

In Confidence

Office of the Minister for the Environment

ENV - Cabinet Environment, Energy and Climate Committee

Waste Legislation 3: Regulating how people manage waste

Proposal

- 1 This is Paper 3 in a set of four papers seeking policy decisions on the content of new waste legislation. It sets out proposals for regulatory powers to control how people manage waste through recycling, composting, recovery or disposal to landfill which together will create a nationally consistent waste management system.
- 2 The link with government priorities is explained in *Waste legislation 1: Overview and overarching provisions*.

Executive Summary

- 3 Current regulatory settings are insufficient to drive change towards a low-emissions, low-waste society. New Zealand's waste management system needs stronger and more consistent standards and controls, greater understanding of material flows, and better management of risks.
- 4 To that end, I seek Cabinet agreement to measures regulating recycling and end-of-life disposal. These measures are:
 - 4.1 a set of legislated duties of care for managing waste, whether through recycling, composting, recovery or disposal to landfill
 - 4.2 a national licensing scheme for waste and resource recovery operators and facilities
 - 4.3 a regulation-making power to develop national standards to govern technical aspects of recycling, composting, recovery or disposal to landfill, including import and export restrictions
 - 4.4 provision for the electronic tracking of material moving through the waste management system within New Zealand.
- 5 Together with proposals for the waste levy, these tools aim to create a nationally consistent waste management system. Refer to *Waste Legislation 1: Overview and overarching provisions* and *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*.
- 6 Compliance monitoring and enforcement matters for the proposals in this paper are covered in *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*.

- 7 The new waste legislation is a good opportunity to ensure that there are appropriate and robust import and export controls or prohibitions for end-to-end waste management. Currently, the Imports and Exports (Restrictions) Act 1988 (the Imports and Exports Act) is used, however that legislation does not adequately allow the development of a robust waste management system at the border. It would be more effective if the proposed waste legislation included import and export regulation-making powers, to ensure waste is regulated under one bespoke primary legislative vehicle.
- 8 I am seeking Cabinet's agreement to delegate authority to myself as Minister for the Environment, and to the Minister of Customs, to make policy decisions regarding appropriate import and export regulation-making powers for the new waste legislation, and to issue drafting instructions as required.

Background

- 9 *Waste Legislation 1: Overview and overarching provisions*, provides an overview of the issues with the Waste Minimisation Act 2008 (WMA) and the Litter Act 1979 (the Litter Act) and presents the rationale for new legislation to provide for a new approach to waste management in New Zealand. The legislative tools that I propose in this paper will help build the foundations for this new waste management system.
- 10 Introducing duties of care is about encouraging individual and collective responsibility for how we manage and dispose of waste – one of the guiding principles in the proposed new waste strategy.
- 11 In addition, as part of the programme of work in the first Emissions Reduction Plan to achieve reductions in biogenic methane emissions from waste, Cabinet agreed to a series of waste actions. One of those was in-principle agreement [CAB-22-MIN-0080 refers] to introduce a national licensing scheme for the waste management sector, to provide for more effective regulation and administration of the sector and improve data collection. This paper seeks Cabinet's agreement to the legislative framework necessary to establish this national licensing scheme.
- 12 The proposals in this paper relate to the waste management system, as defined in *Waste Legislation 1: Overview and overarching provisions*.

Proposed tools for regulating waste and resource recovery

- 13 I seek Cabinet agreement to new legislative tools, as outlined in Table 1, to regulate how the waste management sector operates. Each tool addresses a different issue in the sector, and they interconnect to create a strong overall package of regulation.

Table 1: Overview of proposed tools for regulating waste and resource recovery services

Tool	What it covers	What it provides
Duties of care	Responsibilities of people and entities for waste, whether for recycling, composting, recovering any value	Establish enforceable duties to take certain actions. They will help to drive behaviour change and encourage individual and collective responsibility for waste.

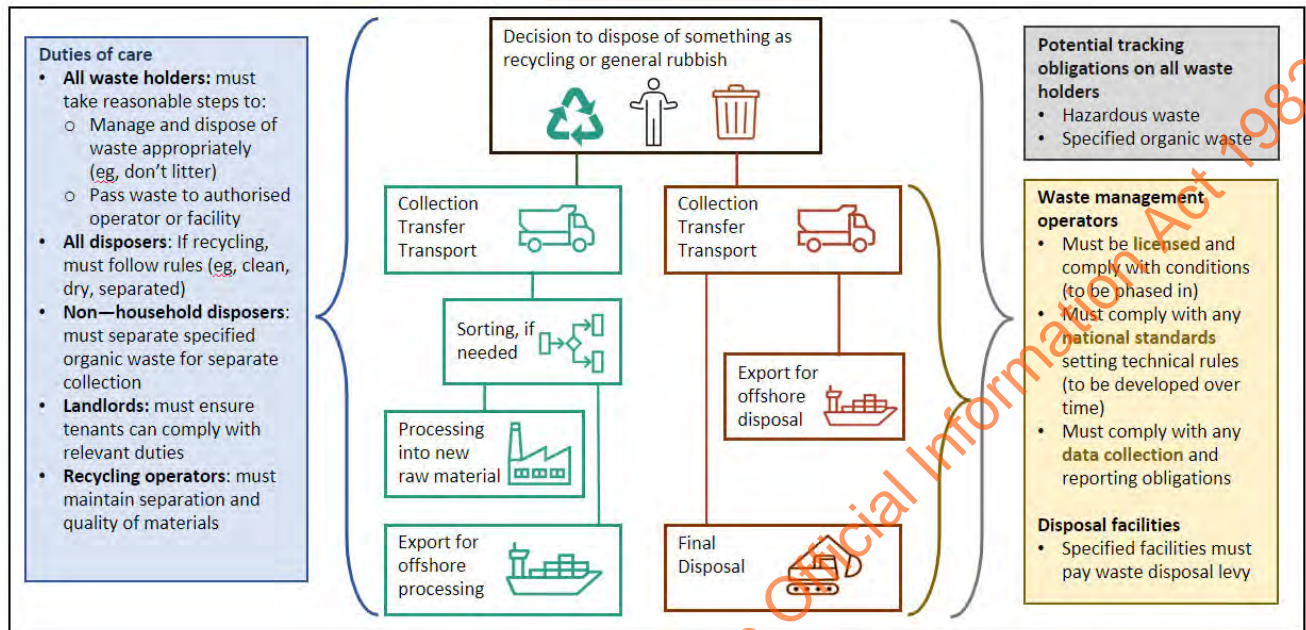
Tool	What it covers	What it provides
	from the material or final disposal	
National licensing scheme	Operators and facilities within the waste management sector	Licensing will create a national register of operators and facilities, with the ability to set entry requirements, operating standards, and oversight and sanctions (including removal of licence). Licensing will also support national data collection and improved regulatory management and enforcement.
National waste standards	Technical requirements for how waste activities are carried out	The power to make national waste standards will enable technical requirements for waste activities to be set at a national level that can be enforced. They will also provide support to other regulatory systems, such as resource consents. This would include powers to ensure waste could not be exported or imported unless destined for disposal or recycling in an environmental sound manner.
Electronic tracking system	How waste moves through the waste management system	Enables establishment of a tracking system to make the movement of waste transparent in real time. An electronic tracking system will promote accountability and strengthen enforcement, while simplifying reporting requirements for industry. It will be particularly suitable for hazardous waste.

14 These four tools interact to ensure that waste, whether recycled or disposed of to landfill, is managed so that harm to the environment is minimised:

- 14.1 duties of care are a way to promote a sense of responsibility for waste and are about how people behave towards waste. They set some basic obligations on people to use the waste management system
- 14.2 standards provide detailed technical specifications for operating waste management services to minimise harm to the environment and people and preserve value in materials
- 14.3 licensing creates a structure where waste and resource recovery operators and facilities are required to be licensed in order to operate, ensuring that both are fit to do so
- 14.4 waste tracking enables monitoring of waste movements and provides data and real time information to inform ongoing policy and operational improvement, and assist compliance monitoring and enforcement.

15 Figure 1 illustrates how the different tools apply once a decision is made to dispose of something as recycling or by final disposal.

Figure 1 How the different waste management regulations apply to recycling and rubbish



Duties of care

- 16 At present, our general law contains few positive requirements obliging people to “do the right thing” with their waste. The main controls in primary legislation are about what not to do: the general environmental duty in section 15 of the Resource Management Act 1991 not to discharge contaminants, and the very specific offences in the Litter Act.¹ The Water Services Act 2021 includes duties specific to drinking water suppliers.
- 17 Individual councils sometimes include more detailed obligations in bylaws, including positive obligations on what to do, but these are inevitably inconsistent, less visible, and have weaker enforcement tools under the current regime.
- 18 By contrast, many other countries have extensive legal obligations controlling what people do with waste, especially in the European Union, the United Kingdom and some states of Australia. A key feature of the UK is a system of “duties of care”. These are a series of obligations controlling what must be done with waste as it moves through the waste management system. The UK model is broad in terms of whom and what the duty applies to. The State of Victoria, Australia, also operates a model of waste duties. This model is much more targeted than the UK model. The Victoria model also appears more straight forward to administer. However, it does not provide the same positively driven messaging to do the “right thing” as the UK model.
- 19 I propose to introduce a duty of care model for waste in New Zealand.

¹ There are also some specific obligations supporting other policy purposes, such as biosecurity controls on disposal of some agricultural waste, but these do not detract from the general point.

The aim of duties of care

- 20 As we move towards a more circular economy, and to best support the new waste strategy, we want to change how people think about waste and their responsibility to address it. A set of legislated duties of care will support this by:
- 20.1 recognising our shared responsibility to protect the environment and the steps we should all take to reduce harm
 - 20.2 outlining nationally consistent and clear expectations on how to minimise and dispose of waste
 - 20.3 supporting these clear expectations with legal force (and a comprehensive range of enforcement tools)
 - 20.4 influencing key choices made by individuals, households and businesses about correctly disposing of waste
 - 20.5 aligning with the themes of shared responsibility and connection in the proposed waste strategy
 - 20.6 resetting New Zealand's regulatory approach to littering by creating a basic obligation on all people to dispose of waste appropriately, supported by a comprehensive infringement and penalty regime
 - 20.7 changing New Zealander's attitudes towards litter by reframing litter as something that is not trivial, but a responsibility on everyone to do the right thing for the environment.
- 21 I consider that introducing a duty of care approach supports the new waste strategy's focus on responsibility and care, and builds on widespread public concern about waste and the desire to help the country do better. There is potential for this duty of care approach to provide a good foundation for ongoing behaviour change work. It reinforces the link that good waste management is an important environmental issue, rather than just about being "tidy". The Water Services Act 2021 has also introduced a similar duty of care approach.

The Litter Act and duties of care

- 22 In *Waste Legislation 1: Overview and overarching provisions* I seek agreement to repeal and replace both the existing Waste Minimisation Act 2008 and the Litter Act. The Litter Act has not been substantively amended since its enactment. The Litter Act prohibits littering and dumping (or 'fly tipping') in public places or on private land without the owner's consent. In recent years we have increased our understanding of the harms done by litter in the environment and acknowledge that litter and dumping is an ongoing problem requiring Government intervention.
- 23 Despite there being some clear issues and constraints in the Litter Act (in particular the ability to hold offenders appropriately accountable). Its purpose and some of the tools that it introduced remain relevant to the programme of waste reform that I am proposing through this suite of papers.
- 24 Through duties of care proposals we have an opportunity to carry over beneficial aspects of the Litter Act into the new legislation. These have been considered

throughout the policy design process. The proposed compliance management and enforcement regime as outlined in *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime* has also considered the relevant aspects of the Litter Act.

- 25 Further detailed work will be needed to ensure that we effectively carry over the relevant tools and provisions in the current Litter Act and I propose that this is a point of detail that can be considered by the Minister and Associate Minister for the Environment during the drafting process (as per the delegations in *Waste Legislation 1: Overview and overarching provisions*).

Proposed duties of care

- 26 To best reflect the proposed purpose and principles of the new legislation, I propose that the duty of care model introduces overarching duties. Each of these overarching duties will be supported by specific requirements that specify clear expectations and direction on demonstrating compliance. My intention is for both the overarching duties and the specific requirements to be included in the primary legislation.
- 27 Table 2 summarises the overarching duties that I am proposing, including who they apply to. To help explain these proposals, the table also includes some illustrative examples of specific requirements that could correspond to these duties.
- 28 Many of the specific requirements already exist under current laws, for example in the Litter Act, through nuisance laws and bylaws. Bringing these obligations into primary legislation gives them prominence and creates uniformity across the country. Further work will be required during the drafting process to finalise the wording of specific requirements, particularly given the complex interlinkage between existing local regulation and national legislation which will need to be carefully considered.
- 29 I am proposing that the duty of care specific requirements in the new legislation be guided by the proposed purpose and principles of the new Act and that Cabinet delegate the authority to make final decisions on the drafting of specific requirements to the Minister and Associate Minister for the Environment, in consultation with other relevant Ministers.
- 30 Supporting regulations would provide additional detail on exemptions, supporting infringement schedules for lower level offending, and when the obligations come into force. They will need to be phased in alongside other parts of the new legislation, in particular the licensing scheme.

Table 2: Duties of care – affected parties and illustrative examples of specific requirements

Party subject to duty	Proposed Duty	Illustrative examples of specific requirements
All waste holders - All persons and entities; includes individuals, households,	General duty to manage and dispose of waste appropriately	<ul style="list-style-type: none"> Do not dispose of or discard waste material into the environment (e.g., littering or illegal dumping) No waste holder may allow any accumulation of waste on any premises they own, occupy or manage to become

businesses, organisations.		offensive, a nuisance or likely to be injurious to health
	A duty to pass waste to an authorised operator or facility	<ul style="list-style-type: none"> Do not give your waste to an unlicensed waste operator Waste material must only be disposed of or discarded at a waste facility if that material is of a type accepted by that facility No waste operator shall, unless licensed to do so, engage in the collection, transportation or disposal of waste
	A duty to recycle properly	<ul style="list-style-type: none"> Users of a waste collection service must ensure that recycling from the premises is separated into recycling types as determined by the collection provider and deposited for collection in the correct approved container. Recycling is clean and dry
Disposers other than householders.	A duty to separate specified organic waste for separate collection	<ul style="list-style-type: none"> To separate and recycle specified types of organic waste Place all food waste into the appropriate approved container
Recycling operators	A duty to maintain separation and quality of materials for recycling	<ul style="list-style-type: none"> Recycling operators to take reasonable steps to maintain the quality of recycling under their control (e.g. clean, dry, separated) Recycling collectors to pass recycling material on to an appropriate licensed operator.
All landlords both residential and commercial.	A duty to facilitate tenants access to collection services.	<ul style="list-style-type: none"> Provide tenants with suitable space for storage and collection of waste and recycling bins and other receptacles (where practicable) Facilitate a tenant's access to collection services, where the service provision is tied to the property (e.g. rated waste collection services).

Using duties of care to promote consistency and improve management of waste

- 31 The proposed duty to pass waste under your control to an authorised collector or facility sits alongside the proposed requirement that it would be unlawful to collect or receive waste without a licence (refer section on licensing, paragraph 54 on). The law will need to define limits to the scope of this duty, for example to acknowledge the practical context of people living remotely with no access to formal collection systems, and to allow community charitable events like bottle drives to continue.

- 32 For recycling, our overall goal is to encourage much more recycling activity, and to improve the quality of the material streams. It is well documented that contamination through poor recycling practice is a significant problem. In keeping with the proposed new strategy, we are progressing many related initiatives, including investment in infrastructure, product stewardship schemes/ extended producer responsibility (EPR), banning hard to recycle plastics, the package of kerbside collection reforms and the proposed beverage container return scheme. Cabinet has already agreed that a New Zealand Container Return Scheme (NZ CRS) will be established by the new waste legislation [ENV-22-MIN-0057; CAB-22-MIN-0539.01 refer]. I will cover proposals for EPR in a subsequent Cabinet paper, alongside further policy agreements for the NZ CRS. All of the above will help to improve the quality of our recycling.
- 33 The duties of care obligations are an important regulatory tool to support those initiatives. Drawing on international examples, I propose that we include two duties to support high quality recycling in the new legislation:
- 33.1 a duty on all disposers of waste (e.g., households, businesses) to recycle appropriately – for example to take reasonable steps to ensure material presented for recycling is clean, dry (for dry recycling), and separated in accordance with collector requirements.
- 33.2 a downstream duty on recycling operators to take reasonable steps to maintain the quality of recycling under their control (e.g., clean, dry, separated) and to pass it on to an appropriate licensed operator. This obligation deters operators from undermining the system by taking shortcuts, for example by combining materials after collection and delivering them to a lower value material stream or even to landfill. Exceptions will be built in to take account of issues like contamination and extraordinary circumstances (such as lockdowns).
- 34 These duties emphasise that if you want to recycle, it is important to do it properly. These duties will provide important support for the kerbside standardisation reforms and protect the investment we and others are making to create new supporting infrastructure.

Duties to separate organic waste

- 35 We need to maintain a strong focus on reducing organic waste going to landfills in New Zealand if we are to meet the targets for reducing methane emissions. The Emissions Reduction Plan (ERP) includes commitments to explore ways to introduce requirements for businesses, households and transfer stations to separate out organic materials for recovery, including food waste, green (garden) waste, cardboard and paper waste, and potentially wood waste and other organic construction and demolition waste. It recognises that requirements would need to be brought in over time, as supporting collection and processing systems are established.
- 36 Some jurisdictions have enacted positive duties on disposers to separate their waste and direct specified materials into the recycling system. Taking such a step in legislation requires careful consideration, as it has the potential to intrude significantly into the activities of a household or business. It also cannot be introduced before the systems and infrastructure are there to support it for any specified material or area.
- 37 I therefore consider that it is appropriate for this legislation to create a specific duty on disposers, other than households, to separate and recycle specified types of organic waste, to be rolled out over time. I do not recommend taking this step for households

in the new legislation at this time. Not only would it be intrusive, but it would also be difficult to support in practice (given that we still need to create effective systems and infrastructure in many places) and to enforce.

- 38 However, with the adoption and implementation of standardised kerbside recycling and food waste services as agreed by Cabinet in November 2022 [CAB-22-MIN-0539], there is potential to take this step in the future by aligning the specific requirements under the 'duty to recycle appropriately' to any future National Standard on kerbside standardisation (see below for further information on National Standards).
- 39 The balance is different for disposers other than households, and particularly businesses generating waste as part of their commercial processes. Creating legal obligations for how to dispose of particular types of waste is less personally intrusive and more about shaping business practices. There is also greater potential benefit, given the increased volumes of material moving through organisations compared to households. Internationally, it is more common to impose positive duties to recycle on businesses and other organisations, particularly for organic waste.
- 40 This organic waste duty of care provision would enable regulations to specify:
- 40.1 *the categories of organic waste covered by the obligation*: the first category would be food scraps, as the ERP has already triggered a programme of initiatives to develop food scraps collection and processing systems. This duty would be the legal mechanism for implementing the kerbside standardisation proposal to require separation of non-domestic food waste.
- 40.2 *who the obligation would apply to*: it will be important that the legal obligations being created do not get ahead of the physical systems and infrastructure needed to support recycling of the particular type or organic waste. The approach to implementing such an obligation will vary with the geographical location and industry. For example, associated regulations outlining obligations on construction and demolition sites might be introduced initially for major construction sites, and gradually extended to smaller sites and more remote locations. Any exemptions will also need to be clearly outlined in supporting regulations. For example, it will need to be clear that onsite composting activity meets the obligation, to cover schools and other organisations that carry out composting themselves.
- 41 I consider that going beyond organic waste and creating a duty for other material streams is not warranted at this stage. This can be reassessed in future, especially once we can assess the voluntary uptake of new systems, including the NZ CRS.
- 42 Enforcement of a general obligation of this kind may pose some difficulties given that neither central nor local government have a significant role in non-domestic recycling collections, which are primarily managed through the private sector. This may be an area where the proposed tracking system could play a useful role (see paragraphs 86 - 110). Non-domestic organic waste could be an early candidate for the tracking system, along with hazardous waste.

Landlord's duty of care

- 43 Table 2 includes the proposal where all landlords (both domestic and commercial) will have a duty of care to ensure that their tenants can appropriately dispose of waste under their control.

- 44 The purpose of this proposal is to facilitate the ability for everyone to comply with relevant duties. Landlords will need to ensure that their tenants are enabled to meet the relevant duties of care by providing tenants with a suitable space for waste and recycling bins and other waste receptacles (where practicable). Further, where local collection services are, for example, tied to the property through rates, a landlord must facilitate a tenant's access to these collection services.

Compliance and enforcement of duties of care

- 45 Enforcement of some of the more general obligations may pose some difficulties. In particular, enforcement of separation of non-domestic organics may be challenging to initially detect or identify, given that neither central nor local government have a significant role in such collections, which are primarily managed through the private sector. This may be an area where the proposed tracking system could play a useful role (see paragraphs 97 - 121). Non-domestic organic waste could be an early candidate for the tracking system, along with hazardous waste.
- 46 In line with my recommendation in *Waste Legislation 1: Overview and overarching provisions*, central government compliance monitoring and enforcement activity for the waste management system will be a function of the Environmental Protection Authority (EPA). This will include compliance monitoring and enforcement for duties of care (see also *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*).
- 47 Local Government have played an important role in compliance and enforcement for the Litter Act and relevant local aspects of the WMA (e.g., those aspects covered by waste bylaws). The experience, knowledge and understanding of such waste activities continues to be relevant under the new legislation, particularly in relation to duties of care. In *Waste Legislation 1: Overview and overarching provisions* I have recommended a continued role for territorial authorities in undertaking compliance monitoring and enforcement, including the ability to produce waste bylaws. I propose that under the new legislation, Local Government have the ability to enforce duties of care alongside the EPA.
- 48 Further work will be required to finalise the specific operational split of the duty of care compliance monitoring and enforcement functions between Central and Local Government. I am therefore proposing that Cabinet delegate the authority to make final decisions on these specific requirements to the Minister and Associate Minister for the Environment, in consultation with other relevant Ministers.
- 49 The paper *Waste Legislation 1: Overview and overarching provisions* proposes that the legislation require councils to provide domestic kerbside recycling collections. Councils will have primary responsibility for enforcing the duty on domestic disposers, as they do now for equivalent bylaw obligations. This is usually through periodic bin audits.
- 50 The paper *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime* sets out proposals for enhanced compliance options and sanctions. Officials are giving further consideration to how these obligations will be monitored and enforced for non-household disposers, as part of the ongoing work on agency responsibilities and compliance tools.

Implementing duties of care

- 51 I am proposing to phase when each duty comes into force via regulations and to provide appropriate mechanisms to support implementation. For example, the general duty on all waste holders to manage and dispose of waste appropriately will come into force immediately, but other obligations both on all waste holders and others will depend on when the proposals for licensing are up and running. See also *Waste Legislation 1: overview and overarching provisions* for further information on transition.

Offences

- 52 It will be an offence if a party subject to a duty fails to comply with that duty or corresponding specific requirements. I have set out the applicable penalties in *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*.
- 53 Any penalty will need to take into account where that failure results in harm or damage to the environment or to human health. Via regulations, I intend to make infringements available for lower level offending. The primary legislation will set out the maximum penalty available for making these infringements under the regulations.

Regulation-making process

- 54 I propose to make regulations to prescribe the details of the duties of care system. The regulations would specify:
- 54.1 who, within the defined group, the duties initially apply to;
 - 54.2 the types of waste to which the requirements apply;
 - 54.3 the links to other requirements in the waste legislation, such as the requirement to use licensed operators and facilities;
 - 54.4 infringement schedules.
- 55 In making regulations for duty of care the Minister must be satisfied that:
- 55.1 the regulation will achieve the purpose of the new legislation;
 - 55.2 there has been adequate consultation with persons or organisations significantly affected by the regulation;
 - 55.3 adequate lead-in time is provided to meet the requirements of the regulation.
- 56 Regulation development will be accompanied by a detailed regulatory impact analysis.

A national licensing scheme for the waste and resource recovery sector

- 57 Cabinet recently agreed, in-principle, to introduce a national licensing scheme for the waste and resource recovery sector as an action in the first ERP [CAB-22-MIN-0080 refers]. I am seeking agreement to provisions enabling a national licensing scheme. I am also seeking agreement for an enabling provision to make regulations to prescribe the details of the national licensing scheme.

- 58 New Zealand's waste and resource recovery sector is characterised by a wide variety of participants, from large internationally owned corporate entities through to community-based recovery initiatives. Participants can be permanent or temporary. The sector includes:
- 58.1 facilities that receive, sort, store, and dispose of waste (often run by large companies or territorial authorities)
 - 58.2 entities that collect and transfer waste (including for exporting)
 - 58.3 organisations focused on specific waste streams.
- 59 The WMA allows territorial authorities to establish licensing schemes through bylaws, and to determine the scope and depth of obligations of those schemes.
- 60 A few territorial authorities have used this provision and introduced local licensing through bylaws (e.g., Auckland Council and Christchurch City Council). Usually where they are in place, they apply to waste transporters and landfill operators, but resource recovery operators and waste exporters are not typically covered.
- 61 The local schemes vary considerably in terms of the obligations imposed on participants, adding complexity and cost for operators working across territorial boundaries. In consultation, submissions showed very strong support for a national licensing scheme from both the waste industry and local government.
- 62 A national licensing scheme in waste and resource recovery would:
- 62.1 enhance consistency and equity
 - 62.2 provide for robust oversight of a complex sector with a wide range of participants
 - 62.3 enable a line of sight between point of initial disposal by the waste producer and final disposal or further processing for products and materials
 - 62.4 enable an elevation and maintenance of performance in the sector related to good practice waste and resource recovery
 - 62.5 enable the acquisition of data to support progression to a circular economy
 - 62.6 reduce the likelihood of stockpiling and other illegal waste management activity and introduce site closure obligations, for example in the event of bankruptcy
 - 62.7 bring New Zealand in line with other jurisdictions.

Key design principles proposed

- 63 National licensing will involve a range of already regulated entities. It will have some overlaps with other regimes such as resource management and will generate new responsibilities for agencies, the sector, and the public. The design and implementation of national licensing will take place over several years and encompass legislative provisions, regulations, standards and guidance, and links with other legislative regimes.

64 To enable consistent and effective development of the scheme, I am seeking Cabinet's agreement to four key design principles to guide the detailed development of national licensing in waste and resource recovery, and to ensure any risks are mitigated and benefits maximised:

- 64.1 embedding a risk-based regulatory model for licensing, having regard to the costs and benefits
- 64.2 encouraging waste minimisation and not disincentivising positive actions
- 64.3 establishing and maintaining a level playing field for all participants, including consideration of the market structure of the sector
- 64.4 meeting the costs of the scheme through cost recovery from participants not the wider public.

A risk-based model

65 I do not propose to license all participants in the sector, but I am proposing regulation will be applied to those parts of the sector that most need regulating to achieve the objectives of the legislation. It would consider issues such as waste volumes involved, as well as those materials that risk causing harm to the environment and to people. Examples of likely early focus points are facilities (and operators of those facilities) already subject to the levy, industrial monofills, waste collectors, transporters and exporters.

Not disincentivising positive actions

66 I consider regulating based on the risk of harm will provide a check to ensure that we do not create an additional, unnecessary layer of bureaucracy for those affected and will also ensure that we do not disincentivise activities that are already economically, environmentally, and socially desirable.

67 For example, it will be important that we do not inadvertently introduce barriers against non-government organisations and voluntary groups that support the objectives of the new waste legislation. I want to ensure these services continue to be supported and to encourage other similar community activity. Community activities such as bottle drives would not be affected other than the requirement to pass the collected material to a licensed operator or facility. Operations that link the food industry with community groups providing quality surplus food to those in need in the community would similarly not be affected - these food rescue organisations are collecting surplus food, rather than food waste, and should not therefore be considered as waste operators.

Establishing a level playing field

68 I also want to ensure that we create a level playing field. The sector is plagued by significant undercutting by non-compliant operators such as those engaged in illegal dumping or "fly-tipping". Licensing (together with supporting provisions - via duties of care - for waste disposers to use licensed operators) would enable improved detection of non-compliance making it more difficult to operate illegally.

69 Internationally, waste crime is a growing area of involvement for organised crime cartels. More sophisticated regulatory approaches than currently exist in New Zealand are needed to safeguard our system against this trend towards large scale waste crime.

- 70 An example of waste crime is illegal waste stockpiling, which in New Zealand has resulted in environmental, cultural and health implications for local communities and government and has involved significant costs for clean-up and remediation. National licensing will support improved detection of those operators who act illegally by accepting waste and stockpiling it, purely for financial gain.

Scope of the national licensing scheme

- 71 Licensing will apply to both operators and facilities. The waste levy and information requirements administered by the Ministry for the Environment (the Ministry) currently place obligations on Class 1 – 5 facilities, industrial monofills and transfer stations:

71.1 Class 1 facilities are municipal solid waste landfills

71.2 Class 2 are construction and demolition fills

71.3 Class 3, 4 are managed and controlled fills

71.4 Class 5 are cleanfills.

- 72 I am proposing that the scope for national licensing covers all the existing regulated parties and facilities and incorporates those involved in the transport, storage, recycling and recovery of waste.

- 73 While I do not propose to license all waste operators and facilities, it is important to future-proof the legislation by retaining broad powers in primary legislation to apply licensing regimes to a wide range of participants within the waste management system. Regulations can then be used to roll out the scheme to new groups within the system based on risk and other factors. I am therefore seeking agreement that the legislation enable licensing regulations to apply to any of the following facilities and operators:

73.1 disposal facilities, including cleanfills and industrial monofills

73.2 disposal operators

73.3 transfer stations

73.4 resource recovery facilities

73.5 recycling operators

73.6 waste storage facilities including hazardous waste

73.7 composting operations (commercial)

73.8 importers and import brokers

73.9 exporters and export brokers for their activities within New Zealand

73.10 transporters.

- 74 Where waste is converted into a new product and is no longer “waste” per se, then the regulatory control will cease until the new product becomes waste.

Obligations

- 75 As part of the duties of care, there will be an obligation on all New Zealanders to use licensed facilities and operators, where applicable, which will support and maintain the visibility of the chain of custody of waste.
- 76 Waste management operators will be required to fulfil relevant duties of care. Where relevant, licensed operators would be required to use the waste tracking system (proposed below), which would allow the regulator to track the movement of specified waste.

Offences

- 77 I am proposing that failure to comply with the licensing requirements will be an offence. I have set out the applicable penalties in *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*.

Administrator of the national licensing system

- 78 In line with my recommendation in *Waste Legislation 1: overview and overarching provisions* and *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime* provisions seeking agreement to transfer operational functions to the EPA, I am seeking agreement that the EPA be responsible for administering the licensing scheme including permitting and compliance monitoring and enforcement.

Funding

- 79 The establishment of a national licensing scheme under the legislation will be funded through usual budgetary processes (see *Waste Legislation 1: overview and overarching provisions* for funding proposals). I am seeking Cabinet's agreement in principle to investigate the possibility for cost-recovery from licence fees for the management of the scheme and to delegate the detail of how it will be implemented to the Minister for the Environment. I propose to seek Cabinet's approval for any cost-recovery mechanisms once further design has been undertaken.

Regulation process

- 80 I intend to work closely with relevant players in the sector, including establishing a Technical Advisory Group (TAG). Design and implementation will take place over several years. The design would be based on the four design principles discussed above: risk-based, encouraging and not disincentivising, ensuring a level playing field and cost recovery.
- 81 I propose to make regulations to set out the details of the national licensing scheme. In making regulations for licensing the Minister must be satisfied that:
- 81.1 the regulation will achieve the purpose of the new legislation
- 81.2 there has been adequate consultation with persons or organisations significantly affected by the regulation
- 81.3 adequate lead-in time is provided to meet the requirements of the regulation.

- 82 The regulations would also specify the links to other requirements in the waste legislation as well as other relevant legislation.
- 83 I am seeking Cabinet agreement that following the passage of the new legislation, the Ministry of the Environment will undertake further work, in collaboration with the EPA and the sector, to develop the licensing scheme, with regulations phased in over the next 4 – 8 years, addressing highest risk operators and facilities first.
- 84 Given the high level of sector support for the licensing proposal, I am confident that the sector will be keen to contribute to the design process.

National standards to regulate disposal and resource recovery

- 85 Currently, standards for the waste and recovery sector are inconsistently set through bylaws, self-imposed by parts of the sector, or defined case-by-case through resource consenting conditions. This has led to variation in how waste and resource recovery services are carried out across the country. These services are relevant to the whole country, so I am proposing a nationally consistent set of standards.
- 86 Waste exports can often generate revenue and provide environmentally sound management disposal options for some materials which cannot currently be safely managed in New Zealand. Without adequate regulatory settings, however, there is a risk that waste will be exported to countries that do not have sufficient infrastructure to process and recycle these goods in an environmentally sound manner.
- 87 Enforceable standards would provide industry, government and the public with greater certainty and assurance that the services that they are accessing are operating appropriately and set a minimum level of performance for waste and resource recovery services.
- 88 A national standard would be an effective tool for prescribing the requirements for standardised kerbside collection that the Government recently consulted on.
- 89 National standards will have the status of regulation and will be subject to consultation obligations in addition to targeted engagement with industry to ensure practicality and that they reflect best practice methods.

Scope of the national standards

- 90 I am seeking Cabinet agreement to a regulation-making power to set standards and technical requirements for the operation of waste or resource recovery services.² These standards would work hand in hand with duties of care and national licensing.
- 91 These national standards relate to waste management service standards and differ from environmental performance standards (refer *Waste Legislation 2: Regulating products and materials to promote circularity*) which are product and material specific.
- 92 The scope for the regulation-making power to develop national standards for waste and resource recovery include the areas set out in table 2.

² The Water Services Act 2021 and Resource Management Act provide examples of legislative powers to make binding standards.

Table 3: Scope for national waste and resource recovery standards

Area of regulation	Explanation
Disposal	
Operation of disposal facilities	The classification of landfills, waste they can and cannot accept, and how they must operate (e.g., cover material, landfill gas capture).
Methods of disposal (e.g., incineration)	Whether and how waste can be incinerated, including potential prohibitions on certain types of waste.
Industry specific waste reduction requirements	Standards on practices to manage waste in particular industries (such as construction sites), e.g., covered bins, separating waste.
Management of the closing of landfills and closed landfills	Developing a consistent approach to the process for closing landfills and how they are managed in subsequent years.
Collection of rubbish and recycling	
Collection and transportation of waste	How waste is collected and transported, such as requirements for covering waste, which waste types must be separated (kerbside standardisation), waste tracking.
Resource recovery and recycling	
Regulating resource recovery and recycling operations (e.g., composting, glass recycling)	How operations such as recycling are carried out (e.g., limits on contamination for recycling operations).
Other waste activities	
Stockpiling of waste	Standards on the long-term storage of waste, including limits on amounts of waste or the time it may stay there. These could be introduced for specific waste types (e.g., solvents).
Export of waste/recycling materials	How material may be exported for the purpose of recycling, having regard to international agreements and the market structure of the sector.
Giving effect to international agreements relating to waste	Where international agreements relate to waste and resource recovery, standards could be used to implement requirements (e.g., Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal).

Obligation to meet national standards

- 93 There will be an obligation to comply with the standards prescribed for facilities and failure to comply will be an offence. I have set out the applicable penalties *in Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*.

The process for making national standards in regulations

- 94 The national standards would be made on the recommendation of the Minister for the Environment.
- 95 The Minister may recommend the making of regulations to set national standards for the purpose of controlling performance matters relating to the:
- 95.1 disposal of waste to land / incineration
 - 95.2 collection and transportation of waste
 - 95.3 resource recovery and recycling
 - 95.4 storage and stockpiling of waste
 - 95.5 import and export of waste, including for, but not limited to, the purpose of implementing international agreements related to waste.
- 96 In making regulations to set national standards the Minister must be satisfied that:
- 96.1 the regulation will achieve the purpose of the new legislation
 - 96.2 there has been adequate consultation with persons or organisations significantly affected by the regulation
 - 96.3 adequate lead-in time is provided to meet the requirements of the regulation.
- 97 When making standards, the Minister will consult with persons significantly affected.
- 98 In developing the standards, I propose that the Minister must have regard to:
- 98.1 the principles of the Act, including climate matters, and relative benefits of action at the highest practicable level of the waste hierarchy
 - 98.2 a broad range of technical advice and other knowledge, drawing on industry and relevant government agency experience
 - 98.3 technology and anticipated technological developments
 - 98.4 the costs and benefits of adopting particular standards
 - 98.5 relevant international standards, obligations, agreements and requirements for waste management and recycling
 - 98.6 the market structure of the sector.

Tracking waste

- 99 We currently lack information and data about what harmful waste is being produced, how much there is and where it is at any point in time. While some data is collected, there are notable deficiencies, and as recent examples show stockpiles can sometimes be found of hazardous waste that have accumulated without regulators' knowledge.

- 100 I am seeking Cabinet's agreement to provide for a waste tracking system that will require waste holders to record details of transactions in which specific types of waste move through the economy.
- 101 The manner and form of the tracking will be prescribed in regulations that will specify the types or quantities of waste that must be tracked, who must report them, and when they must be reported. It would be a condition of a waste licence that where relevant, the licensee would be required to use the waste tracking system. The type of waste specified in regulations will be based on the level of risk of harm to the environment and to people.
- 102 I am proposing that when a type of waste is specified in regulations it will be mandatory for the relevant waste holders (people disposing and waste operators) to use the tracking system as it moves through the economy. The requirements would apply when the regulations prescribing requirements for a particular waste type have been made and are in force.
- 103 The improved data and information on how waste is moving through the economy would significantly assist in the oversight and monitoring of the regulated waste. It would allow regulators "a line of sight" between point of initial disposal by the producer of the waste and its end fate.

Need for waste tracking

- 104 While I am not proposing to track all waste, I see considerable value in tracking those types of waste that pose the most risk, such as hazardous waste. There is already an obligation for workplaces to track hazardous material and waste under the Health and Safety and Work Act. We do not have good or comprehensive data on such waste flows in New Zealand - what is being produced, how much there is and where it is at any point in time. While some data is being collected, there are data deficiencies in the waste sector in New Zealand. This lack of data and information impedes evidence-based policy development as well as the ability to secure a conviction in the event of transgression.
- 105 I am also proposing that the tracking system provides timely information in real to near real time so that irregularities and transgressions can be picked up at the earliest possible time allowing mitigation measures to be put in place by regulators before major harm occurs.

Obligations

- 106 There would be an ability through regulation-making to require the use of the tracking system in certain circumstances in the future. This obligation may fall on relevant persons disposing of waste, waste collectors and transporters, waste facility owners of all types including storage and transfer stations, resource recovery facility owners, recycling operators, composting operations, exporters (for transactions within New Zealand) who handle the waste types specified in regulations.
- 107 This obligation will only apply when the regulations to prescribe requirements for a particular waste type have been made.

Offences

- 108 I am proposing that failure to comply with the requirements of the waste tracking system will be an offence. I have set out the applicable penalties in *Waste Legislation*

4: Waste levy collection and administration, waste data and general compliance regime.

Administrator of the waste tracking system

- 109 As per my recommendation in *Waste Legislation 1: Overview and overarching provisions*, recommending operational responsibility for waste be transferred to the EPA, I am seeking agreement that the EPA develops, administers and maintains the tracking system, and manages associated reporting. The Ministry for the Environment will work with EPA on the development of the system as they retain responsibility for policy decisions and developing the necessary regulations.
- 110 The data collected will be used by EPA to monitor the movement of waste specified in regulations, to help determine compliance with the provisions of the waste legislation and take remedial action in the event of a contravention of the requirements.

Use and confidentiality of information

- 111 The new legislation and regulations will specify the purposes for which the information on waste tracking is being collected, how it can be used, who it can be shared with, and the conditions that will apply to protect commercially sensitive information. For example, information about specific transactions will likely be commercially sensitive and may need to be kept confidential. In addition, where personal information is collected the provisions of the Privacy Act 2020 will be adhered to.
- 112 The legislation will need to specify that information from the tracking system could be used for a range of law enforcement purposes, including being made available to the Police where appropriate.
- 113 Aggregate information resulting from the tracking system will be an important source of robust data for evidence-based policy. It will also be of keen interest to the many researchers working to develop innovative solutions to current problems.
- 114 If the proposal to introduce tracking is approved, officials will develop the detail of those uses, protections and controls. I am seeking agreement for Cabinet to delegate final decisions on these details to the Minister for the Environment.

Funding

- 115 I am proposing that the development costs of the tracking system be met through usual budgetary processes with the ongoing management of the system being paid for from waste management licensing fees (see *Waste Legislation 1: overview and overarching provisions* for funding proposals).
- 116 As an indication of the likely development cost of the system, 9(2)(ba)(i) [REDACTED] which is playing a similar role to the system proposed for New Zealand.

Next steps

- 117 If Cabinet agrees with my proposal for a tracking system, I am intending to instruct officials to develop a tracking system that will make it easy to record the prescribed details at each transaction and that would also provide the regulator with information in real or near real time.

- 118 Hazardous waste is my priority concern as currently in New Zealand it cannot be easily or consistently tracked from production of the waste to end of life (whether that is disposal, recycling or treatment). The Hazardous Substance Compliance System Technical Working Group found that hazardous waste is the least developed aspect of the regulation of hazardous substances. I note that extending the scope of regulation of the waste sector to tracking hazardous waste is an expansion of current regulation.

Regulation process

- 119 I propose to make regulations to prescribe the details of the tracking system and that:
- 119.1 the tracking system be developed in cooperation with the sector, and
 - 119.2 that electronic tracking and other systems in different jurisdictions will be examined, such as the "Waste Tracker" introduced in Victoria, Australia in 2021.
- 120 In making the regulations, I propose that careful consideration be taken of the costs and benefits of applying the proposed requirements including the market structure of the sector and those cost and benefits that cannot be easily quantified. In making regulations for tracking systems the Minister must be satisfied that:
- 120.1 the regulation will achieve the purpose of the new legislation
 - 120.2 there has been adequate consultation with persons or organisations significantly affected by the regulation
 - 120.3 adequate lead-in time is provided to meet the requirements of the regulation.
- 121 The regulations would specify:
- 121.1 the types of waste to which the requirements apply, what information must be provided (including for example, the type of waste, the amount of waste, the industry type that has produced the waste, the persons involved in the transaction, and how and when the information must be provided)
 - 121.2 that each transaction should be recorded as waste is moved, processed or transferred to another person / operator
 - 121.3 procedures for application, modification and renewal of registration for the tracking system
 - 121.4 details of obligations for participants in the tracking system across different categories (e.g., waste transporters, waste facility operators) including underlying standards and reporting requirements.
- 122 I expect that initially regulations to include waste in the tracking system will be used for hazardous waste, however several other categories of waste (such as construction and demolition waste) would also benefit from being included over time.
- 123 Regulation development will be accompanied by detailed regulatory impact analysis.

Changes to the legislative framework for the import and export of waste

- 124 The new legislation provides a good opportunity to ensure that there are appropriate and robust import and export controls or prohibitions for waste management, with appropriate regulatory oversight of all aspects of waste management processes. Currently, the Imports and Exports Act is used for the types of waste for which New Zealand has obligations under the Basel Convention³.
- 125 The Imports and Exports Act is not ideal for the development of a robust waste management system at the border. This Act only allows the making of export prohibitions to give effect to New Zealand's commitment to international obligations. Under the Imports and Exports Act, the sole enforcement responsibility rests with the New Zealand Customs Service (Customs). The current tools available could lead to less than optimal outcomes. For example, if an unpermitted hazardous waste is detected at the border, it is forfeit and may be seized by Customs. Customs then is responsible for its disposal, potentially to an appropriately classified landfill.
- 126 The proposed new waste legislation should include import and export regulation-making powers, to ensure waste is regulated under one bespoke primary legislative vehicle. The proposed new waste legislation should enable the ability to investigate, enforce and manage attempted export breaches with regard to waste. In order to achieve this, the primary legislation should have appropriate import and export regulation-making powers. Such a change is likely to facilitate compliance with the Basel Convention. The proposed waste legislation could also rectify any legislative gaps in the current system.
- 127 I am seeking Cabinet's agreement to delegate authority to myself as Minister for the Environment, and to the Minister of Customs, to make policy decisions regarding appropriate import and export regulation-making powers for the new waste legislation, and to issue drafting instructions as required.

Financial Implications

- 128 The overall financial implications for the package of policy proposals are set out in *Waste Legislation 1: overview and overarching provisions*.

Legislative Implications

- 129 This paper is part of an overall proposal to repeal and replace the WMA and Litter Act. See *Waste Legislation 1: overview and overarching provisions* for details of the legislative timetable. The paper *Improving kerbside recycling and management of business food waste* [CAB-22-MIN-0539 refers] sets out how parts of that reform will transition across from the WMA to the new legislation.

Regulatory, climate and population

- 130 The paper *Waste Legislation 1: overview and overarching provisions* discusses the regulatory impact assessment, and the climate and population implications.

³ The 1989 *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* aims to reduce the amount of waste produced by signatories and regulates the international traffic in hazardous wastes.

Human Rights, Bill of Rights compliance

- 131 The paper *Waste Legislation 1: overview and overarching provisions* discusses compliance for the overall reform.

Consultation

- 132 This is set out in the paper *Waste Legislation 1: overview and overarching provisions*.

Communications and proactive release

- 133 This is set out in the paper *Waste Legislation 1: overview and overarching provisions*.

Recommendations

The Minister for the Environment recommends that the Committee:

- 1 **note** that this is the third of four papers that containing policy proposals for new waste legislation;
- 2 **note** that the proposals in this paper relate to the Government priorities identified in the paper *Waste Legislation 1: overview and overarching provisions*;

Duties of care

- 3 **agree** that new waste legislation should include a set of duties of care, to manage and dispose of waste or to recycle it appropriately and to assign obligations to each duty;
- 4 **agree** that all waste holders will be subject to:
 - 4.1 General duty to manage and dispose of waste appropriately;
 - 4.2 A duty to pass waste to an authorised operator or facility;
 - 4.3 A duty to recycle properly;
- 5 **agree** that disposers other than householders will be subject to a duty to separate specified organic waste for separate collection;
- 6 **agree** that recycling operators will be subject to a duty to maintain separation and quality of materials for recycling;
- 7 **agree** that all landlords (both residential and commercial) will be subject to a duty to facilitate tenants access to collection services;
- 8 **agree** that for each of the overarching duties of care there will be specific requirements below them that specify clear expectations and direction on demonstrating compliance;
- 9 **note** that the specific requirements in the new legislation will be guided by the proposed purpose and principles of the new Act;
- 10 **agree** to delegate the authority to make final decisions on the drafting of specific requirements for each of the overarching duties of care to the Minister and Associate Minister for the Environment, in consultation with other relevant Ministers;

- 11 **note** that recommendation 5 enables the kerbside standardisation proposal that the Government recently agreed to [CAB-22-MIN-0539 refers] to require separation of non-domestic food waste (to be phased in by 2030);
- 12 **note** it is proposed that duties of care and their associated specific requirements are obligations and that it will be an offence to not comply with them;
- 13 **note** that applicable penalties for non-compliance with duties of care are set out in *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*;
- 14 **note** that the components of the general duty that carry over the requirement to not litter will come into effect immediately while other duties depend on when the licensing scheme is up and running;
- 15 **note** the connection between duties of care and the current Litter Act 1979;
- 16 **agree** to an enabling power to create regulations that provide detail on the exemptions, supporting infringement schedules for lower level offending, and when the obligations come into force;
- 17 **agree** that new legislation should require that in making regulations for duties of care the Minister must be satisfied that:
- 17.1 the regulation will achieve the purpose of the new legislation;
- 17.2 there has been adequate consultation with persons or organisations significantly affected by the regulation;
- 17.3 adequate lead-in time is provided to meet the requirements of the regulation;
- 18 **agree** to delegate the authority to make final decisions on the operational split of the duty of care compliance monitoring and enforcement functions between Central and Local Government to the Minister and Associate Minister for the Environment, in consultation with other relevant Ministers;

A national licensing scheme for the waste and resource recovery sector

- 19 **note** that Cabinet agreed, in-principle, to introduce a national licensing scheme for the waste and resource recovery sector [CAB-22-MIN-0080 refers] as an action in the inaugural Emissions Reduction Plan;
- 20 **agree** to four key design principles to help guide the detailed development of national licensing in waste and resource recovery:
- 20.1 enshrining a risk-based regulatory model for licensing;
- 20.2 encouraging waste minimisation by not disincentivising positive actions;
- 20.3 establishing and maintaining a level playing field;
- 20.4 meeting the costs of the scheme through cost recovery from participants;
- 21 **agree** that national licensing be introduced which can place obligations on:

- 21.1 disposal facilities, including cleanfills and industrial monofills;
- 21.2 disposal operators;
- 21.3 transfer stations;
- 21.4 resource recovery facilities;
- 21.5 recycling operators;
- 21.6 waste storage facilities including hazardous waste;
- 21.7 composting operations (commercial);
- 21.8 importers and import brokers;
- 21.9 exporters and export brokers;
- 21.10 transporters;
- 22 **note** that the national licensing regime will be rolled out in a phased manner with careful consideration of factors such as risk;
- 23 **agree** that obligations of licence holders will include requirements to register, provide information, meet performance obligations, and comply with national standards;
- 24 **agree** that non-compliance with licensing obligations will be linked to the overall compliance framework, in addition to the ability for the regulator to suspend and revoke licences to address poor performers;
- 25 **agree** that the Environmental Protection Authority be responsible for administering the licensing scheme subject to further policy work and financial considerations;
- 26 **agree** that new legislation include a regulation-making power to expand on the detail and requirements of the national licensing scheme, create exemptions, and establish thresholds;
- 27 **agree** that new legislation should require that in making regulations for national licensing the Minister must be satisfied that:
 - 27.1 the regulation will achieve the purpose of the new legislation,
 - 27.2 there has been adequate consultation with persons or organisations significantly affected by the regulation,
 - 27.3 adequate lead-in time is provided to meet the requirements of the regulation.
- 28 **note** that officials will establish a Technical Advisory Group from local government and the waste and resource recovery sector to guide the development of a national licensing scheme in waste and resource recovery;
- 29 **note** that I propose to investigate the possibility for cost-recovery from licence fees for the management of the licensing scheme;

- 30 **note** that I intend to come back to Cabinet to seek agreement for any cost recovery mechanisms once further design work has been undertaken;
- 31 **note** it is proposed that non-compliance with the licensing provisions will be an offence;
- 32 **note** that applicable penalties for non-compliance with the licensing provisions are set out in *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*;

National standards to regulate disposal and resource recovery

- 33 **agree** to a regulation-making power to develop binding standards or technical requirements for operating waste or resource recovery services;
- 34 **agree** that the scope for the regulation-making power to develop national standards for waste and resource recovery include the areas set out in the table below, *Scope for national waste and resource recovery standards*;

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Scope for national waste and resource recovery standards

Area of regulation	Explanation
Disposal	
Landfill classifications	The classification of landfills, waste they can and cannot accept, and how they must operate (e.g., cover material, landfill gas capture).
Waste incineration (for energy or otherwise)	Whether and how waste can be incinerated, including potential prohibitions on certain types of waste.
Industry specific waste reduction requirements	Standards on practices to manage waste in particular industries (such as construction sites), e.g., covered bins, separating waste.
Management of the closing of landfills and closed landfills	Developing a consistent approach to the process for closing landfills and how they are managed in subsequent years.
Collection rubbish and recycle	
Collection and transportation of waste	How waste is collected and transported, such as requirements for covering waste, which waste types must be separated (e.g., kerbside standardisation), waste tracking.
Resource recovery and recycling	
Regulating resource recovery and recycling operations (e.g., composting, glass recycling)	How operations such as recycling are carried out (e.g., limits on contamination for recycling operations).
Other waste activities	
Stockpiling of waste	Standards on the long-term storage of waste, including limits on amounts of waste or the time it may stay there. These could be introduced for specific waste types (e.g., solvents).
Export of waste/recycling materials	How material may be imported and exported.
Giving effect to international agreements relating to waste	Where international agreements relate to waste and resource recovery, standards could be used to implement requirements (e.g., Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal).

35 **agree** that new legislation should require that in making regulations for national standards the Minister must be satisfied that,

35.1 the regulation will achieve the purpose of the new legislation;

35.2 there has been adequate consultation with persons or organisations significantly affected by the regulation;

35.3 adequate lead-in time is provided to meet the requirements of the regulation;

- 36 **agree** that that the ability to make bylaws is carried through to the new legislation, with the provision that where bylaws are inconsistent with national standards, national standards should prevail;
- 37 **agree** to carry over the provisions of standardised kerbside collection in regulations under the Waste Management Act 2008;
- 38 **note** it is proposed that non-compliance with the national standards provisions will be an offence;
- 39 **note** that applicable penalties for non-compliance with the national standards provisions are set out in paper *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*;

Tracking system for waste

- 40 **agree** to require relevant waste holders to record details of transactions as specified types of waste moves through the economy;
- 41 **agree** to the development of an electronic waste tracking system to enable the recording of details of transactions as waste moves through the economy;
- 42 **agree** that new waste legislation should include regulation-making powers to develop the details of a waste tracking system;
- 43 **agree** that new legislation should require that in making regulations for tracking systems for waste the Minister must be satisfied that,
- 43.1 the regulation will achieve the purpose of the new legislation;
- 43.2 there has been adequate consultation with persons or organisations significantly affected by the regulation;
- 43.3 adequate lead-in time is provided to meet the requirements of the regulation;
- 44 **note** that my preference is that hazardous waste would be the initial focus of a waste tracking system, with the possibility of tracking additional types of waste in the future (such as construction and demolition waste);
- 45 **note** that a waste tracking system would be designed alongside the national licensing system;
- 46 **note** it is proposed that non-compliance with the waste tracking system will be an offence and that further detail on delegated decision-making powers in relation to the detail of such offences are being sought in *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*;
- 47 **note** that applicable penalties for non-compliance with the waste tracking system are set out in *Waste Legislation 4: Waste levy collection and administration, waste data and general compliance regime*.

Controls for the import and export of waste

- 48 **note** that the current proposals are a good opportunity to ensure appropriate and robust import and export controls or prohibitions for waste management, with appropriate regulatory oversight of all aspects of waste management processes.
- 49 **agree** to delegate authority to the Minister for the Environment and the Minister of Customs to make policy decisions regarding appropriate import and export regulation-making powers for the new waste legislation, and to issue drafting instructions as required.

Authorised for lodgement

Hon David Parker

Minister for the Environment

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