

In Confidence

Office of the Minister for the Environment

ENV - Cabinet Environment, Energy and Climate Committee

Waste Legislation 1: Overview and overarching provisions

Proposal

- 1 This paper proposes the repeal and replacement of the Waste Minimisation Act 2008 and Litter Act 1979.
- 2 It is the first in a set of papers seeking policy decisions on the content of this proposed legislation on waste minimisation and litter ("new legislation"). The set of new legislation papers includes:
 - 2.1 This paper
 - 2.2 Waste Legislation 2: Regulating products and materials to promote circularity
 - 2.3 Waste Legislation 3: Regulating how people manage waste
 - 2.4 Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime
- 3 This paper provides an overview of the proposals, proposed timing, and describes how the new legislation relates to other initiatives, including the new waste strategy agreed by Cabinet on 28 November 2022 [ENV-22-MIN-0053 refers]. It seeks Cabinet's agreement to proposals for the new legislation on:
 - 3.1 the overarching provisions (purpose, principles etc) of the legislation
 - 3.2 governance arrangements, including roles and responsibilities of central and local government
 - 3.3 the strategic planning and reporting framework, and legal obligations
 - 3.4 the allocation and use of waste disposal levy funds.
- 4 I do not intend to introduce this bill during this Parliamentary term due to availability of House time and other government priorities. However, approving the policy direction proposed for the new legislation now will create important long term waste policy foundations for government and the wider waste sector.

Related government priorities

- 5 The proposals in this Cabinet paper advance:
 - 5.1 Labour's 2020 Election Manifesto plans to prevent, reduce, and recycle waste

- 5.2 The Cooperation Agreement between the New Zealand Labour Party and the Green Party of Aotearoa New Zealand, in particular the commitment to take action to minimise waste and problem plastics
- 5.3 implementation of the circular economy and waste-related commitments in the Emissions Reduction Plan
- 5.4 implementation of the new waste strategy agreed by Cabinet on 28 November 2022 [ENV-22-MIN-0053 refers]
- 5.5 legislative context to support the implementation of standardised kerbside recycling and food waste services as well as a NZ CRS both agreed by Cabinet in November 2022 [CAB-22-MIN-0539 and CAB-22-MIN-0539.01 refers respectively].

Executive Summary

- 6 In June 2020, Cabinet noted the intention to review the Waste Minimisation Act 2008 and Litter Act 1979 [CAB-20-MIN-0246.01 refers], and in October 2021 this Committee agreed to public consultation on new legislation to replace those Acts [CAB-21-MIN-0402 refers].
- 7 I now seek agreement to repeal and replace the existing Waste Minimisation Act 2008 and the Litter Act 1979, and policy decisions on its content. New legislation is needed to put in place the tools and arrangements needed to support delivery of many significant initiatives, including the new waste strategy, waste components of the Emissions Reduction Plan (ERP), and a NZ CRS as approved by the Government in November 2022 [CAB-22-MIN-0539.01 refers].
- 8 This Cabinet paper seeks agreement to the core framework for the new legislation. I am seeking Cabinet decisions to:
 - 8.1 align the overarching purpose and principles of the new legislation with the purpose and principles of the new waste strategy
 - 8.2 name the new legislation the “Responsibility for Reducing Waste Act”
 - 8.3 not include a general Treaty of Waitangi clause in the new legislation
 - 8.4 specify central government’s main responsibilities in relation to the national direction, stewardship and investment in waste and resource recovery
 - 8.5 appoint the Environmental Protection Authority as the central government waste regulator
 - 8.6 outline minimum obligations for local government to improve clarity of their legislated role and responsibility
 - 8.7 strengthen the legislative weighting of the proposed strategic planning framework to support delivery of the new waste strategy goals and priorities
 - 8.8 align local government waste planning with the strategic planning framework
 - 8.9 set reporting requirements for central and local government.

- 9 The proposals in this paper will have financial implications for central and local government and I am recommending some changes to the waste disposal levy funds to reflect this. I am seeking Cabinet's support for:
- 9.1 continued ring-fencing of the waste disposal levy funds
 - 9.2 continued equal split of the waste disposal levy funds between central and local government
 - 9.3 proposals to distribute the local government portion of the waste levy more fairly between territorial authorities by introducing a flat-rate allocation alongside the existing population-based calculation
 - 9.4 broadening of the scope of what the waste disposal levy funds can be spent on and outlining decision-making processes for oversight of waste disposal levy spend.
- 10 If Cabinet agrees to the proposals in this set of papers, I propose to issue drafting instructions to the Parliamentary Counsel Office in March 2023. I will subsequently lodge a Cabinet paper and bill with the Cabinet Legislation Committee. I aim to pass the legislation by 2025.
- 11 The new legislation enables delivery of the Governments recent decisions relating to the introduction of a NZ CRS [CAB-22-MIN-0539.01 refers] and standardisation of kerbside collection systems [CAB-22-MIN-0539 refers]. I will cover proposals for extended producer responsibility (EPR) in a subsequent Cabinet paper to be considered in April, alongside further policy agreements for the NZ CRS.
- 12 I am seeking Cabinet's authority to:
- 12.1 instruct the Parliamentary Counsel Office to draft the bill
 - 12.2 further clarify and develop policy matters relating to the proposals in this Cabinet paper in a manner consistent with the policy recommendations contained in this paper, and develop commencement, transitional and any other provisions with Parliamentary Counsel Office, through the drafting process.

Navigation of this paper

- 13 This Cabinet paper is divided into five parts:
- Part one: an overview of the proposed legislation and the process for drafting and implementation of the bill (paragraphs 24 to 40)
 - Part two: proposals for the overarching provisions in the new legislation (paragraphs 41 to 53)
 - Part three: the proposed roles and responsibilities of central and local government (paragraphs 54 to 73)
 - Part four: an outline of the strategic planning and reporting framework and legal obligations (paragraphs 74 to 111)

- Part five: proposals for the use, allocation and distribution of the waste disposal levy (paragraphs 112 to 149).

Background

Waste Reduction Work Programme

- 14 The first objective in the Waste Reduction Work Programme published in 2021 [ENV-21-MIN-0019 refers] is to build the foundations for a transformed waste system. The main workstreams are:
- 14.1 new legislation to replace the WMA and the Litter Act (this set of papers)
 - 14.2 the new long-term waste strategy [ENV-22-MIN-0053 refers]
 - 14.3 the Emissions Reduction Plan policies for waste and hydrofluorocarbons (published in May 2022) [CAB-22-MIN-0152 refers]
 - 14.4 improved data systems (ongoing)
 - 14.5 introduction of a NZ CRS [CAB-22-MIN-0539.01 refers]
 - 14.6 standardisation of kerbside collection systems [CAB-22-MIN-0539 refers].
- 15 Between them, these workstreams effectively create the strategic investment framework that Cabinet asked the Ministry for the Environment to develop when it approved the increase and expansion of the waste levy in 2020 [CAB-20-MIN-0264.1 refers].

Problems with the Waste Minimisation Act 2008 and Litter Act 1979

- 16 The Waste Minimisation Act 2008 (WMA) and the Litter Act 1979 (the Litter Act) currently regulate aspects of waste and litter in New Zealand.
- 17 Both Acts need modernising and lack clarity on roles and responsibilities, particularly for central government. The Litter Act is over 40 years old, while the WMA, in particular, falls short of the powers that are needed to achieve good waste data collection and effective regulation.
- 18 As a country we need to improve waste disposal and resource recovery and move towards a more circular economy. A new Act is needed to achieve these goals.
- 19 The new legislation will update the purposes and principles, governance arrangements, and roles and responsibilities for waste issues, and will facilitate improved collection of data and regulation of the sector.

Public consultation and decisions on the new waste strategy and new legislation

- 20 Public consultation on options and proposals for both the new strategy and legislation took place between October and December 2021.
- 21 Further details on public consultation are outlined in paragraphs 174-179. The summary of submissions report will be released alongside announcements of the new waste strategy.

- 22 The new waste strategy has been developed alongside these legislation proposals. The final waste strategy was considered by Cabinet on 28 November 2022 and is now being prepared for publication.
- 23 This set of papers now seeks policy decisions to enable drafting of the new legislation to begin.

PART ONE: OVERVIEW OF THE PROPOSED LEGISLATION

Proposed content

- 24 I am proposing to repeal the WMA and the Litter Act and replace them with the “Responsibility for Reducing Waste Act”. Although some of the existing content will be carried over, it will need significant revision to make it fit for purpose.
- 25 I propose the new Act cover the following topics:

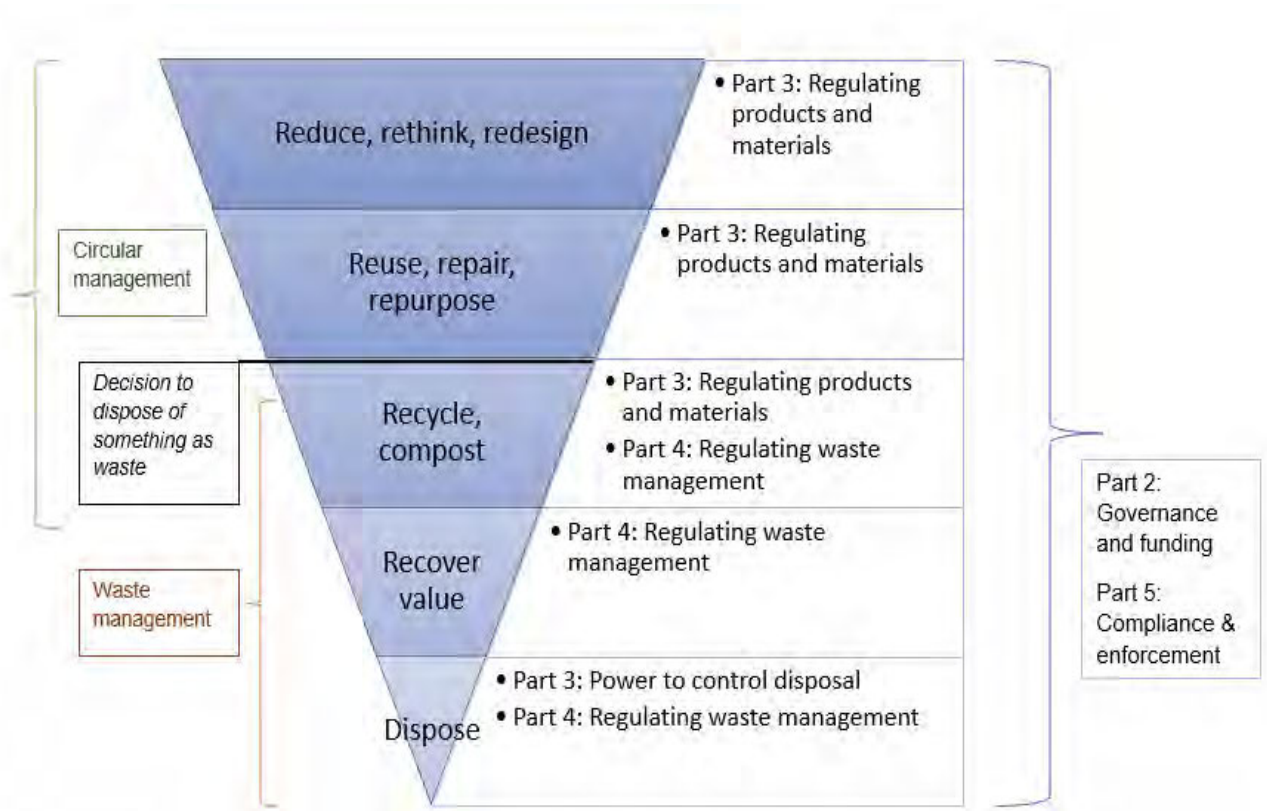
Table 1: Proposed content of new legislation

Topic	Sub-topic
Preliminary <i>Paper 1</i>	<ul style="list-style-type: none"> • Purpose, principles • Definitions • Commencement
Governance <i>Paper 1</i>	<ul style="list-style-type: none"> • Central government roles and responsibilities • Local government roles and responsibilities • Long-term strategy, planning and reporting requirements • Use and distribution of waste levy funds
Regulating products and materials to promote circularity <i>Paper 2</i> <i>Kerbside and NZ CRS papers [CAB-22-MIN-0539 and CAB-22-MIN-0539.01 refers]</i>	<ul style="list-style-type: none"> • Enabling provisions for: <ul style="list-style-type: none"> ○ Extended producer responsibility schemes ○ Deposit return schemes ○ Environmental performance standards ○ Provision of information to consumers ○ Facilitating repair ○ Powers to ban specific products and materials ○ Powers to control disposal of specific products and materials • Beverage CRS
Regulating how people manage waste <i>Paper 3</i>	<ul style="list-style-type: none"> • Duties of care to manage waste appropriately (including aspects of the Litter Act obligations) • Licensing waste management operators and facilities • Tracking system for waste • Powers to set national standards for waste management activity
Levy on final disposal of waste <i>Paper 4</i>	<ul style="list-style-type: none"> • Application of levy to disposal facilities • Collection and administration of levy
Compliance, monitoring, enforcement (including litter) <i>Paper 4</i>	<ul style="list-style-type: none"> • Enforcement agencies, officers • Investigation powers • Infringement offences, offences, penalties

Record-keeping and reporting <i>Paper 4</i>	<ul style="list-style-type: none"> • Data gathering powers and controls
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- 26 Appendix 1 sets out which aspects are new and which update or amend existing provisions.
- 27 Figure 1 shows the main topics against the waste hierarchy that we have adopted in the new strategy.

Figure 1: Parts of new legislation against waste hierarchy



- 28 It highlights a terminology point that underpins much of the strategy and legislation: a product or material becomes waste when it enters the waste management system in the lower portion of the hierarchy, indicated by the solid line. Circular activity above that line aims to prevent things becoming waste (e.g. food rescue). Below that line are the preferred means for managing waste.

Link with related initiatives and other legislation

- 29 This new legislation is needed to implement several initiatives in the Emissions Reduction Plan aimed at tackling greenhouse gases produced by organic waste going to landfills. In particular, it will enable:
- 29.1 national regulation of the waste and resource recovery sector including licensing of facilities and operators, tracking of material, and national standards for sector activities
 - 29.2 powers to control how and where material is collected and disposed of (which would be the mechanism for requiring separate collection of organic waste and any future step to ban or limit organic material from landfill)
 - 29.3 stronger data collection powers, along with evaluation and reporting obligations for the Ministry, to build the information base for future policy making and action.
- 30 The new legislation will also provide the planning, investment and regulatory systems needed to deliver on the vision and goals in the new waste strategy. It will support the investment priorities enabled by the expansion of the waste levy, and enables delivery of the Governments recent decisions relating to the introduction of a NZ CRS [CAB-22-MIN-0539.01 refers] and standardisation of kerbside collection systems [CAB-22-MIN-0539 refers]. In the longer term, it will also support the more general circular and bioeconomy strategy to be developed by the Ministry of Business, Innovation and Employment.
- 31 This legislation will also connect with the Local Government Act 2002 (LGA), Hazardous Substances and New Organisms Act 1996 and the proposed National and Built Environments and Spatial Planning Acts.
- 32 The Building for Climate Change amendments to the Building Act will have specific requirements for industry including requiring those intending to undertake certain building or demolition activities to have a waste minimisation plan. The new legislation is well aligned to the Building Act amendments.
- 33 In particular, the proposals that I am making regarding the regulation of waste will assist implementation of the Building Act amendments by providing clarity on responsibilities for effective management of waste and by supporting effective regulation of the waste management sector (see *Waste Legislation 3: Regulating how people manage waste*). The suite of proposals that I am making in *Waste Legislation 2: Regulating products and materials to promote circularity* are also well aligned to the Building Act amendments as they will support the building sectors move towards a more circular use of construction and demolition products and materials.
- 34 In addition to these specific climate change related amendments; existing and future climate risks (such as adaptation) will need to be considered as part of the design of any new waste initiatives or infrastructure.

9(2)(h)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Timing and drafting process

- 37 The bill is on the legislation programme with priority 5 (drafting instructions to PCO in 2022). The aim is for it to be introduced and referred to a select committee in 2023 and enacted in 2025. It is unlikely that the bill will be progressed through Parliament this term due to availability and government prioritisation, however, approving the policy direction proposed for the new legislation now will create important long term waste policy foundations for government and the wider waste sector.
- 38 In November 2022 the Government agreed to introduce a NZ CRS [CAB-22-MIN-0539.01 refers]. The provisions necessary to support that scheme (as considered by Cabinet in November 2022) will be included in this bill. I will cover proposals for extended producer responsibility (EPR) in a subsequent Cabinet paper to be considered in April, alongside further policy agreements for the NZ CRS.
- 39 As with any major piece of legislation, there is likely to be a need for further policy decisions to be made on points of detail and incidental matters during the drafting process. I propose that Cabinet delegates power to the Minister and Associate Minister for the Environment and (where relevant) the Minister responsible for the Circular Economy Strategy portfolio to take decisions on such matters.

Implementation timing

- 40 Some aspects of the new law will come into effect straight away (e.g. reorganised central government roles, strategic planning and reporting framework). The powers to regulate products and materials will be available following enactment to support a long-term pipeline of work, governed by the waste strategy and supporting plans. The national regulation of the waste and resource recovery sector will be phased in over

several years, which will include transitioning local licensing systems over to the new national system.

PART TWO: PROPOSALS FOR THE OVERARCHING PROVISIONS

- 41 The title and overarching provisions of the new legislation signal the policy scope, ambition and core concepts. They will influence how this legislation is implemented and waste levy funds invested, future iterations of the long-term waste strategy, and the use of the new regulatory powers.

Title

- 42 I propose “Responsibility for Reducing Waste Act” as the working title for the bill. This wording reflects the theme in the consultation document “*Te kawe i te haepapa para* | Taking responsibility for our waste” and reinforces the message that everyone has a part to play in waste and litter reduction. The wording is also broad enough to encompass all the types of change that the legislation will support, from recycling through to reuse, repair and redesign.

Purpose

- 43 I propose that the purpose of the new Act is to support the vision we have agreed in the new waste strategy, namely a low emissions, low waste society built upon a circular economy. The Act will support this by establishing a national strategic planning and reporting framework, enabling regulation of products and materials to promote better use of resources and reduction of waste, and regulating recycling and end of life disposal activity.

Principles

- 44 Drawing on the new strategy again, the proposed principles of the new legislation reflect the following:
- 44.1 the promotion of responsibility across all parts of society for how we make, use, manage and dispose of products and materials
 - 44.2 the waste hierarchy preferences for the management of materials, namely (and in order of preference):
 - avoid, rethink, redesign to reduce consumption of non-renewable virgin resources
 - reuse, repair, repurpose
 - recycle (including compost)
 - recover remaining value from residual waste, where that can be done sustainably and without increasing greenhouse gas emissions
 - final disposal
 - 44.3 the need to protect and regenerate the natural environment, including by:
 - reducing greenhouse gas emissions across the entire life cycle of materials

- taking account of finite planetary limits and preferring renewable resources

44.4 the need to deliver equitable and inclusive outcomes, distributing the costs and benefits of change equitably between communities and across generations.

Treaty of Waitangi

- 45 Consultation shows broad agreement across society, including te Ao Māori, with circular economy principles.
- 46 This paper proposes maintaining the requirements that support a Māori presence on the Waste Advisory Board. I consider that this will strengthen the ability of that board to provide a valuable, independent view on current and future priorities and activity, both to the administering agencies and directly to the Minister.
- 47 I consider there is no need for a specific Treaty clause in the new legislation.
- 48 At a non-legislative level, the waste strategy includes a focus on building Māori capacity and engagement on waste issues, as well as involvement in the sector transformation that the strategy will drive.

Interpretation

- 49 Experience implementing the WMA to date has demonstrated how critical definitions are from a regulatory and enforcement perspective. Advice on compliance and enforcement options to date has indicated issues with the current WMA definitions.
- 50 For a number of the existing definitions, the absence of detail or lack of alignment, has resulted in differing, and sometimes conflicting, interpretations. This has often made it challenging to create certainty across the sector or to develop a shared understanding of foundational concepts such as 'waste' or 'recycling'.
- 51 The new legislation presents an opportunity to create a solid foundation of consistent and universal language for waste and resource recovery. Further work will be required during the drafting process, and I am conscious of the need to take a careful and holistic approach given the importance to the sector.
- 52 I am proposing that definitions in the new legislation be guided by the proposed purpose and principles and that Cabinet delegate the authority to make final decisions on definitions to the Minister and Associate Minister for the Environment, in consultation with other relevant Ministers.

Review timeframe

- 53 A three-year review period is a standard timeframe for reviewing new Acts, however, I propose that the new legislation be reviewed within five years of its enactment. I expect that once enacted it will take some time to use and implement some of the regulatory powers that I am proposing and a longer review period would allow for flexibility in responding to implementation timeframes.

PART THREE: ROLES AND RESPONSIBILITIES

- 54 The proposals that follow set out a new division of roles between local and central government, with a strengthened central government role in setting the national

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direction, regulation of products and materials as well as waste management activity, and investment in waste and resource recovery.

- 55 I have considered the option of a separate Crown entity to manage all waste responsibilities, which many submitters supported. I am not proposing to advance this as it would cause transitional costs and delays.
- 56 Building on existing central government organisations, I therefore recommend that:
- 56.1 the Ministry for the Environment's role encompass waste and resource efficiency policy and sector stewardship (including the strategy and planning process), regulatory policy, monitoring operation of specific interventions (such as EPR schemes), investment policy, and behaviour change functions; and
- 56.2 the Environmental Protection Authority (EPA) takes on the majority of central government operational and enforcement functions under the proposed legislation.
- 57 I will cover proposals for EPR in a subsequent Cabinet paper, alongside further policy agreements for the NZ CRS. That paper will outline additional institutional arrangement, such as a Crown manager role, specific to EPR/CRS schemes in specified circumstances.
- 58 Discussions have been undertaken with the EPA who are supportive of this proposed role. I recommend that the EPA take on the following functions:
- 58.1 operation of the proposed national licensing system for the waste sector (see *Waste Legislation 3: Regulating how people manage waste*)
- 58.2 operation of the proposed track and trace system for waste (see *Waste Legislation 3: Regulating how people manage waste*)
- 58.3 collection and distribution of the waste levy (see Part 5 of this paper and *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime*)
- 58.4 all central government compliance monitoring and enforcement activity for the waste management system (see *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime*)
- 58.5 most operational and enforcement functions for controls on products and materials including EPR (see *Waste Legislation 2: Regulating products and materials to promote circularity*) – see also paragraph 60.
- 58.6 management of reporting obligations, including operation of data systems that support reporting by the sector (see *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime*)
- 59 If Cabinet agrees to these proposed changes to central government roles and responsibilities, Ministry officials will work with the EPA to define and design the expanded role for the EPA, including working through any necessary or consequential amendments to the Environmental Protection Authority Act 2011.
- 60 Alongside EPA, there may be limited roles for other agencies in the operational and enforcement functions for controls on products and materials (see *Waste Legislation*

2: Regulating products and materials to promote circularity). The scope and extent of such controls will depend on the making of regulations, so their implementation is difficult to fully anticipate. New Zealand Customs Service (Customs) may need to have a strengthened role where border control of imported products is feasible and cost-effective. The paper *Waste Legislation 2: Regulating products and materials to promote circularity* includes further information and proposals.

- 61 There may also be a role for Customs in the import and export of waste and the collection of fees, information and data at the border and the subsequent sharing of information and data. I propose that Cabinet delegates power to the Minister for the Environment and the Minister of Customs to take decisions on matters relating to the border and the role of Customs and issue drafting instructions as appropriate. I also propose that the Minister of Customs be consulted on any secondary legislation that affects the border.

Waste Advisory Board

- 62 The WMA established the Waste Advisory Board (WAB), to provide independent advice to the Minister for the Environment on waste minimisation matters.
- 63 The WAB has developed into a valuable forum that provides thoughtful and well-rounded views to me as Minister. However, experience since 2008 has highlighted some limitations, including:
- 63.1 the constraints of the 'on request' nature of the advisory process
 - 63.2 the specific statutory task rather than strategic focus of the WAB
 - 63.3 a lack of resourcing, including secretariat support and budget for independent research or preparation of significant advice.
- 64 There will be an ongoing need for an independent channel for advice from the sector to the Minister. I am also aware of the value that independent strategic oversight will provide as we transition towards a more circular economy and recommend that this also be made available to support the Ministry directly, particularly in the development of waste strategies and supporting plans.
- 65 I propose that the WAB should continue under the new legislation, but with some changes:
- 65.1 refocusing the mandate to enable it to provide advice on strategic and overarching issues or opportunities
 - 65.2 broadening its remit so that advice can be provided to both the Minister and the Ministry
 - 65.3 removing the constraint that advice can only be provided on ministerial request so that the WAB can provide advice to the Minister or Ministry on its own initiative
 - 65.4 strengthening membership requirements to ensure good coverage of the different parts of the waste disposal sector and growing circular economy sectors, relevant community interests and te ao Māori.

- 66 Under the WMA, I, the Minister, must consult the Minister of Māori Affairs (Minister for Māori Development) before appointing any members to the WAB and I propose that the new legislation carry over this requirement. Given the close connection of waste to the circular economy, I propose that the new legislation also include a requirement to consult with the Minister responsible for that portfolio.
- 67 I am not proposing any changes to the membership term of the WAB or the current approach to fees and expenses.

Local government responsibilities

- 68 Local government will continue to have a vital role in waste management and minimisation and in the move to a circular economy. The intention of the new legislation is not to change the basic legal settings that enable local authorities to determine the full extent of their waste activities, but to strengthen and clarify their current functions.
- 69 The new legislation will not make significant changes to existing local government waste roles and responsibilities.
- 70 A number of options have been considered regarding the distribution and allocation of waste functions for territorial authorities. I am recommending that the new legislation prescribe the following minimum obligations on territorial authorities:
- 70.1 delivery of domestic waste and recycling collection (including food waste collections) through kerbside services and other collection methodologies¹
 - 70.2 setting waste bylaws to control waste practices in their area (for matters not controlled by national standards or licensing systems in future) (see paragraphs 102 through 108 for further details on waste bylaws)
 - 70.3 appointment of warranted enforcement officers to undertake compliance monitoring and enforcement under the new legislation, including bylaws set by the territorial authority (see *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime*)
 - 70.4 education relevant to local services and waste minimisation
 - 70.5 working with local communities to support waste minimisation projects, either through levy funds or facilitation roles.
- 71 Territorial authorities are of course able to do much more if they have capacity. This list may not appear significantly different to the work that most territorial authorities are currently undertaking, however, I note that within each of these responsibilities is a comprehensive and expanding role.
- 72 The wider waste work programme, alongside the proposals that I am making in this suite of papers, will require territorial authorities to expand their current role and service provisions. For example, the kerbside standardisation proposals that I am making (ENV-22-MIN-0058 refers) will require territorial authorities to improve and invest in new services (organic waste collections), and the proposed warranted officers listed

¹ Note this will bring into primary legislation the obligation for councils as part of the kerbside standardisation reforms approved by Government in November 2022 [CAB-22-MIN-0539 refers], initially using the power in the WMA to set performance standards for councils.

above will have broader CME accountability than current territorial authority waste enforcement officers.

- 73 Having greater clarity about these core roles outlined in the new legislation will help implementation of the new waste system and will support territorial authorities in delivering better and more consistent local waste outcomes.

PART FOUR: LONG TERM STRATEGY, PLANNING AND REPORTING REQUIREMENTS

- 74 The consultation proposals have been developed into a long term strategic, planning and reporting structure. It sets a three-tier approach to strategic planning. It has been designed to establish strong connections between national directions and local delivery by promoting collaborative working relationships between key stakeholders and central government. The new system is represented in Figure 2.

Figure 2: Strategic planning system



The Waste Strategy

- 75 The strategy provides the first tier. It will provide high-level direction for the future of waste minimisation activity in Aotearoa New Zealand and identify the priority areas for action and investment. The sector strongly supports central government taking a leading role in setting a clear long-term direction, to provide sufficient certainty for them to plan and invest.
- 76 I recommend that the new legislation should require the Minister to:

- 76.1 produce a national strategy that looks out at least 20 years, and sets goals and priorities to guide activities over that period to support the purpose and principles of the new legislation
 - 76.2 review and update the strategy at least every ten years
 - 76.3 consult publicly and meet specific procedural requirements when preparing a new strategy.
- 77 I also recommend that the new legislation strengthens the role of the waste strategy by stating that Waste Management and Minimisation Plans² (WMMPs) produced by territorial authorities must align with the waste strategy. Under the WMA, WMMPs are currently only required to 'have regard' to the waste strategy.

Action and Investment Plan

- 78 Sitting underneath the strategy, the action and investment plan (AIP) will provide the detail on how to deliver the strategy's goals and priorities. The AIP will cover a mix of actions, including:
- 78.1 investment
 - 78.2 engagement (collaboration, behaviour change)
 - 78.3 regulation of products and materials (including EPR)
 - 78.4 regulation of disposal activity.
- 79 The AIP will be the main mechanism for government to signal products and materials for potential regulatory action using the range of tools being proposed in *Waste Legislation 2: Regulating products and materials to promote circularity* of this set of new legislation papers, and EPR. I will cover proposals for EPR in a subsequent Cabinet paper, alongside further policy agreements for the NZ CRS. I am proposing that the AIP will align the signalled product or material with the most appropriate regulatory tool.
- 80 The AIP will also provide industry and local government with short- to medium-term certainty on focus areas for investment. Alongside the waste strategy, the AIP will indicate a required "direction of travel" and set out priorities and goals for system change, regulatory action, and investment. For infrastructure, the AIP will work to support investment across the country to improve distribution of waste and resource recovery facilities in a way that avoids clusters around major centres.
- 81 Cross-boundary waste planning is important to support given the significant infrastructure investment that will be needed across the entire sector and country over the medium term. The AIP presents an opportunity for improved connection and planning between central and local government and with the wider waste sector. To bridge the void between local and central waste planning activities, I propose that the AIP includes chapters dedicated to sub-national issues and opportunities where this is needed.

² A waste management and minimisation plan is the term in the current WMA for a council's waste management and minimisation planning document. The legislation enables councils to use various tools to influence, promote and implement measures to manage and minimise waste.

- 82 The AIP will be a new tool in a complex sector, and it needs to be flexible so that it can effectively respond to rapid changes. I recommend that the sections on the waste strategy include a provision to the effect that the Minister “may” publish an AIP from time to time to support delivery of the strategy. In practice, the Ministry will support these plans in collaboration with the sector.
- 83 Although I do not consider that the AIP should be required by legislation, I am conscious that when an AIP is produced, it will operate as the link between local issues and national direction. To ensure that this link is effectively captured, I am proposing that the new legislation require WMMPs to align with any such plans along with the waste strategy.

Waste Management and Minimisation Plans

- 84 The current WMA requires territorial authorities to produce WMMPs and I am proposing this requirement should continue. Feedback received from stakeholders during consultation, including Local Government, favoured WMMPs remaining separate from other local government planning processes (for example Long-Term Plans).
- 85 Under a more centrally directed strategic framework, the role of WMMPs will change. The focus of the new waste strategy will allow territorial authorities to concentrate on local delivery of the strategy’s goals rather than the development of their own local strategic goals and priorities. Furthermore, the proposal to introduce a national AIP will help to deliver a nationally consistent, coordinated approach to infrastructure planning. Waste infrastructure planning to date has not been coordinated at either a local or nationwide level, and in some instances WMMPs have attempted to fill that gap.
- 86 Feedback received through consultation has indicated several areas for improvement, including:
- 86.1 the focus of WMMP objectives and policies in line with territorial authority legislated waste and resource recovery roles and responsibilities
 - 86.2 the need for WMMPs to link local initiatives and outcomes to the new Waste Strategy and any supporting plans by strengthen the legislated alignment requirement beyond the current ‘having regard to’
 - 86.3 improving flexibility in WMMP review requirements to enable a more proactive response to changes in local needs and to better reflect the broader system changes proposed through the new legislation
 - 86.4 strengthening WMMP requirements so that they better support budgeting and financial allocation to local proposals.
- 87 I am recommending that the focus and format of WMMPs should be updated so that they better reflect the proposed increased waste planning leadership from central government, including alignment with the waste strategy and AIP.
- 88 WMMPs are currently reviewed on a six-yearly cycle. I am proposing to reduce this to five yearly to better align with the wider strategic planning framework development timeframes and to enable better alignment of content and direction. My intention with this proposed timeframe is to reflect the more streamlined scope of WMMPs while also allowing sufficient time for territorial authorities to implement and embed change under the actions of WMMPs.

- 89 The review or change to a WMMP under the WMA includes the use of a special consultative process (SCP) under section 83 of the LGA. I understand that often territorial authorities will try to align their WMMP consultation with wider council consultation processes, such as Long-Term Plans, to save on time, costs and resources.
- 90 I am concerned that under the wider strategic framework of waste planning that I am proposing as part of the new legislation, requiring a full SCP on WMMPs may be unnecessary. WMMPs will need to align with visions, goals, principles and priorities of the new Waste Strategy and any supporting AIP, consultation at a local level will not be needed on such aspects. However, I understand that consultation can be an effective mechanism for engaging with residents on the broader issues of waste disposal, effectively reducing waste and gaining feedback on local responses to such issues.
- 91 I am, therefore, proposing to remove the SCP requirement but include provision for territorial authorities to make an assessment, at their own discretion, on whether or not the use of an SCP is required or appropriate. This allows flexibility for minor changes and adjustments to be made to WMMPs without it becoming a costly and time-consuming exercise for councils.
- 92 Where a new waste service or provision is proposing the use of rates funding, I expect territorial authorities to undertake the appropriate consultation under the LGA.

Intervention powers

- 93 Where a WMMP is considered to fall short of achieving the necessary legislative requirements, the WMA currently gives the Minister two powers to intervene or influence by either a formal direction, or alternatively by setting performance standards.
- 94 Where the Minister is satisfied that the content or provision of a territorial authority's WMMP will not enable them to deliver on the purpose of the WMA, or where it is not well aligned to the New Zealand Waste Strategy, the WMA allows the Minister, through an Order in Council, to direct the territorial authority to amend their WMMP.
- 95 I have already recommended strengthening the alignment of WMMPs with the new Waste Strategy and any associated plans and I propose that the power to direct territorial authorities on the WMMPs is continued in the new legislation as a backstop power to ensure this alignment. I am however, proposing that such a direction may only be used within six months of a WMMP being finalised so as to enable territorial authorities to implement their plans without ongoing risk of undue instability. This places an onus on the Ministry to review WMMPs promptly and provide advice on any concerns within a contained timeframe.
- 96 The Minister may also set performance standards for how territorial authorities deliver their WMMPs under the WMA. This can be a performance standard set for a single council or for all territorial authorities. I am proposing to replace this intervention power by introducing the ability for the Minister to set national standards under the new legislation. This will govern technical aspects of waste and resource recovery management and disposal across the whole sector directly, rather than through territorial planning as is the current approach. Proposals on national standards are included in subsequent papers (see *Waste Legislation 3: Regulating how people manage waste*).

Waste Assessments

- 97 The WMA requires territorial authorities to produce a waste assessment and that they have regard for it in the preparation of their WMMP. Waste assessments are effectively a stock take of waste services within the district and a tool for forecasting future waste service needs.
- 98 Access to good quality waste data for the development of waste assessments can be a challenge for territorial authorities, particularly those that do not own waste infrastructure. In developing the waste assessment, the WMA requires territorial authorities to consult with the Medical Officer of Health.
- 99 The lack of good quality information and the timeframes for input from Medical Officer of Health has been problematic for waste assessment development. I understand that for some territorial authorities, the waste assessment development process can take up to two years. I am concerned that this exercise creates increased work and pressure on local government resources and on the local health officer.
- 100 While I understand that the process of undertaking a waste services stock take and forecasting of waste services can be a very useful exercise at a local level, I do not consider that this should be a stand-alone requirement on territorial authorities. The proposed change to a more nationally focused approach to waste data collection and waste planning reduces the need for these actions to be undertaken locally. I am, therefore, proposing that territorial authorities may undertake a waste assessment in the process of WMMP preparation but that it will not be a separate requirement.
- 101 In addition, I am proposing that the current, local, role of the Medical Officer of Health is replaced by incorporating this input into the central collaboration and engagement process proposed as part of the development of waste strategies and the AIP.

Waste Bylaws

- 102 To support the implementation of a territorial authorities WMMP, and to give local effect to the WMA, territorial authorities can produce bylaws under the current WMA and I am proposing that this requirement should continue into the new legislation. I am not proposing any significant change to bylaw making powers under the new legislation other than to remove the reference to local licensing to reflect proposals for a national licensing scheme (see *Waste Legislation 3: Regulating how people manage waste*).
- 103 I recommend that bylaws should continue to reflect territorial authorities WMMPs and that they may continue to be produced for:
- 103.1 prohibiting and regulating the deposit, collection and transportation of waste
- 103.2 regulating the disposal of dead animals
- 103.3 prescribing charges and use of waste and resource recovery facilities under the control of territorial authorities
- 103.4 regulating the use of territorial authority provided waste services and bins.
- 104 However, to avoid conflict and confusion, I also recommend strengthening the requirement for consistency between bylaws and the relevant aspects of the new legislation, in particular to waste standards, duties of care and waste licensing provisions (*Waste Legislation 3: Regulating how people manage waste*).

- 105 The WMA requires a ten-yearly review of bylaws, however, given that bylaws must be consistent with a WMMP, this timeframe is not well aligned to the current WMMP review timeframe. I am concerned that this requirement results in territorial authorities finding it difficult to deliver on the bylaw timeframes outlined in the LGA, often finding themselves in breach of section 160A regarding bylaw review timeframes compliance.
- 106 I recommend that bylaw review timeframes in the new legislation align with the WMMP review timeframes and the LGA review timeframe of five years. Again, my intention with this proposed timeframe is to reflect the more streamlined scope of bylaws in alignment with the WMMP proposals above.
- 107 Having clear roles and responsibilities is a key element of an effective regulatory system and is a driver of an effective compliance management and enforcement function. The current legislation has some elements of compliance monitoring and enforcement (CME) undertaken at a local level, for example the Litter Act is currently enforced predominantly by territorial authorities. I expect there to be a continued need for local enforcement of aspects of the new legislation beyond the bylaw provisions.
- 108 Proposals on the CME regime to support the new legislation are included in subsequent papers (see *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime*) and will include details on warranted enforcement officers. I intend for territorial authorities to have the ability under the new legislation to appoint such officers and for them to undertake local regulation of the new legislation with the support of the EPA as the central regulator.

Reporting

- 109 Formal reporting on progress against the waste strategy, AIP and WMMPs will build responsibility and accountability into the new system. Drawing on the approach in the Environmental Reporting Act 2015, I propose that:
- 109.1 territorial authorities should be required to report to the Ministry and publicly on progress against their WMMPs and contribution towards AIP and strategy goals, every five years.
- 109.2 the Secretary for the Environment be required to prepare an independent public report on overall national progress against the strategy and any supporting AIP, every five years.
- 110 These reports should include information on how waste levy funds have been used and an assessment of effectiveness, at a local, central government and combined level.
- 111 Additional proposals for data gathering powers are outlined in *Waste Legislation 4: Waste levy collection and administration, waste data, and general compliance regime*.

PART FIVE: USE OF THE WASTE DISPOSAL LEVY

Split and Allocation of the Waste Disposal Levy

- 112 The waste disposal levy (waste levy) funds will increase considerably following Cabinet's decision to increase and expand the waste levy in 2020 [CAB-20-MIN-0264.1 refers]. Current modelling predicts total waste levy revenue to reach approximately \$260 million by 2025/26 when the levy expansion and increase is fully operational (see table 2).

Table 2: predicted waste levy revenue to 2025/26

	2021-22	2022-23	2023-24	2024-25	2025-26
Total predicted levy revenue³	\$66m	\$99m	\$247m	\$270m	\$260m

- 113 Waste levy funds are currently ring-fenced for waste minimisation purposes, with the funds split equally between central and local government. There have been some suggestions that this policy be revisited as part of the legislation reform, however, I consider that there remains a strong justification for this approach to continue.
- 114 Providing funds for waste minimisation activity is one of the two stated purposes of the levy. Ring-fencing the waste levy plays an important role in promoting trust and acceptance of the levy price on disposal by directly connecting it to efforts to improve waste outcomes. Without it, support for the levy could be expected to start to fall away.
- 115 In 2020, it was estimated that at least \$2.1 to \$2.6 billion of investment in infrastructure was needed across the next decade to bring our waste management practices and outcomes up to a reasonable standard, along with \$0.9 billion for supporting systems. This is more than the total amount of forecast levy revenue over that period, and more than double the central government portion (not all of which will be spent on infrastructure).
- 116 The Government has previously recognised that levy funds alone will not be sufficient to achieve our waste minimisation goals (including emissions reduction), at least in the short term, and committed \$103 million additional Climate Emergency Response Fund (CERF) funds over 4 years to support efforts to stop organic waste going to landfills. The intention across the full waste reduction programme, as outlined in the proposed new strategy, is to leverage waste levy funds to encourage others to invest.
- 117 The continuation of fully ring-fenced levy funds has underpinned Cabinet's many decisions over the last two years on the overall waste reduction work programme, including our approach to funding emissions reduction in waste. As set out in paragraph 134 of this paper, the proposal is that levy revenue will fund a number of new or increased functions across central and local government that will support our long term shift towards a circular economy. Removing or reducing the ring-fenced funds would mean the breadth and pace of those changes would need to be reconsidered.
- 118 I am, therefore, proposing that the new legislation maintains the status quo.

Allocation and distribution of waste disposal levy

- 119 The WMA currently requires that waste levy funds are split evenly between central and local government. How the waste levy is allocated in the future will influence the Government's ability to:
- 119.1 deliver inclusive outcomes and achieve efficiencies and economies of scale,
- 119.2 effectively address regional waste equity concerns,

³ Calculations account for a gradual reduction in the amount of waste disposed of to class 1 landfills as the impact of the waste levy expansion and increase take effect on disposal practices. No assumptions have been made on any change to class 2-4 landfill disposal practices.

119.3 promote appropriate responsibility across the sector,

119.4 deliver on the proposed principles of the new legislation, and

119.5 achieve the goals of the Emissions Reduction Plan and the proposed new waste strategy.

120 Generally, submissions received from territorial authorities were very strongly in support of the waste levy continuing to be split evenly between central and local government but advocated for an increased scope for the use of waste levy funds. Several industry submitters, however, considered that the full quantum of the levy should be allocated on a contestable basis, with no direct allocation to territorial authorities.

121 How the waste levy funds are allocated to, and used by, territorial authorities has been an ongoing discussion across the sector for the life of the waste levy. The waste industry has expressed concerns that this funding could unfairly undermine their business model if wrongly invested.

122 Analysis of levy contribution to local government waste spending on a selection of territorial authorities showed that in 2020/21 the levy contributed in the range of 0.47 per cent to 3.7 per cent of total territorial authority operating expenditure on waste (table 3). To date it has, therefore, been a small but useful 'top-up' to territorial authorities funding for waste activities, but not a major source of funding for investment in infrastructure for most territorial authorities.

Table 3: Council waste levy funds and operating expenditure on waste activities, 2020/21

Council	Waste operating expenditure 2020/21 ⁴	Levy funds received 2020/21	Levy funds received 2020/21 as a % of 2020/21 waste opex
Christchurch City Council	\$55m	\$1.35m	2.5%
Wellington City Council	\$20m (approx)	\$0.74m	3.7%
Queenstown Lakes District Council	\$13m	\$0.14m	1.1%
Horowhenua District Council	\$4m	\$0.12m	3.0%
Buller District Council	\$1m	\$0.03m	3.5%
Waimate District Council	\$1.3m	\$0.03m	2.2%
Chatham Islands Council	\$0.56m	\$0.0026m	0.47%

123 The proposals in this paper have financial implications for central and local government and I am recommending that the levy funds continue to be split equally between central and local government. This approach acknowledges the proposed roles of central and

⁴ Sourced from council annual reports. Note that these figures are for operating expenditure only and do not include any capital expenditure.

local government by supporting implementation of the waste legislation through investment at both a national and local level.

- 124 I am, however, recommending a change to how the local government half of the waste levy is distributed among territorial authorities. While the current population-based approach to levy distribution does allocate the most money to where the largest populations can be impacted from a waste minimisation perspective, it does raise concerns around equity and the ability of the country to minimise waste.
- 125 Auditing to date has shown that territorial authorities that were best placed to achieve good waste outcomes did so in part due to having dedicated waste staff. In addition to staffing resources, levy funding is likely to contribute towards:
- 125.1 waste and recycling collection and processing services - including the introduction of an organics collection service
 - 125.2 local behaviour change campaigns - including local community waste minimisation funding initiatives
 - 125.3 compliance monitoring and enforcement, with a focus on litter and illegal dumping in particular
 - 125.4 waste and resource recovery asset and infrastructure maintenance and investment.
- 126 Therefore, allocating sufficient funding to individual territorial authorities to support investment in staffing resources while still having enough to apportion to their WMMP deliverables is essential for delivering on the principles of the act.
- 127 I am concerned that there are increasing inequity issues with regards to waste between main centres and more remote areas and that relying solely on a population-based approach to allocate levy funding between territorial authorities will result in equity, distribution, and delivery challenges for local government. However, we cannot ignore the waste complexities that come with large populations.
- 128 I am, therefore, proposing that the new legislation allocates the territorial levy funding as follows:
- 128.1 Twenty per cent of the local government portion is distributed evenly between territorial authorities to create a flat rate of waste levy funding for all territorial authorities to contribute to their legislated roles and responsibilities, and
 - 128.2 the remaining 80 per cent of the local government proportion of waste levy funding is allocated to councils on a population basis, using the current formula.
- 129 Modelling indicates that increasing the percentage allocated under a flat rate works to reduce the extremity of funding between smaller and larger councils. However, this does result in a significant increase in funding for some smaller authorities and raises concerns around their ability to effectively spend this money in line with the overarching principles of the waste legislation.
- 130 A flat rate at 20 per cent (table 4) reduces the extremity of waste levy allocation that currently occurs between very large and very small territorial authorities whilst also recognising the need to allocate funding to support the authorities scale.

Table 4: proposed territorial authority funding

Council	2020/21 100% Population based allocation (status quo)	2025/26 100% Population based allocation	2025/26 20% flat rate 80% population- based allocation (proposed)
Auckland Council	\$5.73m	\$43.50m	\$35.18m
Christchurch City Council	\$1.35m	\$9.94m	\$8.34m
Wellington City Council	\$0.74m	\$5.50m	\$4.79m
Queenstown Lakes District Council	\$0.14m	\$1.22m	\$1.37m
Horowhenua District Council	\$0.12m	\$0.93m	\$1.13m
Buller District Council	\$0.03m	\$0.24m	\$0.58m
Waimate District Council	\$0.03m	\$0.21m	\$0.56m
Chatham Islands Council	\$0.0026m	\$0.019m	\$0.40m

Controls on use of waste disposal levy

- 131 The use of levy funds is currently limited to promoting or achieving waste minimisation, defined as reducing waste (including by redesign and increased efficiency), reuse, recycling and recovery. For territorial authorities, the use must also be covered by their WMMP. Central government is limited to funding “projects” promoting waste minimisation.
- 132 This set of controls has been regularly criticised for:
- 132.1 inadequate coverage of the wider aspects of a circular economy, including changing choices about types of resources used, consumption patterns and regeneration
 - 132.2 more recently, no explicit link to low carbon goals alongside waste minimisation
 - 132.3 requiring too tight a connection between the funded activity and a waste reduction outcome, so that research and data collection, litter projects, enforcement activity and response to legacy landfill issues are often excluded
 - 132.4 for central government, being limited to projects only, rather than longer term programmes of work (whether by the Ministry or another party). This is further constrained by the relevant appropriation, which adds in a requirement for a contestable fund.
- 133 I believe that these criticisms have merit, especially as the amount of money available increases. It is important that the use and investment of the waste levy supports the more ambitious and broader purpose of the new legislation generally. The distribution

of the levy can be used to address inequalities in the waste system and address cost pressures that local government, Māori, local communities, small businesses, and industry face. Strategic spending of the waste levy is vital to achieving the outcomes articulated in the new Waste Strategy.

- 134 To address these issues, I am proposing that the new legislation broadens how waste levy funds can be used. As an overall control on both central and local government, I recommend that the legislation specifies that waste levy funds must be used to support the overall purpose of the new legislation, and the goals and priorities set out in the waste strategy and supporting plans applicable at the time.

Controls specific to central government

- 135 For the proportion of waste levy funds allocated to the Crown, currently, the levy covers the costs associated with collecting and enforcing the levy and administering the Waste Minimisation Fund (WMF), with all remaining funds being available to fund projects.

- 136 I intend to broaden the central government activities that can be funded from the levy, to include:

136.1 collection and distribution of the levy (by the EPA)

136.2 all compliance and enforcement activity under the new waste legislation (by the EPA)

136.3 the long-term national behaviour change programme that is central to the waste strategy (to be run by MfE)

136.4 start-up costs for schemes and systems such as extended producer responsibility or licensing systems if those costs cannot be met through the scheme itself or by industry

136.5 administering the investment of waste levy funds.

- 137 All remaining funds would be available for investment, in line with the overall controls noted in paragraph 134. As with the current approach to funding under section 38 of the WMA, investment of the remaining funds will be approved by the Minister, subject to the legislative controls outlined in paragraph 138 and 139 below.

- 138 I also propose changes to the legislative controls governing the investment of levy funds, as follows:

138.1 to introduce a new power for the Minister to notify investment priorities from time to time, within the scope of any current strategy and supporting AIP, so that there is formal power to limit the scope of a particular funding round or process

138.2 to continue the existing power for the Minister to gazette criteria for applications, for example to set expectations on matters like co-funding, size thresholds and similar technical requirements

138.3 to introduce a new mandatory consideration of value for money, alongside the overall controls on what can be funded

- 138.4 to introduce a new requirement for proposals above \$10 million to be independently assessed before approval
- 138.5 to introduce a new requirement that the Minister must consult with the Minister of Finance before approving proposals over \$25 million.
- 139 In the legislation, the formal power to approve funding for a particular proposal or project would continue to sit with the Minister, subject to the new requirement proposed in paragraph 138.5. The Minister would be able to delegate authority to approve smaller proposals to the Secretary for the Environment and Deputy Secretary for the Environment.
- 140 In practice, I expect the following decision-making thresholds (table 5) to operate when the new system comes into force, supported through a mix of the legislation, normal Cabinet protocols, and normal powers of delegation.

Table 5: Proposed decision-making thresholds

Decision maker	Threshold
Cabinet	Above \$25 million (this aligns with the general approach in CO (19) 6)
Minister	Between \$10 million and \$25 million
Secretary	Between \$1 million and \$10 million
Deputy Secretary	Below \$1 million

- 141 The Ministry has also developed a more sophisticated assessment framework, principles and practices to support its investment activity. Its approach will be guided by general central government practices, including the advice in CO (19) 6 for managing Crown investments, and ongoing consultation with Treasury, the Infrastructure Commission and other investment organisations across central government.
- 142 I note that these proposals will come into effect when the new legislation is enacted in 2025. Until that time investment of the waste levy through the WMF and associated funds will continue to be governed by the current system of regular published “investment signals”. The current investment signals focus on supporting ERP initiatives to reduce organic waste going to landfills.

Controls specific to local government

- 143 The changes that I am proposing to how the Local Government portion of the waste levy is distributed between territorial authorities will result in increased funding to all territorial authorities. This will provide financial support to smaller councils in particular to provide the increased level of services that is expected in future.
- 144 Despite this increase, it is not expected that the waste levy funding alone will cover all territorial authority waste costs. At present, territorial authorities fund their various waste-related activities through a mix of rates, the waste levy, and some user pays charges for services. Some have made successful Waste Minimisation Fund applications for additional funding from time to time. I expect that this mixed funding model will continue.

- 145 However, to maximise the use and potential of waste levy funding I propose that councils should be able to use their levy funds for any activity that falls within the overall controls noted in paragraph 134 and is provided for in their WMMP. This broad approach will remove some current debates between levy and rates funding for different waste-related activities and support smaller councils to improve levels of service. The proposed requirement for WMMPs to be aligned to the AIP and the waste strategy will strengthen the alignment of local investment to central prioritisation and will increase transparency of waste levy funding.
- 146 Currently, the Secretary for the Environment must withhold levy payments to a territorial authority if they do not have a current WMMP or have not reviewed it within the required time. The Minister may also direct levy payments to be withheld if a territorial authority has spent levy money outside the requirements of the WMA or has failed to meet a performance standard set by the Minister or to comply with requirements to provide information.
- 147 With the increased size of levy funds, and the likelihood that the funds will support delivery of core services or form part of long-term funding plans, automatically withholding the funds becomes a disproportionate response to what may at times be administrative shortcomings. It sets up a paternalistic relationship that is at odds with the collaborative approach that the overall reforms are building.
- 148 Nevertheless, the ability to hold territorial authorities accountable to poor compliance by retaining waste levy funding is sometimes a necessary, all be it final, consequence. I am therefore recommending that the new legislation includes the ability to withhold levy payments to territorial authorities but that it is broadened to improve its use and application.
- 149 This should include clearly outlining in what circumstances the waste levy can be retained, including the ability to retain the waste levy in part, and for the waste levy funding to be back paid on achieving compliance where appropriate. I intend to enable increased regulator discretion in how and when this tool is applied.

Financial Implications

- 150 The reforms proposed in this set of papers would start to come into effect from 2025, once the new legislation is passed.
- 151 Most of the new legislation either creates regulatory regimes that will be phased in over some years (eg, licensing would probably be phased in between 2025 and 2030), or enables regulation of specific products over time (e.g., product bans, extended producer responsibility schemes).
- 152 For these aspects, the financial implications will depend on future governments decisions on the scope and pace of change and cannot be accurately assessed now. However, it is useful to summarise the proposed funding mechanisms for the different parts of the reform and signal where there may be a future need for direct government funding.
- 153 Table 6 sets out the proposed funding mechanisms for all central government functions once the new legislation is implemented. It shows that most investment, operational and compliance functions in future will be funded either by the waste levy or through fees and levies attached to individual regulatory schemes. The main areas that will require ongoing departmental or agency funding will be:

- 153.1 overall strategic planning, reporting and system stewardship (MfE)
- 153.2 policy development and initial implementation of new regulations under the new legislation (MfE)
- 153.3 the Contaminated Sites Remediation Fund (although it may in future also be supported by the waste levy) (MfE)
- 153.4 set up costs for the licensing and tracking systems (EPA)
- 153.5 all aspects of the environmental design standards system (Agency TBC).
- 154 There will also be some costs associated with transferring some existing functions from the Ministry to EPA.

Table 6: Future functions and funding sources

Agency	Function	Activity	Funding	Timing
MfE	Strategic planning	Strategy & planning Data & evaluation Reporting	Departmental funding	Current activity, size increasing from 2025
	Policy	Sector stewardship Products & materials regulation Waste management system regulation	Departmental funding	Current activity, size increasing from 2025
	Operations	Behaviour change	Waste levy	Significantly expanded activity, building on initial ERP-related programmes for organic waste
		Implementation of new regulations	Departmental funding	Ongoing from 2025
		Extended producer responsibility schemes: set-up and monitoring	Waste levy to support set-up costs if needed Cost recovery/ fees to cover monitoring	First product stewardship schemes currently being established; strategy signals ongoing pipeline
		Deposit return schemes: set-up and monitoring	Waste levy to support set-up costs if needed Cost recovery/ fees to cover monitoring	Beverage CRS is only scheme currently proposed, for implementation 2025-2027
	Investment, funding	Circular economy, waste minimisation	Waste levy CERF	Ongoing
		Addressing climate-related waste	Waste levy to address	Ongoing

		vulnerabilities and contaminated sites remediation	landfills and contaminated sites vulnerable to impacts of climate change CERF	
EPA	Regulatory operations	Licensing Tracking system	Agency funding for set up costs Licensing levies and fees for operating costs	
		Waste levy collection	Waste levy	
	Compliance & enforcement	Products and materials regulations	Waste levy	Steadily building set of regulations, 2025-2040
		Waste management regulation	Waste levy	Phasing in, 2025-2030+
TBC	Environmental design standards	Development of new standards Implementation Enforcement	Agency funding	From 2025

155 Updated projections for the waste levy forecast \$100 - \$130 million will be available annually for central government use from 2025. Revenue in this range will be sufficient to cover the costs of all the relevant functions in table 6 and to maintain a significant investment and funding programme to support change.

156 Officials will carry out more detailed work on anticipated costs once decisions have been made on the institutional arrangements and scope of activity under the new legislation.

Legislative Implications

157 The decisions from this set of papers will result in legislation that will repeal and replace the WMA and Litter Act. The Responsibility for Reducing Waste bill should be on the next legislation programme as a category 5 bill (to be referred to a select committee in 2023).

158 The new legislation will need to make consequential amendments to some other Acts to reflect the changes to roles and specific waste regulatory functions. Consequential amendments are likely to be needed to enable effective information sharing, to support CME proposals and to allow interactions with aspects such as the new legislations proposed environmental performance standards.

159 In particular, it is likely that the Bill will amend the Environment Act 1986, Environmental Protection Authority Act 2011, Energy Efficiency and Conservation Act 2000, Hazardous Substances and New Organisms Act 1996 and the Customs and Excise Act 2018. It may also need to amend the Local Government Act 2002.

Transitional arrangements

- 160 As outlined in paragraph 40, the implementation of the new legislation will be phased, with some aspects coming into effect straight away, and other aspects phased in over time. Transitional arrangements will be necessary for some aspects of the policy proposals outlined in this suite of legislation papers.
- 161 In particular, changes to the distribution of responsibilities between central and local government (outlined in this paper) will need to be carefully implemented. The proposals in paper 3 (see *Waste Legislation 3: Regulating how people manage waste*) to introduce a national waste licensing system will need a comprehensive transitional process for those existing waste licensing schemes that are operating at a local level under the current WMA. Similarly, the transition of operational and enforcement functions from MfE to the EPA as proposed in this paper will require further consideration. Product stewardship schemes set up under the current WMA will also need to be transitioned to the new legislation.
- 162 Further work to better determine the transitional arrangements will be required during the drafting process. I am conscious of the need to take a considered approach to this transition and I am therefore proposing that detailed commencement and transitional provisions will be introduced through the select committee process after the Bills are introduced.

Impact Analysis

Regulatory Impact Statement

- 163 Cabinet's impact analysis requirements apply to the proposals to support a transformation of waste management in New Zealand. The Ministry for the Environment and The Treasury's Regulatory Impact Assessment Panel (Panel) has reviewed the attached interim Regulatory Impact Statement (RIS) document to support a transformation in waste management in New Zealand, prepared by the Ministry for the Environment.
- 164 The full quality assurance statement reads: *"The Panel considers that the RIS document on the proposals to support a transformation in waste management in New Zealand meets the quality assurance criteria for regulatory impact analysis. The problem definition, valuation criteria against which options were assessed, and the context are well set out. Having reached that assessment, the Panel notes that the RIS acknowledges that parts of the analysis are constrained by the limited ability to quantify some data at this stage in the project."*

Climate Implications of Policy Assessment

- 165 The new legislation itself has no direct climate impact. However, some of its content will support actions to reduce emissions from organic waste as set out in the ERP.
- 166 According to the Ellen MacArthur Foundation *"nearly half of all the worlds emissions are a consequence of the way we make and use resource"*. Aspects of the broader legislation, including those that regulate products and materials and those that regulate the disposal of waste and resources are expected to contribute to the reduction of emissions.
- 167 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as it is of an enabling

nature with no direct quantifiable impact at this stage. However, it progresses many of the key actions and priorities in the ERP.

- 168 Progressing regulation under the new legislation will be important for meeting Waste sub-sector targets under the ERP, with impacts on carbon emissions. These impacts will be quantified and disclosed to Cabinet as work on specific regulations is advanced.

Population Implications

- 169 The main potential population impacts of the new legislation are on rural communities, including rural Māori communities. These communities may currently have limited alternatives to landfill disposal. The new strategy and new legislation will help reduce the need for disposal and drive the growth of alternatives. I do not consider there are substantial risks of negative population impacts for other groups.
- 170 However, it is worth highlighting that I am proposing that the new legislation include a principle on the need to ensure fair and equitable outcomes. That principle will affect how the new legislation is implemented and its powers are used.
- 171 I am proposing to allocate waste levy revenue more equitably between territorial authorities. Currently, revenue is allocated to authorities in proportion to their share of the total population and in this paper, I have made recommendations to make adjustments that would support smaller authorities more equitably.
- 172 The population implications of the specific policy proposals are dealt with in the relevant papers.

Human Rights

- 173 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 174 In October 2021, I released a public consultation document, *Te kawe i te haepapa para | Taking responsibility for our waste*, with a proposed new waste strategy and issues and options for new legislation. There was widespread support for a change in the waste sector with many supporting the move to a circular economy.
- 175 No post-settlement Iwi organisations requested specific sessions in response to the Ministry's communications during this consultation process, however, five Iwi did submit in response to the consultation document itself; Te Rūnanga o Ngāi Tahu, Te Rūnanga o Ngāti Whātua, Te Arawa Lakes Trust, Ngati Tahu-Ngati Whaoa Runanga Trust, Ngāti Whātua Ōrākei. The five Iwi listed above generally supported the proposed shift towards a circular economy and the principles underpinning this but also commented on the absence of clear Treaty or mātauranga Māori discussion in the consultation paper.
- 176 Officials have undertaken targeted engagement on the overall reform and specific issues with key sector bodies, including the Waste Management Industry Forum, Local Government New Zealand, Taituara, and the Territorial Waste Officers Forum within WasteMINZ.
- 177 Early policy options were also tested with the Waste Advisory Board.

178 The following government agencies have been consulted: EPA, Te Arawhiti, Ministry of Business, Innovation and Employment, New Zealand Customs Service, Ministry for Health – Manatū Hauora, Statistics New Zealand, Corrections, the Ministry of Foreign Affairs and Trade, the Ministry for Primary Industries, the Treasury New Zealand, Energy Efficiency and Conservation Authority, Ministry of Housing and Urban Development. The Department of the Prime Minister and Cabinet has been informed.

179 The Green Party has been consulted.

Communications

180 I intend to issue a press release following Cabinet's decisions on the proposals for the new legislation.

Proactive Release

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

Recommendations

I, the Minister for the Environment, recommend that the Committee:

- 1 **note** that in June 2020 Cabinet noted our plans to develop new waste legislation (CAB-20-MIN-0264.01 refers);
- 2 **note** that in October 2021 the Government consulted on proposals to repeal the Waste Minimisation Act 2008 and Litter Act 1979 and the contents of new legislation to replace them;
- 3 **note** that these proposals advance:
 - 3.1 Labour's 2020 Election Manifesto plans to prevent, reduce, and recycle waste;
 - 3.2 The Cooperation Agreement between the New Zealand Labour Party and the Green Party of Aotearoa New Zealand, in particular the commitment to take action to minimise waste and problem plastics;
 - 3.3 implementation of the circular economy and waste-related commitments in the Emissions Reduction Plan;
 - 3.4 implementation of the new waste strategy agreed by Cabinet on 28 November 2022 [ENV-22-MIN-0053 refers];
 - 3.5 legislative context to support the implementation of standardised kerbside recycling and food waste services as well as a container deposit return scheme (NZ CRS) both agreed by Cabinet in November 2022 [CAB-22-MIN-0539 and CAB-22-MIN-0539.01 refers respectively];
- 4 **agree** that the Waste Minimisation Act 2008 and Litter Act 1970 be repealed and replaced with one new piece of legislation to be enacted;
- 5 **note** that this is paper one of five seeking policy decisions on the content of the new legislation;

- 6 **note** that papers on kerbside standardisation and the proposed beverage container return scheme contain policy decisions for the new legislation relating to the substantive decisions in those papers;
- 7 **agree** to aim to introduce this legislation in the current term of government;
- 8 **note** the intention for the Bill to be introduced and referred to a select committee in late 2023 or early 2024 and for legislation to be enacted by 2025;

Overarching Provisions

- 9 **agree** to “Responsibility for Reducing Waste Act” as the working title for the bill;
- 10 **agree** that the purpose of the new legislation will be to support the transition a low emissions, low waste society built upon a circular economy;
- 11 **agree** that the principles of the new legislation will reflect:
 - 11.1 The promotion of responsibility across all parts of society for how we make, use, manage and dispose of products and materials;
 - 11.2 The waste hierarchy preferences for the management of materials;
 - 11.3 The need to protect and regenerate the natural environment;
 - 11.4 The need to deliver equitable and inclusive outcomes;
- 12 **agree** that the new legislation will not include any specific reference to the Treaty of Waitangi;
- 13 **agree** to review the operation of the Act no later than 5 years following its commencement;

Central Government Roles and Responsibilities

- 14 **agree** that the Ministry retains the role and responsibilities regarding waste and resource recovery policy, all stewardship, regulatory policy, investment and behaviour change functions;
- 15 **agree** that the Environmental Protection Authority takes on the role and responsibility of waste and resource recovery regulator;

Local Government Roles and Responsibilities

- 16 **agree** that the new legislation will prescribe minimum obligations on territorial authorities and that this will include:
 - 16.1 delivery of domestic waste and recycling collection through kerbside services and other collection methodologies;
 - 16.2 setting waste bylaws to control waste practices in their area (for matters not controlled by national standards or licensing systems in future);
 - 16.3 compliance monitoring and enforcement for duties of care and bylaws set by the territorial authority;

IN CONFIDENCE

- 16.4 behaviour change and education relevant to local services and waste minimisation;
- 16.5 working with local communities to support waste minimisation projects, either through levy funds or facilitation roles;
- 17 **agree** to delegate power to the Minister for the Environment and Minister of Customs to make decisions on matters relating to the border and the role of Customs, and to issue drafting instructions as appropriate;

Advisory Function

- 18 **agree** that the new legislation requires the Minister for the Environment to establish a Waste Advisory Board, but with some changes:
 - 18.1 refocusing the Waste Advisory Board mandate to be more strategically focused;
 - 18.2 broadening the remit of the Waste Advisory Board so that advice can be provided to both the Minister and the Ministry;
 - 18.3 removing the constraint that advice can only be provided on ministerial request;
 - 18.4 strengthening membership requirements;
 - 18.5 renaming the Waste Advisory Board to align with the overarching purpose of the new legislation;
- 19 **note** the intention to increase the Waste Advisory Board's capacity with increased secretariat support and an allocated budget for research and preparation of advice;
- 20 **agree** to make changes to the Waste Advisory Board's legislated appointment processes by including the requirement to consult with the Minister responsible for the Circular Economy portfolio in addition to the Minister for Māori Affairs;

Waste Strategy

- 21 **agree** that the new legislation will require the Minister for the Environment to produce a national strategy that looks out at least 20 years, and sets goals and priorities to guide activities over that period to support the purpose and principles of the Act;
- 22 **agree** that waste legislation should broadly outline the scope of the strategy; the process for development (including any consultation requirements), and the high-level aspects that need to be covered (ie, principles, priority areas for focus and investment, reporting, and review timeframes);
- 23 **agree** that new legislation should require that the strategy is reviewed no later than ten years after publishing;

Action and Investment Plan

- 24 **agree** that new legislation include a provision to the effect that the Minister for the Environment may publish action and investment plans from time to time to support delivery of the strategy;

Waste Management and Minimisation Plans

- 25 **agree** that the new legislation will continue to require territorial authorities to produce a waste management and minimisation plan and that these are reviewed no later than five years after publishing;
- 26 **agree** that territorial authorities be required to align with the waste strategy and any action and investment plans in their Waste Management and Minimisation Plans;
- 27 **agree** to removing the requirement for a special consultative process to be undertaken in preparing or amending a waste management and minimisation plan and allow territorial authorities to make an assessment, at their own discretion, on whether or not the use of such a process is required or appropriate;

Intervention Powers

- 28 **agree** that the new legislation will include the ability for the Minister to direct territorial authorities on their WMMPs through an Order in Council and that this will include a timeframe of within six months of a WMMP being finalised;
- 29 **note** that performance standards will be replaced in the new legislation by the Ministers ability to set national standards (*Waste Legislation 3: Regulating how people manage waste*);

Waste Assessments

- 30 **agree** that territorial authorities may undertake a waste assessment in preparation of their waste management and minimisation plan but that this will not be a separate requirement;
- 31 **note** that consultation with the Medical Officer of Health will form part of the central collaboration and engagement process proposed as part of the waste strategy and action and investment plan process and will no longer be a requirement on territorial authorities;

Bylaw making provisions

- 32 **agree** that territorial authorities may produce bylaws for:
 - 32.1 prohibiting and regulating the deposit, collection and transportation of waste;
 - 32.2 regulating the disposal of dead animals;
 - 32.3 prescribing charges and use of waste and resource recovery facilities under the control of territorial authorities;
 - 32.4 regulating the use of territorial authority provided waste services and bins;
- 33 **agree** that new legislation should require that territorial authority bylaws are reviewed no later than five years after publishing;

Reporting

- 34 **agree** that the new legislation will require territorial authorities to report to the Ministry and publicly on progress against their WMMPs and contribution towards AIP and strategy goals, every five years;

- 35 **agree** that the new legislation will require the Secretary for the Environment to prepare an independent public report on overall national progress against the strategy and any supporting AIP, every five years;
- 36 **note** that these reports will include information on how waste levy funds have been used and an assessment of effectiveness, at a local, central government and combined level;

Waste Disposal Levy allocation and distribution

- 37 **agree** to continue ring-fencing the waste disposal levy funds;
- 38 **agree** that the waste disposal levy funds will continue to be split equally between central and local government;
- 39 **agree** that the new legislation allocates the local government portion of the waste disposal levy funding as follows:
- 39.1 Twenty per cent of the local government proportion is distributed evenly between territorial authorities to create a flat rate of waste levy funding for all territorial authorities to contribute to their legislated roles and responsibilities, and
- 39.2 the remaining 80 per cent of the local government proportion of waste levy funding is allocated to councils on a population basis, using the current formulaic approach;
- 40 **agree** that waste disposal levy funds be used to support the overall purpose of the new legislation and the overarching goals set out in the new waste strategy and any supporting plans;
- 41 **agree** to broaden the central government activities that can be funded from the levy, to include:
- 41.1 collection and distribution of the levy (by the Environmental Protection Authority (EPA));
- 41.2 all compliance and enforcement activity under the new waste legislation (by EPA);
- 41.3 the long-term national behaviour change programme that is central to the waste strategy (to be run by the Ministry for the Environment);
- 41.4 start-up costs for schemes and systems if those costs cannot be met through the scheme itself or by industry, this could include regulated product stewardship schemes or licensing systems;
- 41.5 administering the investment of waste levy funds;
- 42 **agree** that the new legislation will include legislative controls governing the investment of levy funds by:
- 42.1 introducing a new power for the Minister to notify investment priorities from time to time;
- 42.2 continuing the existing power for the Minister to gazette criteria for applications;

- 42.3 introducing a new mandatory consideration of value for money;
- 42.4 introducing a new requirement for proposals above \$10 million to be independently assessed before approval;
- 42.5 introducing a new requirement that the Minister must consult with the Minister of Finance before approving proposals over \$25 million;
- 43 **note** that the formal power to approve funding for a particular proposal or project would sit with the Minister, subject to the new requirement proposed in recommendation 38;
- 44 **note** the following decision-making thresholds:

Proposed decision-making thresholds	
Cabinet	Above \$25 million (this aligns with the general approach in CO (19) 6)
Minister	Between \$10 million and \$25 million
Secretary	Between \$1 million and \$10 million
Deputy Secretary	Below \$1 million

- 45 **agree** that local government can use levy funds for any activity that falls within the overall controls noted in recommendation 38 and is provided for in their WMMP;
- 46 **agree** that waste levy payments will be withheld from non-compliant territorial authorities and that this tool will be used at the discretion of the regulator;
- 47 Drafting of the bill / Delegated authority **agree** to delegate power to the Minister and Associate Minister for the Environment to take decisions on further policy decisions to be made on points of detail and incidental matters during the drafting process;
- 48 **agree** to delegate the authority to make final decisions on definitions to the Minister and Associate Minister for the Environment, in consultation with other relevant Ministers.
- 49 **agree** to delegate power to the Minister for the Environment to make decisions on consequential amendments to other legislation, in consultation with the relevant Minister
- 50 **authorise** the Minister for the Environment to make further policy decisions, consistent with the proposals in this paper, and issue drafting instructions to provide for those decisions;
- 51 **invite** the Minister for the Environment to issue drafting instructions to Parliamentary Counsel Office in relation to the proposed waste bill, based on Cabinet's decisions on the set of papers for the new legislation;
- 52 **authorise** the Minister for the Environment to further clarify and develop matters relating to the proposals in this Cabinet paper in a manner consistent with the policy recommendations contained in this paper, and develop commencement, savings, transitional and any other provisions with Parliamentary Counsel Office, through the drafting process;

- 53 **authorise** the Parliamentary Counsel Office to make technical or drafting changes that arise during the drafting of the legislation.

Authorised for lodgement

Hon David Parker

Minister for the Environment

Appendix 1: Overview of new Act and changes from WMA

Topic	Sub-topic	Comment
Preliminary	Purpose, principles	Broadens and updates WMA in line with new waste strategy
	Definitions, commencement	Updates, strengthens and reflects new legislation purpose and principles
Governance	Central government roles and responsibilities	New, to reflect stronger central government role and allocation of functions across agencies
	Local government roles and responsibilities	Updated and clarified
	Long-term strategy, planning and reporting requirements	New
Regulating products and materials to promote circularity	Extended producer responsibility schemes: overall system and enabling provisions to establish individual schemes	Updates, strengthens and clarifies current WMA provisions
	Deposit return schemes: overall system and enabling provisions to establish individual schemes	Updates, strengthens and clarifies current WMA provisions
	Environmental performance standards: overall system and enabling provisions to establish individual requirements	New
	Provision of information to consumers: overall system and enabling provisions to establish individual requirements	Broadens current WMA power on labels to a more modern and general system
	Powers to require steps to facilitate repair	New
	Power to ban specific products and materials	Updates and strengthens current WMA power, mainly to specifically include import as well as manufacture
	Power to control disposal of specific products and materials	Updates and strengthens current WMA power, mainly to extend to provide ability to specify the proper destination if not landfill
	Beverage container return scheme,	New

I N C O N F I D E N C E

Regulating how we manage waste (recycling and disposal)	Duties of care to manage waste appropriately	New, but builds on Litter Act obligations
	Licensing waste management operators and facilities: overall system and enabling provisions to develop details and phase in over time	New, building on systems in some council bylaws
	Tracking system for waste: basic system and enabling provisions to phase in over time	New
	Powers to set national standards for technical aspects of waste management activity	Largely new, but builds on an existing WMA provision (s 23(1)(g))
Levy on final disposal of waste	Application of levy to disposal facilities	Updated, expanded to cover all forms of final disposal and remove blanket waste to energy exclusion
	Collection and administration of levy	Updated and modified to reflect changed institutional arrangements
	Use and distribution of waste levy funds	Updated and modified
Compliance, monitoring, enforcement	Enforcement agencies, officers	Updated and modified to reflect changed institutional arrangements
	Investigation powers	Updated and strengthened
	Infringement offences, offences, penalties	Updated and strengthened
Transition and machinery provisions	Data gathering powers and controls	Updated and modified
	Transition – phase-in arrangements	
	Other machinery and remaining provisions	