections

What we learn in the field is directly applied to our planning and risk assessment for future years, but our knowledge is also useful for other parts of our division and organisation. Information collected for regulatory compliance purposes is also useful for policy effectiveness monitoring, for example. The insights from our auditing programme this year are set out below and identify areas where opportunities exist to improve policy settings.

- The regime for managing disposal facilities under the Waste Minimisation Act 2008 (WMA) has been narrow, because the levy is only payable for class 1 sites. This is changing as the levy expansion rolls out, and our audit programme will continue to provide useful insights we can apply from both a policy and regulatory standpoint. It is critical good feedback loops are in place between compliance and areas of the organisation charged with system stewardship.

- A significant number of new parties joining the regulated community in the coming years will put an emphasis on strong education and orientation processes, particularly related to using the Online Waste Levy System (OWLS). The Ministry is updating its guidelines and improving the quality and frequency of communication with the relevant sectors. OWLS has recently been upgraded and is undergoing further enhancements to meet the growing demand of the levy expansion.
- The WMA operates adjacent to a wide range of other legislation, in particular the Resource Management Act 1991 (and its imminent replacement). We see opportunities to support outcomes in both regimes by improving the interface between the two Acts, particularly regarding managing waste facilities and the operators that bring materials to them. These opportunities should be canvassed in the review of the legislation in both instances.
- The change in the levy is likely to alter behavioural incentives in the regulated community, and non-compliance may become more profitable. A failure to maintain a level playing field and patchy regulatory approaches will further aggravate this. The Ministry is developing systems to manage increasing referrals, including building an online complaints system, developing a suite of policies and procedures to support an investigations role, and hiring further staff to manage the regime more broadly.



## Workstream 2: Territorial authority compliance | Tautukunga mana wāhi

▶▶ Audit results form the basis of our risk-based planning for future audit years. ◀◀



### Overview of workstream

Our territorial authority (TA) audit programme audited 48 (72 per cent) councils in the 2020/21 financial year. By October 2021, we audited all 67 TAs, subject to COVID-19 and the resulting restrictions on field work. The scope of the audits includes:

- an assessment of levy expenditure practices for the most recent reported financial year
- a review of key documentation, such as the TA's waste assessment and Waste Minimisation and Management Plan (WMMP), any applicable bylaw and/or solid waste policy and reporting.

The Ministry for the Environment has resourced this function with a lead auditor, with Waste Operations team staff assisting. All 48 audits to 30 June were carried out by the lead auditor or an external contractor (Deloitte carried out 20), and all data are collated and managed by the Ministry. Audit results form the basis of our risk-based planning for future audit years.

### What we found through auditing

The TA auditing programme has shown a relatively high level of compliance by local government with the obligations set out under the Waste Minimisation Act 2008 (WMA) (table 4). We also assess how councils comply with the Ministry's guidance on levy spending.

**Table 4: Audit results of territorial authority audit programme of levy spending**

Audit results	Relevant section of the WMA	Compliance (%)
Levy expenditure on matters to promote or achieve waste minimisation	Section 32(1)(a)	88.89
Levy expenditure in accordance with WMMP	Section 32(1)(b)	77.78
WMMP compliance	Sections 43, 50 & 51	89.50
Adherence to Ministry guidelines for levy spend	Good practice levy spend guidelines for TAs	92.09

**Note:** TAs = territorial authorities; WMA = Waste Minimisation Act 2008; WMMP = Waste Minimisation and Management Plan.

Our audits of WMMPs identified a lack of understanding of what was required in a WMMP review. Some TAs were not clear on the required steps and timeframes for a review, and due to this and other factors, the Ministry has been required to **retain quarterly levy payments** from several TAs over the past 14 months. Close engagement to support TAs through their review process has been effective in helping them achieve compliance.

Areas where non-compliances have been identified include:

- WMMPs not reviewed within the six-year statutory timeframe, with the Ministry having to retain levy payments to several TAs during 2020 and 2021 (as required by section 33 of the WMA). At the date of this briefing, one TA's WMMP review remains overdue, and Ministry staff are working with the council to progress this so they can start receiving levy payments again
- inconsistencies between reporting of levy spend and financial records due to administrative errors and/or journaling of funds not completed at end of financial year as intended
- levy spend not always entirely traceable back to the WMMP, predominantly due to spend priorities changing over the six-year WMMP period
- inability to clearly account for historical levy funds, including lack of 'ringfencing' within TAs' financial management systems.

The Ministry has provided education, corrective actions and monitoring where necessary for these low-level non-compliances. Due to an overall willingness to comply with regulatory obligations, we expect to see a decrease in the number of non-compliances for TAs' levy expenditure activities in future years.

The Ministry's **support and guidance to TAs has been limited** to date, and the new auditing programme has been welcomed by councils. Ongoing education and engagement will form an important part of the Waste Operations communication and engagement strategy in future, so challenges or issues encountered by the regulated community can be identified and shared. We are confident that levels of compliance will improve further with more effective and detailed guidance.

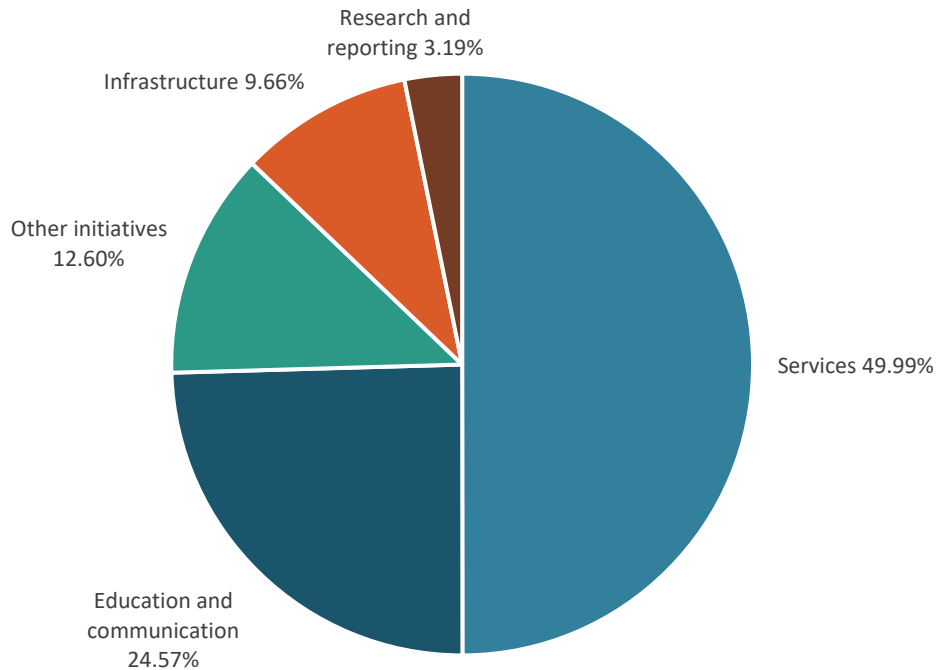
## **What we found through levy spend reporting**

TAs are asked to submit a report to the Ministry annually (around August–September) to outline how they have spent their share of levy funds for the previous financial year. The data presented below are for the 2019/20 year (figure 4). This reporting is currently voluntary, but most TAs are happy to provide this information, with a return rate of 64 out of 67 TAs (Rangitikei District Council, Kaikōura District Council and Carterton District Council did not submit reports).

During 2019/20, TAs reported total levy expenditure of \$20,359,970.63. This equates to more than the total amount of levy funds paid to TAs (\$17,326,914.25), with some TAs, such as Auckland Council, choosing to save levy funds and spend larger portions in particular years, to cover costs associated with projects such as new infrastructure.

The type of spend by TAs was heavily weighted towards services such as kerbside recycling, followed by education and communication. This reflects a typical spread of spending, based on historical data.

**Figure 4: Total territorial authority spend by category in 2019/20**



Many TAs are using levy funds for ‘existing’ activities (that is, subsidising their operational recycling costs (to reduce the impact on rates)), while others are only using levy funds on ‘new or expanded’ activities. The latter are often proactively looking for different ways to spend the levy each year (where their WMMP gives them the flexibility to do so), and often new initiatives relate to behaviour-change projects, such as community workshops, education in schools or local waste minimisation grants that community groups need to apply for. Note that these data will not demonstrate improvements from auditing inquiries and assistance from the Waste Operations team.

### Spotlight on territorial authority spending of levy

The annual levy spend reporting process and audit of territorial authority (TA) compliance are both administered by our team and are closely linked. The primary purpose of the reporting is to demonstrate compliance with the Waste Minimisation Act 2008 (WMA) and that spending is for the purpose of waste minimisation. Where spending does not meet this test, the Minister can direct that the levy be withheld. Currently no other regulatory consequences are in place for non-compliant spending.

Levy funding distributed to TAs must be spent on waste minimisation. This requirement is set out in section 32 of the WMA.

#### 32 Spending of levy money by territorial authorities

- (1) A territorial authority may spend the levy money it receives under section 31 only—
  - (a) on matters to promote or achieve waste minimisation; and
  - (b) in accordance with its waste management and minimisation plan.
- (2) When making a decision in relation to funding any matter to which subsection (1) applies, the territorial authority must consider the effects that the decision may have on any existing waste minimisation services, facilities, and activities (whether provided by the territorial authority or otherwise).

The type of activities TAs choose to fund through the levy varies, with some choosing to spend their levy funds in full on kerbside recycling and others only funding educational initiatives. Some confusion has occurred on permitted expenditure types in the past (including whether levy funds can be used to subsidise existing services or whether funds must be used only for new or expanded initiatives).

This has been identified as an area where the Ministry could provide more strategic direction and guidance and is being considered as part of the review of the WMA. Over time, we would like to be able to report more richly on outcomes-focused aspects of levy spending. This will require more data and strengthened powers within our auditing programme.

Sometimes audit findings require a further step of review, analysis and, potentially, investigation.

TAs receive a share of the levy and must spend it on waste minimisation. Our investigations team will respond to concerns about levy funds not being spent in this way. An example of a matter investigated this year was where levy funds declared by a TA as accrued were found to be less than outlined in Ministry records.

The audit team referred the matter for in-depth investigation. An investigation was initiated, and the Ministry engaged with the TA to determine the reasons for the discrepancy. We considered the TA's financial records and were able to trace the historical reasons for the difference in the amount accrued. The TA accepted the Ministry's findings and corrected the amount of levy money it held.

The resolution of this referral resulted in an additional \$111,000 in levy money being available for the TA to use on waste minimisation. While accruing funds over a number of years to spend on larger projects is common, it is important records are kept carefully to ensure the levy usage is in line with the WMA and the Ministry's guidance on this matter.

## Reflections

Information collected for a regulatory compliance purpose is extremely useful for informing policy effectiveness monitoring. While the data highlights our regulatory role, the implications for the regime at large cannot be overlooked. The insights gathered from our auditing programme this year are set out below and identify areas of opportunity for improving policy settings.

- TAs that can support a **dedicated waste officer** tend to perform better, because they can more effectively plan for and fund waste minimisation initiatives in their areas. Smaller TAs receive a small share of the levy, which can make financing these positions challenging (for example, Auckland Council receives around \$6 million per year while Chatham Islands Council receives just over \$2,000 per year, when eligible). We have communicated this to our legislation review team so the nature of the levy distribution model may be revisited.
- Waste minimisation, like many other council activities, **can be deprioritised** in favour of other priorities. Delivery of the intended objectives, methods and targets to minimise waste (as set out in WMMPs) can often be compromised by competing activities that have clearer legislative requirements or levels of service obligations. Without TAs being required to meet any target or goal for waste minimisation, this activity can often be deprioritised. There may be insufficient external drivers, such as mandated outcomes, to drive some councils to apply energy to this role.
- Further opportunities exist to **better coordinate waste minimisation** initiatives, including through joint planning and collaboration at local, regional and national scales. Varying

levels of collaboration and information sharing exist across the 67 TAs. Those TAs that are part of a joint regional network for waste can pool both resources and funds to implement more comprehensive initiatives than those TAs operating in isolation.

While all WMMPs reviewed to date have contained the minimum required elements set out in the WMA, the content of these documents currently varies greatly. Some TAs set ambitious targets through their WMMPs and regularly monitor and report on their progress, while others choose not to set targets and use their six-yearly waste assessment as the only stocktake of their waste activities and behaviours for their district. The revision of the New Zealand Waste Strategy will help **provide direction for WMMPs**, through the setting of targets.

## Workstream 3: Fund compliance | Tautukunga tahua

» In 2021/22 we'll increase audits and consider whether to expand across other funding mechanisms within the Ministry. «



### Overview of workstream

Each year the Ministry for the Environment distributes the levy. Most of the funds are distributed through the Waste Minimisation Fund (WMF), with others distributed to projects initiated by the Minister for the Environment.

It is important the levy funding is clearly distributed for waste minimisation, as stated in the Waste Minimisation Act 2008 (WMA). Assessing and validating this is critical to ensure the funding:

- purpose aligns with its distribution
- is used to minimise waste.

In 2020/21 the Waste Operations team, with assistance from the WMF team, began designing and introducing a pilot internal auditing capability. An experienced financial auditor was hired, and the pilot was launched in March 2021, after a six-month design process.

### Establishing a pilot programme

The programme focuses on ensuring WMF recipients comply with the terms and schedules on the Deed of Funding. We are developing an auditing programme, establishing processes, and creating templates and guidelines. Find out more about the WMF auditing approach at [Waste Minimisation Fund audits](#). All audits are initiated either proactively or in response to referrals (Table 5).

Waste Operations conducts two types of audits:

- **full audit** – this engages with the WMF recipient to ensure the funds have been spent in accordance with the Deed of Funding
- **third party payment audit** – this involves directly contacting the supplier who provided the services to the WMF recipient on the project. This is to ensure the supplier has been paid by the WMF recipient where the Ministry has paid the WMF recipient. If significant issues are identified, this will warrant a full audit on the recipient.



**Table 5: Audit activity for internal audit function of Waste Minimisation Fund projects**

Audit activity	Number
Number of referrals	3
Audits initiated because of referrals	1
Proactive audits initiated	3
Audits in progress at 30 June	1
Audits finalised	3

## What we found

No significant issues were identified from audits in the first three months of the programme. Internal and external parties have been responsive to information requests from our audit team. In 2021/22 we will increase audits to cover up to 10 per cent of the current WMF projects and consider whether to expand across other funding mechanisms within the Ministry.

## Workstream 4: Product compliance | Tautukunga hanganga

▶▶ As a compliance team, we have an important role in managing in-scheme compliance and addressing non-compliance. ◀◀



### Overview of workstream

Over the past four years, the Ministry for the Environment has made policy interventions to control certain product markets by banning their sale and is exploring allowing declared priority products to be sold only under an accredited scheme. These initiatives create stronger measures than under the existing 12 voluntary accredited product stewardship schemes.

Cabinet has agreed to further product bans and a series of regulated product stewardship schemes. As a compliance team, we have an important role in managing in-scheme compliance and addressing non-compliance with such initiatives. Product compliance demands a new range of skills and a new approach, and we are working to establish a robust regulatory resource to ensure the outcomes intended through the legislation are met in practice.

### Implementing the ban on plastic bags

A significant example to date is the ban on single-use plastic bags. To support the regulations, the Waste Operations team administered a significant compliance project over one year. Compliance projects are short-term initiatives that deploy resources to particular areas to focus in a way that might be different from how things will be administered in the long run. They are particularly useful for new regulatory initiatives.

A one-year project ran from January to December 2020 to gauge compliance and engage with the regulated community. The scope of the project included:

- management and resolution of reports received from the public regarding suspected use of banned bags
- providing support and advice to businesses to ensure compliance
- liaising with retailers using deficient or borderline bags to influence compliance, and also prevent return to bad behaviours, and encourage retailers to make more sustainable choices
- providing assurance to retailers found to be genuinely compliant and promoting examples of real retailers using alternatives to plastic bags
- providing assurance to the public that the legislation is implemented and crosschecked as promised
- providing feedback and insight from Aotearoa New Zealand retailers to government and raising awareness and support for the reduction of other problematic plastics.

## What we found

Table 6 outlines the work completed over the term of the project (note: this exceeds the formal date range of this report).

**Table 6: Plastic bag compliance results over the life of the project**

Reported retailers	Number	Notes
Reports of suspected banned bags	534	Actionable reports received from members of the public from 1 July 2019 to 15 July 2021.
Businesses reported (cases)	219	Businesses reported (many businesses were reported multiple times).
Non-chain stores reported	163	Reports received regarding retailers not part of a national chain or franchise (decision-maker instore).
Chain stores reported	56	Reports received regarding retailers as part of a national chain or franchise (decision-maker at head office).
Cases resolved	208	Cases resolved to confirmed compliance; that is, confirmation retailer is not using banned bags.
Cases in progress	14	In progress due to: <ul style="list-style-type: none"> <li>no response from the retailer</li> <li>awaiting evidence</li> <li>chains (longer processing times).</li> </ul>
Cases escalated	1	Extensive actions taken (contact and/or spot checks) but complex case requiring Ministry advice.
Spot checks	Number	Notes
Retailers spot checked	1,818	Spot checks performed at shopping centres and retail precincts across Aotearoa.
Retailers using deficient bags	49	Advice provided to cease using banned bags and left specific flyer.
Retailers using borderline bags	15	Advice provided to consider more sustainable alternatives and left specific flyer.
Retailers using compliant plastic bags	115	Advice provided re non-plastic options.
Retailers not using plastic bags	1,639	Confirmed no plastic bags in use, congratulated retailer and took picture with permission if positive example.
Retail coverage	3,147	Approximate number of retailers in the precincts visited.
Total assessed compliant	3,089	Retailers in the precinct not spot-checked (low risk of non-compliance based on category or previous visits) plus those confirmed compliant.
Estimated nationwide compliance	97%	Assessed compliance as a percentage of coverage.

The compliance project showed high levels of compliance and support and demonstrated future product bans would likely be met with support. Following the project focus, the compliance programme for plastic bags was continued at a lower intensity. The Ministry received fewer reports and resolved most of the cases quickly. The programme now focuses on responding to reports of alleged non-compliance by contacting or visiting retailers that are the subject of complaints and requesting evidence of compliance.

## Interpretation

A range of single-use plastics and other products (for example, products containing mercury) are the subject of proposed future bans on, or further regulation of, sale and/or manufacture. Products slated for potential bans or further regulation include:

- some hard-to-recycle PVC and polystyrene packaging and oxo-degradable plastic products
- seven single-use plastic items, including plastic straws, drink stirrers, produce bags, tableware (for example, plastic plates, bowls, cutlery) and non-compostable fruit stickers

Regulated product stewardship is also a significant development happening in parallel.

## Regulated product stewardship

‘Product stewardship’ describes how producers and suppliers involved in the lifecycle of a product take responsibility for the environmental effects of the product. For example, manufacturers may implement recycling plans, and stores may offer takeback schemes where customers can return the goods to be reused or recycled.

To date, no regulations have been made on product stewardship, but 17 voluntary schemes have been developed and accredited since the Waste Minimisation Act 2008 (WMA) came into effect. Several have ceased operation or allowed their accreditation to lapse, and 11 are currently accredited. The Ministry’s role for product stewardship includes:

- (a) monitoring the performance of an accredited scheme (voluntary or regulated)
- (b) auditing record-keeping requirements and compliance with regulations relating to product stewardship
- (c) investigating possible offences relating to the contravention of product stewardship regulations.

The Waste Operations team has responsibility for (b) and (c) above, the RPS Policy team administers (a) in the context of their policy evaluation and monitoring role.

As no regulations are in place at present, our activity levels have been limited to providing policy input. Regulated product stewardship schemes are under development for six priority products:

- plastic packaging
- tyres
- electrical and electronic products (e-waste)
- agrichemicals and their containers
- refrigerants
- farm plastics.

Regulated product stewardship schemes are schemes governed by regulations under section 22 and section 23 of the WMA. Consultation on regulated product stewardship schemes for tyres and large batteries (including electric vehicle batteries) began in November 2021 and we expect to consult on other priority products in 2022 and 2023. Because of this, we are developing our capacity and systems to meet this challenge over the next financial year.

## **A container return scheme for Aotearoa New Zealand**

In late 2021, the Government will consider advice from officials on whether to proceed with the option of a container return scheme (CRS) for Aotearoa New Zealand. A CRS is a resource-recovery scheme, a form of product stewardship that encourages people to return beverage containers for recycling or refilling in exchange for a refundable deposit.

Implementing a CRS would likely include compliance monitoring and enforcement requirements for both the scheme's managing agency and the government agency responsible for scheme oversight. It is anticipated bespoke regulations would be required to implement a scheme.

Compliance monitoring and enforcement of a CRS could include routine operational work (for example, scheme administration, managing the scheme's technology process, audits, guidance) and reactive operational work (such as investigations). Should the Government decide to proceed with a scheme, compliance monitoring and enforcement requirements will be further identified and developed.

## Workstream 5: Levy administration | Whakarite utu

▶▶ Regulations introduced in early 2021 now require that all waste is weighed on entry to a disposal facility and reported through the Online Waste Levy System. ◀◀



### Overview of workstream

The main aspects of administering the levy are its collection and distribution; currently, the Waste Operations team administers the levy. Administering and distributing the levy to territorial authorities (TAs) is not inherently a compliance-oriented role, but historically this has been done by the Waste Operations team.

The team's compliance role effectively 'bookends' levy administration, because they manage audits of disposal facilities to ensure the correct levy is paid, and audit TA levy spending. The end-to-end management of the levy is also under review, to ensure the systems and processes can manage significant activity increase as the levy expands.

### Collecting the levy

Our current regulated community comprises 36 facilities, a net reduction of three this year due to facility closure (table 7). Class 1 landfills paid levies on just over 3.5 million tonnes of waste in the 2020/21 year. Regulations introduced in early 2021 now require that all waste be weighed on entry to a disposal facility and reported through the Online Waste Levy System (OWLS). The gross tonnage figure is likely to increase sharply in coming years as a result.

The levy is paid via OWLS, which is administered by a third-party contractor, Fishserve Innovations New Zealand (FINNZ). Our disposal facility operator auditing programme supports this by ensuring payments made are based on correct tonnages, and levy avoidance is quickly referred to our investigators.

### *Waivers*

Under section 29 of the Waste Minimisation Act 2008 (WMA), the Secretary for the Environment can waive the requirement to pay the levy on waste in 'exceptional circumstances'; two waiver applications were received this year, and both were approved. For one, 15,832 tonnes were subject to an approved waiver relating to Fox River Landfill waste.



**Table 7: Overall figures for facilities and waste**

Metric	Figure
Facilities reporting tonnages	39
Facilities closed during the year	3
Active facilities at 30 June 2021	36
Gross tonnage of waste reported through the Online Waste Levy System (OWLS)	3,847,986.99 tonnes
Diverted tonnage reported through OWLS	306,158.41 tonnes <sup>2</sup>
Net tonnage of waste reported through OWLS	3,541,827.58 tonnes
Waived tonnage	15,831.95 tonnes

## Documentation received and processed

Various permissions can be applied for under the WMA where certain circumstances apply, including waivers. The volume of applications in all cases is generally low. It is important that when applications are made under the WMA, they are treated fairly and consistently, and decisions are recorded for traceability.

Table 8 outlines the documentation the levy collector manages under the Act, briefly describes them, and shows data on approval rate and timeliness. The volume and complexity of applications is also likely to increase over the coming years, making refining the processes more important.

**Table 8: Levy administration application and other process description and data for the 2020/21 year**

Application and process	Received 2009–30 June 2020	Received 2020/21	Declined (2020/21)	Approved (2020/21)
<b>Applications</b>				
<b>Application to file an annual return</b> Reg 9	105 (104 approved, 1 withdrawn)	6	0	6
<b>Application to use an average tonnage methodology</b> Reg 15	33 (26 approved, 7 declined)	3	0	3
<b>Application for a levy refund</b> Reg 33	0	0	0	0
<b>Application for a payment extension</b> Reg 30	0	0	0	0
<b>Application for a return extension</b> Reg 10	0	0	0	0
<b>Application for a storage time extension</b> Reg 11	56 (9 approved, 42 declined, 5 withdrawn)	0	0	0
<b>Application for a waiver</b> Section 29	21 (16 approved, 4 declined, 1 withdrawn)	2	0	2
<b>TOTAL (applications)</b>	215	11	0	11

<sup>2</sup> Until May 2021 disposal facilities were not required to measure diverted material that was 'immediately diverted' within six months of arriving at the facility. This ability has since been revoked in the Regulations.

Application and process	Received 2009–30 June 2020	Received 2020/21	Declined (2020/21)	Approved (2020/21)
<b>Other processes</b>				
<b>Issuing a return estimation</b> Section 34 Regs 25–26	4	0	n/a	n/a
<b>Reimbursement of levy where applicable</b> Reg 27 (7)	0	0	n/a	n/a
<b>Revocation of permission for use of average tonnage methodology</b> Reg 15(7)	0	0	n/a	n/a
<b>Initiating debt recovery process for unpaid levy</b>	0	0	n/a	n/a

**Note:** n/a = not applicable.

The Ministry received 11 applications in 2020/21 and processed all on time.

The decline rate is generally low. The historical exception to this is for storage time extension applications (materials can only be stored for six months under the WMA unless an application is made). However, 23 of the declined applications were submitted by a single facility and at the same time; it was decided to address the matter in a different way, so all were declined.

Some processes have never been used, for example, debt recovery (recovery of funds owing more than 120 days after the invoice was due). No known debt is currently in arrears.

The scheduled expansion of the levy to more sites will result in a much greater volume of applications, and the Ministry will need to ensure sufficient processing capacity when that occurs.

### Spotlight on: FINNZ and OWLS

The Ministry for the Environment contracts Fishserve Innovations New Zealand (FINNZ) to support the Ministry's statutory 'levy collector' role. FINNZ takes the public-facing inquiries regarding the levy payments and reports monthly to the Ministry. The Ministry retains the statutory decision-making role under the Waste Minimisation Act 2008 (WMA), and responsibility for any applications or processes under either the WMA or regulations. No serious issues have been identified in the management of the contract with FINNZ.

For 2020/21, FINNZ received 149 phone and email inquiries about the Online Waste Levy System (OWLS). Most inquiries related to account access and maintenance. Other aspects of their role are shown below.

Element	Number 2020/21
Calls	92
Emails	57
Applications	11
Return amendments	9
Official Information Act requests	0
Estimates issues	0
Disposal facility operators with 90-day debt	0 (total debt \$0)
Disposal facility operators with 120-day debt	0 (total debt \$0)

Investment has been made in 2020/21 in upgrading OWLS, with further improvements scheduled to support the expansion of the levy. The increase in the regulated community, arising from the levy expansions, will broaden the role of OWLS.

## Distributing the levy

Proportional distribution of the levy to TAs is a significant statutory role of the Ministry. How each share is calculated is prescribed in section 31 of the WMA. Ensuring distribution occurs in a timely way and takes account of the relevant legal responsibilities of TAs does not allow a lot of discretion. Payments are made on a quarterly basis, and councils report on expenditure, which informs our auditing programme.

**Table 9: Levy distribution and withholding data 2020/21**

Levy distributed and withheld	Number
Validated territorial authority (TA) allocations distributed within quarterly timeframe	261 (100%)
Non-validated TA allocations withheld	7 (for two TAs across four levy payments)

For 2020/21, nearly \$17 million (\$16,781,597.74) was available for distribution to TAs (table 9). Each quarterly payment round requires that non-complying councils have their levy funds withheld. No discretion is provided under the WMA where councils do not meet their core obligations; the Ministry must withhold funds.

## Retention of levy payments

Currently two provisions are under the WMA where the Ministry may withhold quarterly levy payments from a TA. These are:

- section 33(1)(a)(ii), where quarterly payments **must** be retained if a TA has not reviewed its Waste Minimisation and Management Plan (WMMP) within the six-year statutory timeframe
- section 33(1)(b), where the Secretary **may** direct the Minister to retain levy funds if a TA has not spent levy funds in accordance with section 32 (on matters to promote or achieve waste minimisation and in accordance with their WMMP).

During 2020/21, only section 33(1)(a)(ii) was used, with the following levy payments retained (table 10).

**Table 10: Levy funds withheld and relevant councils 2020/21**

Quarterly payment	Territorial authority	Amount
July 2020	Kaikōura District Council	\$3,299.31
July 2020	Chatham Islands Council	\$559.17
October 2020	Kaikōura District Council	\$3,822.02
October 2020	Chatham Islands Council	\$647.75
January 2021	Kaikōura District Council	\$3,646.49
January 2021	Chatham Islands Council	\$618.00
April 2021	Chatham Islands Council	\$626.91
<b>Total levy withheld</b>		<b>\$13,219.65</b>

A total of \$13,219.50 (less than 0.1 per cent) was withheld over the four quarterly payments, meaning **\$16,768,378.24** was distributed to TAs (table 11).

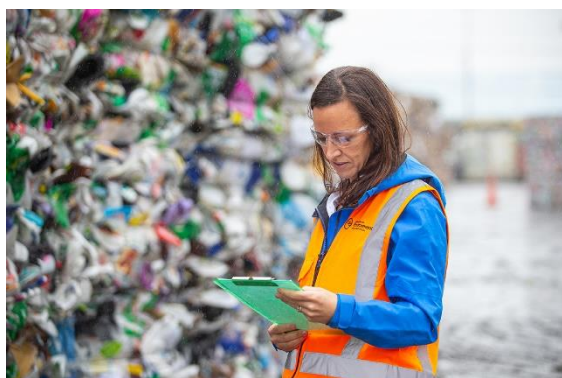
**Table 11: Net levy distributed to territorial authorities 2020/21**

Quarter	Total available	Withheld	Net paid
Quarter 1 Jul 20	\$3,963,658.23	\$3858.48	\$3,959,799.75
Quarter 2 Oct 20	\$3,993,301.32	\$4469.77	\$3,988,831.55
Quarter 3 Jan 21	\$4,380,740.02	\$4264.49	\$4,376,475.53
Quarter 4 Apr 20	\$4,443,898.17	\$626.91	\$4,443,271.26
	<b>\$16,781,597.74</b>	<b>\$13,219.65 (&lt;0.1%)</b>	<b>\$16,768,378.09</b>

Monitoring TA WMMP review dates is an important part of the TA audit programme, which aims to help TAs comply with the six-year review timeframe and prevent the Ministry from having to retain levy payments. The Ministry continues to engage regularly with Chatham Islands Council to support it with the review requirements for its WMMP.

## Workstream 6: Investigations | Ngā tūhuratanga

►► Investigations can be initiated by the team or by referral from one of our auditors, another staff member or a member of the public. ◀◀



### Overview of workstream

The Waste Operations team is responsible for investigating alleged non-compliance under the Waste Minimisation Act 2008 (WMA). An active investigation programme has been under way since late 2020, following the appointment of a dedicated part-time investigator.

Investigations can be initiated by the team or by referral from one of our auditors, another staff member or a member of the public. Investigations are prioritised using an analytical matrix; they are documented and may result in enforcement action. Investigations are in the preliminary stage and further learnings will be extracted next year.

### Investigation activity

Table 12 outlines the number of referrals and investigations for each workstream.

**Table 12: Referrals and proactive investigations against workstream**

	Referrals	Initiated proactively	Investigations initiated	In progress	Concluded
Territorial authority	2	0	1	0	1
Disposal facility operator	9	1	4	3	1
Fund compliance	0	0	0	0	0
Product compliance	0	0	0	0	0
Total	11	1	5	3	2

For the 2020/21 year, 11 investigations were considered and five initiated. Three remained in progress at 30 June and two had been concluded. Other matters have been addressed by lower-level actions (such as corrective action requests) during audits. With the team having limited resources, the risk for each case is reviewed to determine the priority for addressing it.

During an investigation, our officers can seek information from 'any person' using a notice to produce, an application for a production order through the courts or through interviews under section 79(1)(c) of the WMA. The investigations programme started in October 2020 and issued 10 notices to produce information to a range of parties (table 13).

**Table 13: Investigation processes used in 2020/21**

Process	Historic use	2020/21
Notice to produce	0	10
Application for a production order	0	0
Interviews conducted	0	0

A range of possible enforcement tools are available under the current WMA. Table 14 sets out the tools used in the 2020/21 year.

**Table 14: Use of enforcement tools under the Waste Minimisation Act 2008 in 2020/21**

Tool	Historic use	2020/21
Education/advice letter	Unknown	2
Prosecution (certain instances)	0	0
Recovery of unpaid levy	0	0
Court order for commercial gain	0	0
Ministerial direction to retain levy money	0	0
Revocation of scheme accreditation	0	0

## Reflections

Audits have revealed some long-running non-compliance. This has arisen because of ambiguity in requirements and varying advice to the regulated community over the past decade. In most cases, investigations that have confirmed non-compliance have been able to achieve compliance without resorting to punitive measures.

The WMA provides limited tools for behaviour change, with offences mainly related to record keeping, rather than environmental harm. The WMA has no history of punitive enforcement, and the only example of a tool being used to effect behaviour change has been the withholding of levy funds (see [Retention of levy payments](#)).

## Workstream 7: Strategy and policy | Te rautaki me te kaupapa here

►► Our strategic projects focus on lifting our performance and ensuring our systems and processes are always up to scratch. ◀◀



### Overview of workstream

The Strategic workstream pulls together the threads of our operational, field-based audit programmes, and our investigations and support systems, and ensures they are connected to policy development and evaluation. Our strategic projects focus on lifting our performance and ensuring our systems and processes are always up to scratch.

This workstream also ensures information and knowledge from our work is shared in a timely and comprehensive way (through feedback loops) with the policy and legal areas of the Ministry for the Environment. This ensures robust stewardship of law and policy (for example, intelligence on waste disposal trends through the Online Waste Levy System (OWLS) data) and that compliance insights are shared with the legislation review project.

The five main areas of work for the Strategic team are:

1. **enhancing regulatory practice** – lifting awareness of compliance and quality of work across the team, the division and the wider Ministry
2. **measuring success** – developing and maintaining clear performance frameworks to ensure compliance is being carried out in accordance with best practice
3. **analysing and review** – conducting compliance-specific research and analysis of Ministry responsibilities under the Waste Minimisation Act 2008 (WMA) and related regulations
4. **providing policy input** – providing thought leadership from a compliance perspective on new and emerging policy issues and supporting colleagues in their work programmes. This includes providing feedback to policy teams on the effectiveness of existing policies and challenges faced in implementation
5. **building connections** – establishing and maintaining relationships and connections with other teams across the division and the organisation, stakeholders, our regulated communities, and other regulators and compliance experts.



## Reflections

The anticipated and significant change in our regulatory role will create further opportunities for strategic improvement. The learnings from our Modern Regulator Improvement Tool (MRIT) evaluation will also provide insights.

For the coming year, the following tasks will be important:

- enhancing and developing further quality assurance practices
- developing clear metrics to support workstream objectives and help us demonstrate our effectiveness in this area of our work
- supporting the establishment and transition of auditing programmes to operationalise the levy expansion
- establishing and maintaining more effective working relationships with co-regulators and partner compliance agencies.

## Workstream 8: Systems, processes, and coordination | Ngā pūnaha, ngā tukanga me te reretahi

» Our staff are located throughout the country, from Auckland to Christchurch, in five cities and towns. «



### Overview of workstream

The Systems, processes and coordination workstream is the core infrastructure that keeps our team members safe, well trained and able to focus on their role. This workstream is responsible for:

- managing logistics for our travelling auditors
- training of staff and contractors
- managing health and safety requirements, such as personal protective equipment
- internet access, IT equipment and any other specialised requirements
- developing systems and frameworks to support our operational and strategic work areas.

This critical supporting role makes our work possible.

The team has a variety of expertise including frontline environmental enforcement, investigations, auditing, accounting, law, science, policy and logistics.

The workstreams map out our main work areas, but special focus is often needed in one or more areas and, as a team, we work to mobilise where staff time is best spent. The Systems workstream ensures the smooth running of our compliance team as a whole.

### Building our team

The 2020/21 year was a time of significant change, because the Waste Operations team doubled from 6 to 11 staff, with further recruitment in progress (table 15). Our staff are located throughout the country from Auckland to Christchurch, in five cities and towns. The flexible approach to staff location is particularly useful for our role, which is centrally administered but caters to highly dispersed regulated communities.

**Table 15: Staffing levels (full-time equivalent) in Waste Operations compliance team at 30 June 2021**

Role	Full-time equivalent
Audit and compliance	6
Investigations	1
Strategic	2
Support	2
<b>Total</b>	<b>11</b>

Our team members have attended 15 different training courses this year. Most staff completed the G-REG Level 3 and Level 4 certificates,<sup>3</sup> advanced driver training, investigation and tactical communication, and de-escalation techniques courses through a private training provider. Other initiatives included internationally recognised auditor training, first aid and central government regulatory seminars.

The diverse skillsets are applied across different compliance programmes, and team members are continually training and building capability to improve how they carry out their role.

Training also helps boost morale, provides professional development opportunities for our staff, and enhances wellbeing.

### Investing in systems

Information technology solutions are important support systems for compliance monitoring and enforcement. Our team use a range of IT solutions to support our work, including:

- an app used by our auditors to report in from the field, to ensure they are safe; other staff monitor their whereabouts and ensure they 'check in', in the event they do not, matters are escalated to senior staff and emergency services
- power BI is used to track and report on our flagship auditing programmes
- the Online Waste Levy System was subject to a significant upgrade to better support the Ministry for the Environment in its levy collector role; further upgrades are being carried out to support the levy expansion and our much larger and more varied regulated community of landfills and transfer stations.

The 2020/21 year saw the Ministry invest in various systems to support its regulatory role under the Waste Minimisation Act 2008 (WMA). In the coming year, the following systems will be investigated or developed:

- an app to allow members of the public to file complaints about WMA offending
- a case management system for investigations
- a customer relationship management tool to support interactions with stakeholders.

<sup>3</sup> The G-REG certificates relate to an online learning management programme administered by the Government Regulatory Practice Initiative that enables compliance professionals and those in related fields to study towards the New Zealand Certificate in Regulatory Compliance (Core Knowledge).

# Appendix 1: Developing our performance monitoring framework

## Measuring regulator performance

Regulators are generally a step removed from the environmental consequences of the regulated community’s decisions (figure A1.1). Regulators control the behaviour but are not directly responsible for the outcomes. They have control over their own actions and use of resources, and seek to control and influence the actions and use of resources by others; the end outcome is the consequence of that interplay.

**Figure A1.1: Regulators are one step removed from outcomes, controlling behaviour**



Regulatory performance must take account of these relationships and understand how they interact. These interactions require that regulators are performance monitored, taking a tiered approach. This strategy recognises four tiers of results in a performance monitoring framework for a regulator, noting the control and influence a regulator has over different aspects of the environment (table A1.1).

**Table A1.1: Tiers of information on regulatory outcomes**

Type of result	Example
<b>Tier 1</b> Effects, impacts and outcomes	Environmental results (for example, decline in waste stream)
<b>Tier 2</b> Behavioural outcomes	Compliance rates, adoption of best practice
<b>Tier 3</b> Agency activities and outputs	Enforcement actions, inspections numbers
<b>Tier 4</b> Resource efficiency	Agency resource use, regulated community’s resources

Source: Sparrow M K. 2002. *The Regulatory Craft Controlling Risks, Solving Problems, and Managing Compliance*. Washington: The Brookings Institution.

## Underlying principles

The fundamental principles underlying this framework are **ICONIC**.

1. **Information** is sufficiently granular to inform performance improvement.
2. **Complete** coverage of compliance monitoring and enforcement (CME) framework ensures balanced reporting of regime.

3. **Objectives** and metrics are linked through the framework.
4. **Nuanced** measurement ensures perverse incentives are minimised.
5. **Integrated** with the organisation’s business planning and management processes.
6. **Cost effective**, balancing the benefits of performance information against the costs.

## Establishing metrics

Measuring performance relies on effective metrics that help us tell the story of the CME function. Metrics need to link clearly to higher level statutory objectives and then through to the way the information they provide is used. Clear platforms are also needed to synthesise the information for input into strategic management decisions.

## Metrics cascade

The framework comprises metrics at various levels, linked from objective through to the intended use or application of the information. The metrics were developed with regard to the **ICONIC** principles above and recognise specific characteristics of good metrics (**VERACITY**) to drive performance measurement (table A1.2).

**Table A1.2: Characteristics of good performance measures**

Characteristic	Description
Verifiable	Metric is the best and clearest means of measuring performance of that aspect.
Efficient	Metric is the best and clearest means of measuring performance of that aspect.
Relevance	Metric is relevant to the purpose of the performance framework and to what the organisation is aiming to achieve.
Attribution and accountability	The regulator’s influence on the metric can be measured or estimated, and it is clear where accountability lies.
Comparable	With either past periods or similar programmes elsewhere.
Innovative	Metrics chosen are modern, fit for purpose, and promulgated de novo where examples do not already exist.
Timely	Producing data quickly and frequently enough for the intended purposes and informing timely decision-making.
Yardstick	Metrics provide a clear picture of performance that can be summarised, communicated and fed back into business improvement processes.

## Developing metrics

Metrics should be a combination of operational and compliance information and, where useful, case studies or other examples. Table A1.3 gives an example of development of a metric.

**Table A1.3: Development of a metric**

Aim	Description	Example
Outcome or objective	Aim linked clearly to statute and/or strategy	Levy is distributed in accordance with the Waste Minimisation Act 2008 (WMA)
Relevant statutory link	Legislation section or other reference	WMA section 31(3)
Metric	Information element of interest	Number of <b>validated</b> territorial authority (TA) allocations distributed within quarterly

Aim	Description	Example
		timeframe
Metric goal	Key performance measure	100% of validated TA allocations are distributed within quarterly timeframe
Source	Where the information comes from to inform data	Levy spend memos
Trend	Desired trend to be achieved where applicable	100% compliance to be reached and maintained
Reporting	How the information is to be used or communicated (at a minimum)	Annual report and as needed
Frequency	How often the metric will be collated	<ul style="list-style-type: none"> <li>• Monthly</li> <li>• Quarterly</li> <li>• Annually</li> </ul>

Meaningful metrics are based on purpose and measuring the change to be achieved. For instance, training is used to develop capacity and capability, so managing the effectiveness of training programmes should focus on objectives rather than just capturing how many attended what training. For instance, it could measure if and how new skills are being applied, as well as the proportion of staff who have attended the training.

Metrics will be developed at various scales to allow reporting at an appropriate level for a given purpose. Aggregation can be used to tell the big picture story, providing the intended application of the information is preserved. Some metrics may need to be aggregated for privacy or other reasons.

Some metrics may relate to sensitive issues (such as investigations), so may need to be treated with discretion. Investigation metrics would be most meaningful if they are complete and sequential, following issues from the time the potential breach became known through to resolution, and at a level of granularity to identify and resolve performance issues and establish learnings and outcomes.

## Reporting

Monitoring regulatory performance supports timely measures of effectiveness and efficiency to reach interested parties. The CME Performance Monitoring Framework will be communicated through:

- an annual bespoke monitoring report
- internal and external reporting as required
- regular articles in newsletters and other communication streams
- various reactive and proactive communications as required.

# Appendix 2: Modern Regulator Improvement Tool

## Modern Regulator Improvement Tool framework

Twelve attributes across four themes make up the framework (table A2.1). They are based on the Australasian Environmental Law Enforcement and Regulators neTWork Statement of Better Regulatory Practice. Each of these attributes represents a level that the regulator may occupy, which equates to measurements of regulator maturity.

**Table A2.1: Modern Regulatory Improvement Tool framework**

Theme	Attribute	Description
Vision, role and strategy	Corporate plan and contribution	A corporate plan that articulates the organisation's goals, objectives, and future work activities. 'Contribution' describes the regulator's ability to link its goals, objectives and activities with the Government's agenda.
	Risk-based compliance planning	Mechanisms to allocate regulatory effort and response, based on an assessment of the regulator's risk appetite, characteristics of the regulated community and so on. This may include annual planning mechanisms, assessment frameworks or other systems to apportion and track effort.
	Problem-solving approach	A way of resolving specific complex or complex problems by rearranging effort, skills and resources around the problem itself, rather than through traditional functional structures. It is often associated with agile project management styles and concepts of double loop learning.
Capability and improvement	Training and procedures	How the regulator ensures it has the requisite combination of skills and competencies to achieve its regulatory role and organisational priorities (training). The procedures and policies used to reinforce expected behaviours and to support staff to achieve the organisation's objectives (procedures).
	Quality assurance and review functions	Initiatives that support operational consistency, fair and unbiased decision-making, and continuous improvement; including internal and external mechanisms such as structured assessments and reviews, and multiple avenues within and outside the regulator for duty holders to review decisions or lodge complaints.
	Learning with others	The regulator's role in learning from, and sharing information and experiences with, other regulators as part of the broader regulatory profession.
Governance and delivery	Activity and visibility	How active the regulator is in administering its legislation and regulatory scheme, including whether it is proactive or mostly reactive, and whether it uses all measures available to it (activity). How much the regulated and wider community are aware of the regulator's role, function and achievements.
	Performance reporting	The collection and use of information to determine whether the regulator is effective in its regulatory mission and to inform organisational decisions, and to inform the public and stakeholders about the regulator's effectiveness.



Theme	Attribute	Description
	Governance and oversight	The systems and institutions for ensuring that the regulator is well-managed, accountable, ethical and transparent.
Leadership and culture	Stakeholder and community engagement	The regulator's ability to bring stakeholder and community voices into decisions that affect or interest them. This can involve different levels of engagement. The types of engagement can include inform, consult, involve, collaborate and empower.
	Regulatory philosophy and approach	The regulator's ability to clearly articulate and apply the theory that acts as a guiding principle for the way it regulates; how it will approach its role as a regulator and use its powers to regulate, and the factors that the regulator takes into consideration when responding to any identified non-compliance or harm.
	Culture and leadership	The regulator's expectations, experiences, philosophy and values that hold it together (culture) and its ability to establish a clear vision, share that vision with others, and coordinate and balance the conflicting interests of all members and stakeholders (leadership).

The assessment against the attributes is based on levels of organisational maturity, of which there are six. Each attribute has a specific description associated with each of the levels, but the general descriptions are given in table A2.2.

**Table A2.2: Levels of organisational maturity**

Level	Description
Leading	It is not expected that many agencies will reach this level of maturity without a conscious investment of resources in the attribute. A 'leading' agency will be recognised as such across the Australasian Environmental Law Enforcement and Regulators neTwork network, and quite likely overseas. It will have a strong theoretical understanding of the attribute, as well as a best-practice approach that achieves consistently strong results in matters related to the attribute.
Well established	The attribute is now embedded in the agency and will likely continue at this level despite organisational changes. The agency will be recognised by its peers as being at a high level of development in this attribute, and the agency will achieve strong results as a consequence of its level of maturity.
Maturing	An agency's confidence or proficiency is growing, and it may be recognised within its regulatory community or jurisdiction as performing well in the attribute. The attribute may not be fully embedded in the agency though. A change of leadership or change in the external environment could impact on the attribute.
Developing	The agency will have recognised the importance of the attribute and progressed down the path of embedding it into the systems, processes or culture of the agency. Agencies at the 'developing' level will have a growing degree of confidence with the attribute, but its presence may not be at a consistently high level across the whole agency.
Emerging	The attribute is present but is at an early stage of its development. The agency may have recognised the importance of the attribute and begun developing its capability, or it may not have formally developed it, but parts of the agency may be displaying the attribute in an ad hoc or unstructured way.
Absent	The attribute is not present in the agency or is present only in a rudimentary form. No judgement is associated with an agency identifying itself as 'absent' for a particular attribute, because many legitimate reasons exist as to why an attribute might not be present. For example, this might apply to a newly formed agency that has yet to develop some of the attributes or to a more established agency that has not branched out into a particular area (such as compliance planning).