Ministry for the Environment
Manatū Mō Te Taiao

Proposed waste legislation amendments

Consultation questions and answers

This document provides answers to questions we have received on the proposals in the waste legislation amendments consultation. For further information, please visit the consultation page.

This document provides additional information about the following proposals for waste legislative amendments:

- Extended producer responsibility (EPR)
- The waste disposal levy
- Roles and responsibilities
- Litter and mismanaged waste
- Compliance monitoring and enforcement.

Extended producer responsibility (EPR)

What happens to the currently declared priority products if a new extended producer responsibility framework is adopted?

A new EPR framework would cover currently declared priority products and any potential new products of interest (eg, beverage containers).

The proposed new process would remove the need to declare priority products and instead the Ministry will be looking at alternative ways for the Minister for the Environment to indicate products that are a priority for EPR schemes. For example, the Government could use a transparent priority setting tool for identifying potential products. For example, through Ministry for the Environment work plans approved by Cabinet or by tabling priority lists in the House of Representatives.

Work is continuing on the detail of the transition from the current product stewardship framework to the proposed EPR framework. We welcome your views on this through your submission.

What penalties are proposed in the new extended producer responsibility framework?

If scheme performance issues arise, the proposals include that the Minister for the Environment would have the ability to:

- appoint a Crown review team
- appoint a Crown manager
- dissolve the Producer Responsibility Organisation (PRO) Board
- take over and manage assets of the PRO
- make changes to the PRO.

There will be compliance responsibilities for all scheme participants with legislative obligations, which could include:

- first responsible suppliers (ie, the first supplier to the New Zealand market of a product regulated under an extended producer responsibility scheme. This could be an importer or a manufacturer)
- producer responsibility organisations (PROs)
- retailers
- return point operators
- councils
- all scheme participants with legislative obligations.

Types of compliance tools include a range of the following:

- written reminders (regulated parties are sent reminders of deadlines or other compliance obligations)
- directive notices (direction from the regulator to a regulated party to fix or prevent a breach of the Act or regulations within a specified period. The notice will specify what needs to be done and may also include recommendations to prevent breaches in the future)
- infringements (an 'on the spot' infringement (at a set fee) for an alleged offence or contravention of the legislation)
- monetary benefit order (which may be used to recover profits from activity that did not meet regulatory requirements, such as sales of in-scope products that did not comply)
- adverse publicity order (requires a person involved in non-compliance to either publicise or notify specific persons of the non-compliance, any impacts on human health or the environment or other consequences, and any penalties imposed / orders made by the Court because of the non-compliance)
- pecuniary penalty (a fine imposed by the Court for breaches of the legislative requirements)
- criminal penalty (using criminal prosecution for regulated parties that breach the legislation).

How do the extended producer responsibility proposals impact existing regulated schemes and those currently in different stages of development?

For priority product schemes that are being designed under the current Waste Minimisation Act 2008 but do not have regulations in progress or in place, we will do a case-by-case assessment of whether to:

- continue developing regulations under the current legislation and then transition into the new regime, or
- sequence work so that regulations to support the scheme can be developed under the new legislation.

This will depend on what stage the priority product scheme is at, how complex the scheme is, and other factors (such as the extent to which limitations in the current legislation are affecting scheme design at present).

Will Government financial support still be available for developing and implementing extended producer responsibility schemes?

This will be considered on a case-by-case basis. To date, the Government has provided support for scheme development and in some cases, enabling infrastructure investments, through the Waste Minimisation Fund. However, it is important for producers and retailers of products to contribute both financially and in terms of design solutions, rather than government (central or local) being responsible for this. In an EPR scheme, these costs could be covered by the regulated charges.

Within the proposed extended producer responsibility framework, how would local government, iwi/Māori and other community interest groups have a role in the development/design of a scheme or a producer responsibility organisation?

The proposed scheme co-design parameters would have an expectation that all stakeholder interests are represented. Requirements for the members of the Board of the producer responsibility organisation could also ensure coverage of a range of skills and perspectives, including iwi/Māori, consumer, local government and community interests.

Why is the Government proposing to stop the accreditation of voluntary product stewardship schemes?

Voluntary schemes have had mixed success, some with limited participation and coverage. Given the limited outcomes and lack of intervention options, the administrative costs of accrediting and monitoring voluntary schemes are not justified, for either government or participants.

There are existing accredited voluntary product stewardship schemes for priority products which have helped inform the design of regulated schemes, such as the agricultural plastics and chemicals schemes and the refrigerant scheme. Industry-led schemes can still provide benefits without requiring accreditation from central government.

How does the Consumer Guarantees (Right to Repair) Amendment Bill relate to the waste legislation proposals?

'Right to repair' is not within the scope of the waste legislation amendments we are consulting on. The lead agency is the Ministry of Business, Innovation and Employment (MBIE). It may be possible for EPR schemes to incorporate aspects relating to the ability for consumers to access repair for their products into their scheme designs.

How will extended producer responsibility schemes deal with online marketplaces and online sales?

Scheme regulatory design is considered on a case-by-case basis. Producers or importers would typically be considered the 'first responsible supplier'. If an online marketplace and its operator fell within the regulatory scope, then they could potentially be obligated to participate in a scheme. However, an importer is more likely to be a *customer* of an online marketplace in New Zealand. Through that transaction, the obligation to participate could potentially sit with the customer as the importer. However, pursuing very low volume imports may be impractical and such considerations would be a matter of considering the costs and benefits for scheme design and any supporting regulations.

Is there a draft list of 'products of interest' and 'excluded products' for extended producer responsibility schemes? Would it be based loosely on the priority products list already in place?

The initial 'products of interest' would align with existing priority products. More detailed consideration of which products might be excluded from any specific scheme would be developed as part of scheme co-design and subject to consultation and decision making, then provided in regulation.

The Waste Disposal Levy (the levy)

Is the Government going to change the current 50:50 split of levy between central and local government?

No, the intention is to retain the allocation of levy funds according to the current settings of 50 per cent allocated to territorial authorities (TAs) and 50 per cent allocated to central government. This is appropriate given the central government waste investment priorities, wider use of levy funds, and financial challenges facing local government. The levy will still be hypothecated (ring-fenced for specific purposes).

At this stage there are no proposals to amend the settings for what the central government portion can be spent on, noting the levy spend scope for central government was amended as part of the 2024 waste legislation amendments that were implemented in the Waste Minimisation (Waste Disposal Levy) Amendment Act 2024.

Why is the Government proposing to change the methodology for allocating the territorial authority allocation? Is this unfair to larger territorial authorities? What about councils with seasonal population peaks or significant rural areas?

Councils with small populations in rural areas or spread across wide areas may struggle to provide a comprehensive waste service network using the current allocation method. Additionally, small councils may face additional challenges, such as smaller economies of scale, having fewer waste providers to choose from, limited waste minimisation infrastructure nearby, and higher transport costs. Therefore, we are proposing this alternative levy calculation method to increase their share of the levy to a level that could enable the appointment of a staff member dedicated to waste management and minimisation.

Population size is being used because it is readily available and reliable data using the most recent census figures from Stats NZ (2023 census). Using other calculation methods could be difficult such as incorporating facility types, capability and capacity, or visitor or tourist data as these can change over time and there is not a single, comprehensive reliable and verified data source.

We welcome your views on the proposed approach.

How much levy allocation will my territorial authority get each year under the proposed new methodology?

The following methodology for calculating your territorial authority's levy allocation under the 80:20 proposal can be used to estimate the likely impact on your territorial authority relative to the current 100 per cent population approach:

As a hypothetical example (levy figures chosen for ease of calculation), for a total territorial authority levy allocation of $100 million in a financial year each territorial authority would receive their allocation as follows:

A – Twenty per cent of this sum ($20 million) would be allocated equally between all 67 territorial authorities, which equates to $298,507 per council in this example.

B – Eighty per cent ($80 million) would be allocated based on a population calculation, reflective of population of the district of the territorial authority as a proportion of the total population (as at most recent census, refer to Stats NZ data: 2023 Census population counts (by ethnic group, age, and Māori descent) and dwelling counts | Stats NZ).

Each territorial authority's levy allocation = A + B.

Worked example: a territorial authority has a population of 100,000 and the total of all districts' populations is 4,993,866 (based on the 2023 census).

This equates to 2.002% of the total population and therefore $1,601,965 from $80,000,000.

Levy allocation for this territorial authority = $1,900,472 (298,507 + 1,601,965).

This spreadsheet, available on the following Ministry for the Environment webpage, shows the total annual payments to territorial authorities Data file [Excel, 89 KB].

Why is the Government proposing to expand what councils can spend the waste disposal levy on, including things unrelated to waste? What does this mean for territorial authorities' waste management and minimisation planning and reporting?

The Government is seeking to balance the objectives of helping to relieve financial pressure on local government while also ensuring that levy funds are used to support priority outcomes. The proposed wider scope for what can be funded through the levy would give councils greater flexibility to meet local needs.

Under the proposals, councils may choose to spend their levy allocation on activities such as the remediation of contaminated land, managing waste from an emergency or other activities with environmental benefits.

As increasing environmental benefits and reducing environmental harm are broad terms, to retain the accountability of decision-making for spending the levy, it is proposed a decision-making framework is included in the legislation for the levy to be spent on environmental benefits and reduction of environmental harm. This decision-making framework could apply to both central government and territorial authorities' decisions on how to spend levy money on wider environmental benefits / reducing environmental harm (which might be unrelated to waste minimisation). We welcome your views on what type of framework would assist this purpose.

We are exploring options to use planning and reporting mechanisms that territorial authorities already have in place that could provide for the planning and reporting of any new levy spending activities. We welcome your views on this.

What is meant by waste-to-energy?

There is no specific definition of the term 'waste to energy' in the current Waste Minimisation Act. The detailed text in amended legislation would be developed alongside legislative drafters at the Parliamentary Counsel Office at a later stage of the legislative process. The specific types of waste to energy that could be made subject to a levy, and at what rate, would be described in regulations using section 41 of the Waste Minimisation Act – as is used for current levied waste disposal. We have an information sheet on waste to energy on our website that gives an overview of the different types of waste to energy technologies and the relevant New Zealand context.

Roles and responsibilities

Why do territorial authorities need minimum obligations for waste minimisation and what might they be?

Current Waste Minimisation Act provisions relating to territorial authorities are not comprehensive and can lead to variations in how statutory responsibilities are carried out, with territorial authorities having some discretion about the extent of their involvement. There are limited mechanisms for specifying what standards or performance territorial authorities (and others where relevant) must adhere to in the delivery of waste and resource recovery services.

To ensure territorial authorities continue this important role, we seek your views on clarifying their role, to ensure the sufficient delivery of waste minimisation services in their district, whether contracted directly or delivered by private providers. Minimum obligations undertaken by territorial authorities could include a requirement to ensure the delivery of household waste and recycling

collection services (through kerbside services and other collection methodologies) in their district, which could be delivered directly or by other private providers. This better reflects the purpose of the Act, and the vital role local government has in waste management and minimisation.

Litter and mismanaged waste

Will the Litter Act remain as separate legislation?

We have reviewed the Litter Act 1979, which is a 46-year-old piece of legislation, and identified which provisions we consider:

- should be retained
- are no longer fit for purpose
- may need amending, and
- where there are gaps that require new provisions.

We are still at the policy development stage and once we move into drafting the waste legislation, we will work with the Parliamentary Counsel Office on what the legislation will look like. We believe it makes sense for 'mismanaged waste' to be included within the Waste Minimisation Act as it is a key part of the waste management system, particularly when considered as waste lost from the formal system rather than solely as littering.

Will territorial authorities have to collect and report on data on mismanaged waste?

Mandatory reporting of litter and mismanaged waste information is not in-scope of the proposed amendments. The proposal is to broaden the current regulatory tools to enable reporting on litter and mismanaged waste to become mandatory through regulations. This will allow the Government to implement such a requirement in the future if required.

Will these proposals related to litter and mismanaged waste create more or less of a burden for agencies and territorial authorities?

The proposed changes to the mismanaged waste provisions (the Litter Act) should make litter abatement more efficient and effective. We are also looking at improving the bylaw provisions in the Waste Minimisation Act to ensure that these are appropriate and can be utilised effectively for managing local waste issues by territorial authorities.

Will the proposed tiered compliance monitoring and enforcement system for mismanaged waste result in more uniform regulation across local government?

Currently, under the Litter Act, councils are required to adopt a policy which outlines their infringement framework up to a maximum amount of $400. The proposed amendments would list the infringement fees and the types of offences (such as volume and type of waste), providing consistency throughout local government on the fee amounts for mismanaged waste. This is being developed with the Ministry of Justice.

What will the fee and fine levels be for the proposed offences and penalties?

We are working closely with the Ministry of Justice on setting fine and fee levels as they need to be appropriate not just for the waste legislation but when compared across all legislation. We are referring to similar legislation and overseas examples. It is proposed there would be lower levels of fees and fines for individuals than for companies.

How will the improved compliance monitoring and enforcement for mismanaged waste and other offences be funded?

The proposals include improved cost recovery mechanisms and new provisions for issuing clean-up directives. In addition, it is proposed that the permitted uses of the levy by territorial authorities be expanded to include compliance monitoring and enforcement of local waste control issues.

For the extended producer responsibility proposals, ongoing central government costs to monitor and regulate schemes would be covered by a combination of cost recovery from participating schemes and in some cases from levy funding. The proposed new approach moves away from setting scheme fees by regulation, which is administratively cumbersome, and would instead empower producer responsibility organisations to set scheme charges (with input from the Secretary for the Environment).

Amended compliance monitoring and enforcement tools will provide the regulator with a graduated, proportionate range of responses, rather than just prosecution, which requires significant resourcing. It will also provide a greater ability to deal with non-compliance. This should help level the playing field between those already compliant (who may face higher business costs as a result) and those who are currently non-compliant.

Why are you recommending that councils are no longer required to provide public place rubbish bins?

The Litter Act creates a mandatory obligation for territorial authorities to provide 'litter receptacles' in public places under their management, where litter is likely to be deposited. Litter control officers indicated that in practice, some territorial authorities are removing public rubbish bins to address littering (as a way of encouraging people to take their litter home with them). Equally, for some councils which have large geographical areas and relatively small populations, having a legislated responsibility to provide and maintain litter receptacles everywhere where litter is likely to be deposited is not financially or environmentally sustainable.

The proposal is for this to be changed from mandatory to discretionary, to give territorial authorities flexibility about whether they use litter receptacles and where they put them. Councils will still maintain overall responsibility for making sure public places within their management are kept litter-free. It is also proposed the term 'litter receptacles' is broadened to allow councils to provide any type of public waste receptacle – for example, for recycling, glass only, and composting.

Compliance monitoring and enforcement

What does the proposed tiered compliance framework look like, and can you give examples of how it will work?

The table below provides more information on the general compliance tools and examples of how the proposed tiered compliance framework may work in practice.

Compliance tool	Purpose and scope	Type of offending	Example of use	Appeal provisions	Other notes
General tools					
Formal warning	The purpose of a formal warning is to advise a person or company that they are on notice. Breaches where a formal warning is in place will generally be viewed more severely, as they play an important role in maintaining a record of behaviour.	Formal warnings can apply across the framework. They serve a similar purpose in all instances and only require specificity to the extent that the relevant behaviour or breach is identified. They are proposed to be issued where offending has occurred or may occur.	A scenario for a warning is where a disposal facility operator has a minor breach, but with the potential for further offending to occur if behaviour is not changed. A formal warning is issued which may close the matter.	Formal warnings do not require appeal provisions via the Courts. There is, however, clear justification for operational policy to provide for a disputes process. Compliance policies should provide information to regulated parties and direct recipients of formal warnings as to the basis for their issue and how to challenge that basis.	Formal warnings have an advantage of being able to be similar no matter the circumstances, so it is proposed there is a single statutory template within the proposed legislation.
Directive notice	A directive notice is a formal requirement to do something or to cease doing something (or both) to achieve compliance. If the requirements are disregarded this is an offence in its own right. Directive notices enable unambiguous direction to be provided to a possible or actual offender and enable escalation in the event the direction is not followed.	Directive notices are suitable for most types of offending but may need to be customised to the context. For instance, directive notices in a similar form to abatement notices under the RMA are likely to be suitable for most types of offending, but regulated product stewardship may require bespoke approaches.	A scenario for a directive notice is that an entity is selling a product which contains banned materials. A directive notice would be issued setting out their obligations and a timeframe for compliance. If the recipient did not carry out the requirements of the notice, the offender would be liable for both the original breach and the breach of the directive notice.	Directive notices should be subject to a right of appeal. For offences where there is a significant risk of environmental harm, it is proposed that an appeal of the notice does not constitute an automatic stay. Otherwise, an appeal would generally have the effect of staying the notice (eg, a 'stay' delays the requirement to comply until after the Court has heard the appeal).	May require customisation for certain instances, but a general and default notice should be used wherever possible. Where compliance is not achieved with a directive notice, further offence provisions and potential for cost recovery is likely required. Decisions on details of supporting mechanisms of this nature will form part of delegated decision-making powers requested.
Infringement fee	An infringement fee is a low-level punitive tool that addresses minor offending. They are issued at the time of offending occurring or shortly thereafter. It is a financial penalty that is payable generally 28 days after issue. If unpaid, a reminder is issued and following that the fee proceeds to debt recovery via the Ministry of Justice.	An infringement fee is an appropriate sanction where offending is minor, confined, and unlikely to continue. The financial penalty must be sufficient to deter offending. The proposed legislation will include offences at various scales, and it is important that fines are proportional.	A scenario for an infringement fee is the deposition of rubbish unlawfully (illegal dumping, including 'littering'). Where offending is minor and the person or company responsible can be identified an infringement fine would have an important specific deterrent effect.	Infringement notices should be subject to a right of appeal.	Infringement fees are proposed to be tiered to ensure they are proportionate to the offending they are designed to address. Too high and they will be an unfair sanction; too low and they will fail to achieve the objective of behaviour change.
Enforceable undertaking	Enforceable undertakings are offers from parties that have been identified as being potentially involved in wrongdoing. They are a proposed restitution that has the effect of supplanting punitive action upon them, while providing for the harm caused by the activities in question to be addressed.	Enforceable undertakings are appropriate where restitution is possible but unlikely or inappropriate to achieve by other means. A characteristic of good enforceable undertaking processes is the absence of a 'negotiation', meaning the proponent is minded to provide a strong offer in the first instance.	A scenario for an enforceable undertaking is likely for illegal dumping, where harm has occurred due to unlawful activity. To avoid punitive action, a company offers full restitution and a range of other benefits.	Enforceable undertakings are offers from offenders and do not require a right of appeal. The decision to accept, reject or withdraw acceptance however does sit with the regulator and it is appropriate that a form of dispute resolution is appropriate in that instance.	Enforceable undertakings have been criticised for enabling 'deals' to be cut between regulator and regulated parties. To allay these concerns, it is proposed that the full details of enforceable undertakings are publicly registered.
Adverse publicity order (APO)	Adverse publicity orders require corrective advertising designed to provide the general public and targeted parties as appropriate with information about offending by a party. They are proposed to be able to form part of an enforceable undertaking or to be issued as part of a proceedings (eg, by a judge instead of, or in addition to, a fine). They are typically a direction to publicly announce offending, its impact and how	They are a form of 'name and shame' approaches which have the effect of daylighting issues and how they have been addressed to ensure denunciation occurs, particularly for companies or individuals reliant on social license to operate. A common medium for this corrective advertising is newspaper or social media. The wording is generally to the satisfaction	An example of an adverse publicity order being applied in this framework would include where a company had extracted significant benefit from intentional and recidivist import, manufacture or sale of a banned product or product containing banned materials. The publicity order would be issued as a result of proceedings generally and generally issued together with a fine or other penalty.	An APO should be subject to a right of appeal	Wording is commonly required to be to the satisfaction of the regulator or the Court, to avoid the prospect of it being warped into an advertising opportunity of net benefit.

Compliance tool	Purpose and scope	Type of offending	Example of use	Appeal provisions	Other notes
	the recipient has changed or will change their behaviour.	of the judge so as to guard against it being warped into a positive news story.			
Monetary benefit order	Monetary benefit orders are instruments that allow the recovery of pecuniary gain made in the course of offending. They are heard in the civil jurisdiction and money recovered in centralised in a fund. That fund is often made accessible for initiatives relating to justice.	Monetary benefit orders enable those who profit from unlawful behaviour to be stripped of that gain. The quantum's recovered in this manner can often exceed the fine maximums and provide a powerful means of rebalancing the public interest and ensuring a level playing field for compliant operators.	Monetary benefit orders enable those who profit from unlawful behaviour to be stripped of that gain. The quantum's recovered in this manner can often exceed the fine maximums and provide a powerful means of rebalancing the public interest and ensuring a level playing field for compliant operators.	Appeals on monetary benefit orders should be provided for.	The manner in which the gain is calculated can vary but is proposed to be set out in secondary legislation in this framework. Gain is considered to comprise both profit and averted compliance costs.
Pecuniary penalty	Pecuniary penalties are non-criminal sanctions applied by the Court. The civil burden of proof applies to pecuniary penalties – on the balance of probabilities – a lower evidential threshold than criminal proceedings. Their purpose is deterrence, not restitution.	Pecuniary penalties are primarily distinguished from criminal sanctions by the procedure that is followed to issue them, not their size. Many statutes in New Zealand provide for pecuniary penalties (eg, Commerce Act 1986, Biosecurity Act 1993).	Pecuniary penalties are sought in a similar manner to a fine, but through a different process.	Appeals should be provided for on pecuniary penalties.	The Law Commission explored Civil Pecuniary Penalties in 2013. Their paper noted that environmental legislation had many examples of comprehensive civil regimes and other Acts which lacked civil remedies entirely. Since this report was produced, guidance on the development of civil remedies has been issued by the Legislation Design and Advisory Committee (LDAC). The proposals in this paper align with that guidance.
Prosecution	Prosecution for criminal offences is provided for in the existing compliance monitoring and enforcement function and is proposed to be carried over, with higher financial penalties. The purpose of prosecution is to take punitive action to punish an offender and to achieve specific and general deterrence. A successful prosecution yields a criminal conviction for the defendant/s and this has considerable implications for them as an individual or company.	Criminal prosecution with a fine maximum of $1 million for corporates and $250,000 for individuals is a significant sanction. While prosecution is provided for in the existing compliance monitoring and enforcement function, the penalty is much greater in the proposed legislation. Prosecution would be contemplated in accordance with the Solicitor-General Guidelines for Prosecution in addition to operational policies.	Charges are filed in the District Court for any prosecutable offence in the proposed legislation.	Outcomes of a District Court hearing would be able to be appealed to the High Court on a matter of law in the usual manner.	

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