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Office of the Minister for the Environment

ENV - Cabinet Environment, Energy and Climate Committee

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

Proposal

- 1 This is paper four in a set of four papers seeking policy decisions on the content of new waste legislation. It sets out proposals for:
 - 1.1 the collection, administration, and monitoring of the waste disposal levy
 - 1.2 improving waste and resource recovery data
 - 1.3 the design principles and key components of the overall compliance monitoring, and enforcement regime to support all parts of the new legislation.

Relation to government priorities

- 2 For the legislation proposals, this is set out in *Paper 1: Waste legislation overview and overarching provisions*.

Executive Summary

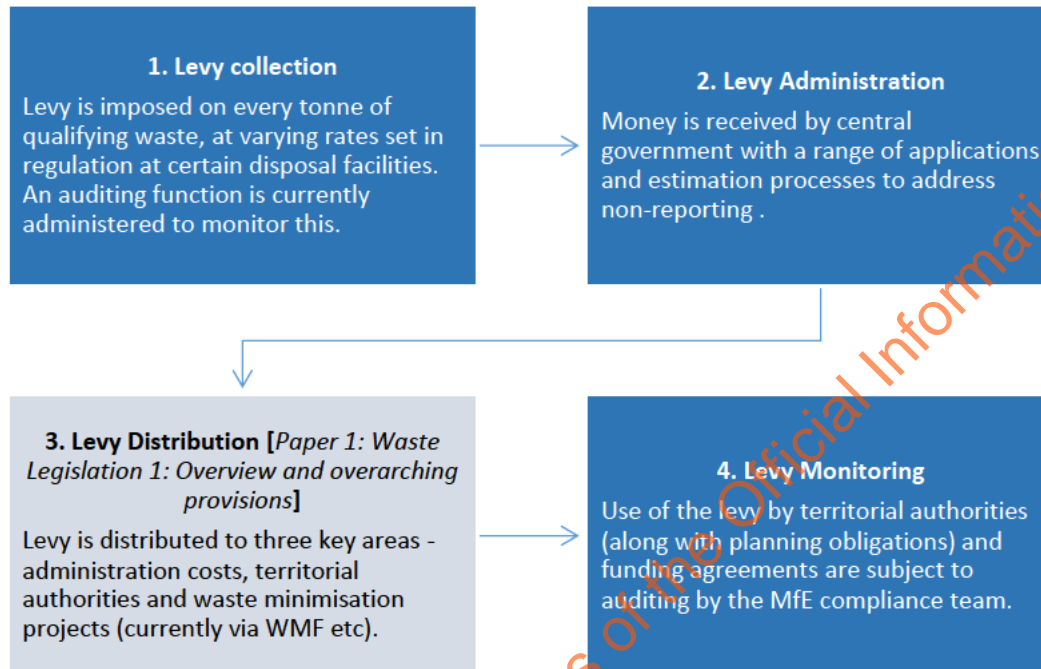
- 3 I seek three sets of decisions in this paper. They relate to:
 - 3.1 the collection, administration and monitoring of the waste disposal levy
 - 3.2 improved provision for record-keeping and reporting obligations to improve availability of waste and resource recovery data
 - 3.3 the compliance regime for the proposed legislation.
- 4 In addition, I seek Cabinet's agreement to delegate authority to me, as Minister for the Environment, to develop policy proposals and issue drafting instructions on provision for emergencies. It may be beneficial for the legislation to include provisions that can be invoked in the case of national level emergencies (such as natural disasters), for example, flexibility in reporting and levy payment.

Background

- 5 This section sets out the broad background to the issues at hand and provides the necessary context to understand the proposals set out, including a brief overview of how the waste disposal levy works currently.

- 6 I propose no significant changes are made to the general structure and operation of the waste disposal levy (levy) at present. This paper proposes changes to aspects of steps 1, 2 and 4 of the system as set out in Figure 1.

Figure 1: Overview of the key subsets of the waste disposal levy



- 7 I am proposing changes to record-keeping and reporting powers (Part 2), to improve availability of waste and resource recovery data.
- 8 Data is acknowledged to be important for designing and evaluating effective waste policy, as well as for compliance monitoring and enforcement (Part 3). Both domestic¹ and international² reports have assessed New Zealand's current data as inadequate.
- 9 Commitments in the Emissions Reduction Plan³ and Waste Strategy will require improved tools to gain, manage and disseminate waste data.⁴

¹ Parliamentary Commissioner for the Environment, 2019, "Focusing Aotearoa New Zealand's environmental reporting system", 2022; Parliamentary Commissioner for the Environment (PCE), 2019, "A review of the funding and prioritisation of environmental research in New Zealand", 2022; Climate Change Commission, 2021, "Ināia tonu nei: a low emissions future for Aotearoa", 2022; Parliamentary Commissioner for the Environment (PCE), 2006, "Changing behaviour: Economic instruments in the management of waste", 2022.

² New Zealand's waste data is assessed as being poor or having gaps in the UN Country Profile. OECD Environmental Performance Reviews: New Zealand 2017.

³ The waste chapter of the Emissions Reduction Plan includes actions to undertake a national data collection and reporting programme to improve our understanding of emissions from waste; and to publish national waste statistics each year from 31 December 2023.

⁴ The waste strategy adopted by Cabinet in December 2022 [ENV-22-MIN-0045 refers] outlines an intention to work with the sector to identify information needs, potential data sources, and to steadily increase the range and quality of data available to meet those needs. The strategy establishes three high level targets, along with a proposed statutory requirement for the government to report regularly on progress (to be achieved through this legislative process).

- 10 Stakeholder feedback on recent consultations including the waste strategy and legislation and changes to the levy generally support improvements to the availability, accessibility and communication of waste data.
- 11 The effective administration of the levy and the new and improved record-keeping and reporting powers will both require support from a robust compliance regime. This paper seeks decisions on all three elements.

Current provisions for emergency situations

- 12 The repeal and replacement of the current legislation provides an opportunity to ensure that we have the correct amount of flexibility in the Act to allow for emergency situations. It will be important to consider how emergencies may arise in the context of new proposals such as licensing and tracking obligations, in addition to others, including levy payment and reporting obligations.

Part 1 – Levy proposals (collection, administration, and monitoring)

- 13 The levy is a hypothecated (ring-fenced) instrument that collects a differential fee on waste disposed of at prescribed facilities. The current purposes of the levy are to:
 - 13.1 raise revenue for promoting and achieving waste minimisation
 - 13.2 increase the cost of waste disposal to recognise that disposal imposes costs on the environment, society, and the economy (section 25, WMA).
- 14 I propose no change to the core concepts underlying the levy, nor the broad way in which it is administered (see Figure 1). However, to develop the proposed legislation, decisions are required on the ‘building blocks’ to administer the levy.
- 15 The distribution of the levy is addressed in *Paper 1: Waste Legislation 1: Overview and overarching provisions*. The remainder of levy proposals are contained in this paper, particularly the related regulation-making powers.

Role of the levy collector

- 16 The role of the levy collector is a statutory role and enables decision making on the day-to-day administration of the levy and the regulated community subject to it. I propose the following roles for the levy collector under the proposed legislation:
 - 16.1 to collect the levy and oversee associated reporting obligations
 - 16.2 to administer any permitting or application-based processes related to the collection of the levy and associated reporting obligations
 - 16.3 to estimate and recover levy, inclusive of recovery as debt
 - 16.4 to carry out all other processes related to the levy, inclusive of distribution and monitoring expenditure, including issuing refunds alongside the auditing role performed in relation to planning and reporting obligations of territorial authorities.

Regulation making power for levy administration

- 17 Table 1 sets out the key elements of the levy regime (including the relevant regulation making powers) and notes where changes are proposed. The levy and information regimes are operationally active, and stability is favoured by default.
- 18 I seek broad decisions on the purpose of the levy and the regulation making powers that will define the detail of its operation from time to time. I am concerned with maintaining stability for regulated communities, while ensuring the regime is flexible, efficient, and able to be adjusted to ensure the focus is appropriate and any perverse consequences are minimised.
- 19 I propose that the matters below form the basis of new regulation making powers, and that transitional provisions maintain the continuation of the current levy and data regulations in the meantime.

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Table 1: Key regulation making powers related to the waste disposal levy

Regulation-making power		Why it is important	Change from existing framework
Determine to whom the levy and information obligations apply			
	Ability to define facilities and waste types in waste and resource recovery and the definition of waste and related terms	Providing for broad scope of potentially obligated parties and waste types allows the regime to pivot to manage harms appropriately over time.	Proposed to be able to apply to all forms of final disposal, and to remove blanket exclusion of waste to energy facilities.
	Ability to set, increase or reduce the levy rates	Ensuring the levy sends an appropriate price signal for waste disposal is essential to its functionality as a co-regulatory instrument.	No change to existing regime.
Determine the administrative processes levy and information obligated facilities must follow			
	Ability to require reporting of levy and other information	Providing for the obligation to provide waste-related data is an important aspect of the regime overall and specifically in relation to key interventions such as the levy.	Data obligations already exist and will be maintained with minor and technical changes to the language to ensure efficacy.
	Ability to establish systems and prescribed	Ensuring all operators calculate waste data in accordance with a clear methodology helps	Modernising of language, including increasing prescription for processes

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	processes for fulfilling levy and reporting obligations	maintain consistency and improve performance across the sector, in addition to increasing the veracity of data submitted.	such as keeping of records, filing of returns and application processes where appropriate to provide clarity.
	Ability to set requirements for how the levy is calculated	Ensuring an equitable calculation of the levy across a range of facilities and waste types ensures a level playing field is maintained.	Proposal carries over current approaches but enables direction for more comprehensive requirements for waste management on sites to increase accuracy (e.g., management of stockpiles).
	Ability to provide for exemptions from the levy	Levy is not always appropriate and can result in a barrier to effective waste management. Providing for exemptions will avoid perverse consequences by enabling secondary legislation to set out certain circumstances in which levy can be waived 'as of right'.	Exemptions can already be introduced as secondary legislation. These powers are proposed to be retained.
	Ability to provide for waivers from the levy	Levy is not always appropriate and can form a barrier to effective waste management. Providing for waivers will enable the regime to avoid perverse consequences.	Waivers can already be applied for, but proposal is to broaden criteria by which one is assessed to allow it in a greater range of circumstances.
Set out processes to be followed where failures to report and pay occur			
	Ability to estimate levy in the case of non-reporting	Estimate processes ensure levy can be estimated (backdated) for registered facilities. This tool reduces the incentive to avoid the registration and payment obligations of the regime. At a sector level, this maintains data consistency and ensure levy is paid on all qualifying waste.	Estimation of levy is currently provided for, and there is no proposal to change the policy intent, just timelines and process including providing for more flexibility to estimate.
	Ability to recover the levy where reporting is not completed, or levy is unpaid	Levy recovery ensures levy owed can be invoiced from facilities that are unregistered. This tool reduces the incentive to avoid the registration and payment obligations of the regime. At a sector level, this maintains data consistency and ensure levy is paid on all qualifying waste.	Recovery of levy is currently provided for, and there is no proposal to change the policy intent, just timelines and process and providing for a greater scope for recovery.

Determining to whom the levy and information obligations apply

- 21 The WMA currently enables the levy to be applied to facilities for the final disposal of waste – the least desirable, lowest level of the waste hierarchy. At present it explicitly includes landfills and incineration but excludes all types of waste to energy facilities.
- 22 I propose that the new legislation maintains that the levy is only able to be applied to final disposal, but that the blanket exclusion of waste to energy is removed. This would enable future governments to distinguish between desirable and undesirable forms of waste-to-energy technology and facilities, based on the approach set out in the new waste strategy. The approach will be developed further in work on bioeconomy and energy policy, but broadly distinguishes between:
 - 22.1 proposals with clean renewable biomass as a feedstock, which are more likely to align with circular economy goals and have emissions reduction potential and fewer harmful by-products
 - 22.2 proposals based on single waste streams like tyres, treated timber or plastics, which need to be considered on a case-by-case basis
 - 22.3 pyrolysis and gasification of municipal solid waste, which is unlikely to align with circular economy goals due to its climate impacts, dependency on continued linear waste generation and likelihood of hazardous discharges.
- 23 Defining the facilities to which the levy is applied and the rate of levy that applies are both significant regulation-making powers in the WMA (section 41 WMA). The purpose of having these set in secondary legislation is to maintain flexibility in the regime, and to take account of the level of technical detail that can be involved in defining types or classes of facilities. It is proposed these powers are retained and a rollover recommendation is included in this paper. A brief analysis of the three key aspects is included below.
- 24 There are three key aspects of the ability to set and apply the levy. These are the:
 - 24.1 ability to define types of ‘waste’ and to define facilities as a ‘disposal facility’ for the purposes of the legislation. This power is essential to clearly define the activities or waste types subject to the levy given the limited entry criteria.
 - 24.2 many activities have similar characteristics to waste disposal (e.g., quarry rehabilitation and earthworks) and clear delineation is needed to avoid overreach, with flexibility to adjust depending on changes in practice. In addition, it may be appropriate over time to consider certain waste types to be subject to a different rate of levy regardless of where they are disposed of.
 - 24.3 ability to determine whether the levy applies to those facilities (note that levy is applied to all waste entering the facility and is rebated for waste subsequently diverted). Determining where the levy should and should not apply must take account of evolving markets and ensure the imposition of the levy is an appropriate intervention that does not have significant perverse consequences.
 - 24.4 ability to define the amount of levy to be paid on all, or some, types of waste at those facilities (note that diversion of material attracts a levy rebate). The ability to change the quantum of the levy is important to ensuring it drives the right behaviour. If it is too low, it will not provide sufficient incentive to avoid or

recycle waste and too high a levy will drive undesirable behaviours like illegal dumping. Frequent adjustment to rates makes this power better suited to secondary legislation.

- 25 This approach to applying and setting the levy is well understood by the waste management sector and I consider that the level of delegation to secondary legislation is appropriate and practical. However, the significance of these powers means that the legislation needs to include controls on its use. At present the WMA requires, before the Minister recommends these regulations, that they consider:
- 25.1 advice from the Waste Advisory Board
 - 25.2 consultation with those likely to be significantly affected
 - 25.3 assessment of the costs and benefits.
- 26 Once made, regulations which alter the rate of the levy must be specifically confirmed by Parliament under the procedures for confirmable instruments under the Legislation Act 2019, which is a stronger check than the normal Regulations Review Committee disallowance process.
- 27 I do not propose any significant change to these controls. I seek delegated decision-making power to enable the Minister for the Environment to make decisions on residual matters including commencement, savings and transitional arrangements. It is proposed that decisions on transitional arrangements favour maintaining stability in the existing regulatory regime, including providing for regulations in existence to be carried forward into the new regime.

Determining administrative processes facilities must follow

- 28 The levy, as it applies to a diverse range of entities, is complex to administer. Ensuring broad flexibility in administration means the regime can respond to an evolving sector highly influenced by changes in market settings, including the ability to recycle certain products that haven't historically been able to be diverted. Further, the scope of discretion in the existing regime has proven narrow, arguably limiting the ability of the levy collector to allow for unusual circumstances or waive the levy where there is a strong basis to.
- 29 I propose that there be more flexibility in the levy regime by providing for more discretion in relation to where waivers and exemptions on the levy and associated reporting requirements can be applied, in addition to any provisions that seek to limit the regulatory burden on small operators or those located in remote areas.

Set out processes to be followed where failures to report and pay occur

- 30 To maintain a level playing field and encourage compliance, it is important that defaults on reporting and levy payment requirements can be backdated and recovered. I propose the following interventions in addition to the general compliance regime:
- 30.1 the ability to estimate levy for registered facilities via specified processes set down in secondary legislation
 - 30.2 the ability to recover avoided levy by facilities via specified processes set down in secondary legislation

- 30.3 note that the ability to issue an estimate and to recover levy is provided for in the existing regime.

Audit and enforcement of levy expenditure

- 31 Where the levy is distributed to local government, planning and spending obligations are currently subject to audit by the Ministry's waste compliance team. I propose that such processes, and the powers that enable them, continue. It is also proposed that powers to audit recipients of waste levy funding are also carried over and expanded to reflect the higher quantum enabled by increased levy collection.
- 32 Given the increasing size of the levy revenue and the need to use it effectively, the compliance role is very important. It is important to maintain public confidence in the hypothecation (ring-fencing) of the funding and to be able to demonstrate alignment with statutory obligations.
- 33 I am seeking delegated authority to further develop the details of proposed levy regime during the drafting process, including matters relating to the underlying administrative framework for collection, administration and monitoring.

Part 2 – Improved record-keeping and reporting provisions

- 34 The WMA includes regulation-making powers in relation to records, information, and reports (section 86). These powers allow for record-keeping and reporting by:
- 34.1 disposal facility operators, in order to facilitate correct payment of the levy
- 34.2 any class of person, to assist the Secretary to compile statistics for specified purposes⁵
- 34.3 territorial authorities, for monitoring in relation to defined roles.
- 35 Requirements to collect and/or report information are also outlined elsewhere in the WMA, in relation to specific regulatory powers (such as provisions for regulation of products) and for territorial authorities in relation to waste assessments (in part 4 of the WMA).
- 36 These provisions have allowed for the establishment of some mandatory reporting by disposal facilities and other sites. Further mandatory reporting has been agreed by Cabinet in relation to waste companies [ENV-22-MIN-0058] and territorial authorities [CAB-21- MIN-0181 refers].
- 37 While a start has been made to improve the quality and availability of waste data, I propose a range of further improvements (outlined below), in order to clarify and modernise provisions, and bring the purpose of reporting in line with the overall proposed purpose for the new legislation.

⁵ In order to:

- (i) measure progress in waste management and minimisation
- (ii) report on the state of New Zealand's environment
- (iii) assess New Zealand's performance in waste minimisation and decreasing waste disposal
- (iv) identify improvements needed in infrastructure for waste minimisation.

Proposed new record-keeping and reporting requirements

- 38 I propose to retain the general structure of provisions in the WMA, namely for the legislation to specify who may have data obligations, the types of data, and the purposes for which data can be required. I propose updates in each of these categories, as outlined below.

Table 2: Proposed record-keeping and reporting parameters

Party subject to proposed obligation	Proposed information/records	Proposed purpose
Disposal facility operators	Records and information on waste and materials, including materials received, disposed of, stockpiled, and diverted, and site management (e.g., greenhouse gas generation and capture).	To enable amounts of levy payable by the operator to be accurately calculated. To enable monitoring of other obligations under the Act. To gain understanding of the environmental impacts of the activity.
Waste facility operators (e.g., a wider range of sites that may or may not be subject to waste disposal levy e.g., transfer stations, material recovery facilities)	Records and information on waste and materials, including materials transported, received, disposed of, stockpiled, diverted, recycled, reused and otherwise managed and site management (e.g., greenhouse gas generation and capture).	To provide information on the circulation of materials within the economy and their status and fate (e.g., for recycling, final disposal etc). To enable monitoring of obligations under the Act.
Territorial authorities	Records and information on: provision of waste management and minimisation services, facilities and activities spending of levy money performance against any performance standards set by the Minister. report to the Secretary and publicly on progress against their WMMPs and contribution to AIP and strategy goals.	To enable monitoring of obligations under the Act, and to enable local, regional and national level planning of services, facilities and activities.
Any class of person regulated under the new legislation	Records and information relating to regulated obligations.	To assist with monitoring/enforcement of regulated requirement (such as extended producer responsibility requirements, regulation of products or sites).

Any class of person	Information required for the prescribed purposes, including information on the circulation of materials within the economy and their status and fate (e.g., for recycling, final disposal etc), including information on imports, exports, and domestic production/sale of materials.	Records and information to allow the Secretary to compile statistics, in order to: <ul style="list-style-type: none"> • assess progress at meeting the purpose of the Act • report on the state of New Zealand's environment and circularity of the economy, including for reports required under the Environmental Reporting Act 2015 and this Act • assess New Zealand's performance in waste minimisation and decreasing waste disposal • identify improvements needed in infrastructure for waste minimisation.
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- 39 I propose the same decision-making controls for these regulatory powers as outlined at paragraph 22 above (namely, considering advice from the Waste Advisory Board, consultation with those likely to be affected, and assessment of costs and benefits). Where relevant, I also propose to retain the requirement in the current Act for the Minister to also consult the Government Statistician.
- 40 I am seeking delegated authority to further develop the details of proposed record-keeping and reporting obligations during the drafting process, including matters relating to the frequency of reporting obligations, any provisions necessary to ensure the effective management and sharing of data, and the circumstances under which the Government Statistician should be consulted.

Relation to environmental reporting

- 41 In August 2022, Cabinet agreed improvements to the Environmental Reporting Act 2015 to better support decision-making on environmental issues [ENV-22-MIN-0030 refers]. Cabinet agreed the reporting framework would cover five cross-domain themes.
- 42 At least one commentary will be produced every year (excluding every sixth year, when a state of the environment report is produced), with each cross-domain theme – including waste and pollution – covered at least once over that period.
- 43 As noted in *Waste Legislation 1: Overview and overarching provisions*, I am proposing that the Secretary for the Environment be required to prepare an

independent public report on overall national progress against the strategy and any supporting action and investment plan every five years.⁶

- 44 I will ensure my proposals for improved powers to collect and disseminate waste data are complementary to existing provisions such as environmental reporting. While environmental reporting focuses on impacts on the environment, my proposed report will have a wider focus on how materials are used and circulated in the economy, and local and central government progress towards progress with the waste strategy.
- 45 I am seeking delegated authority to further develop the details of the proposed national waste report during the drafting process.

Part 3 – Compliance regime – a modern and effective framework to support a circular economy

- 46 I seek approval for the proposed legislation to include a modern and effective compliance regime, including a range of civil and criminal enforcement tools. I propose that where the legislation shares tools with the Natural and Built Environment Bill (NBA) that the drafting should be consistent.
- 47 I seek key decisions on the proposed compliance regime. I also seek a rollover provision to preserve continuity of wording in the Act where specific modifications are not proposed.
- 48 The analysis is arranged according to the core elements of a compliance framework, being:
- 48.1 design principles
 - 48.2 operationalising institutional arrangements
 - 48.3 powers
 - 48.4 offences
 - 48.5 tools and sanctions (general and specific)
 - 48.6 rights of appeal, review, and complaint.

Design principles

- 49 Compliance regimes require multi-layered and detailed design. To support the development of the proposed legislation, I am seeking agreement to four key design principles, in addition to a suite of high-level decisions.
- 50 The four key design principles to support the development of the compliance regime which are:
- 50.1 undertaking evidence-led regulatory design
 - 50.2 ensuring just distribution of costs and benefits

⁶ This report may be a physical and/or online resource, designed to effectively convey information to a wide audience.

50.3 maintaining stability through non-regression

50.4 maintaining consistency across the regime wherever possible.

- 51 The purpose of the design principles is to guide day-to-day decision making as the proposed legislation is developed and implemented. Table 3 outlines the principles in more detail and provides an example of their application for clarity.

Table 3: Design principles for the waste compliance regime

Principle	Example
Undertaking evidence-led regulatory design This principle would help ensure the design and development of the regime reflects the most up-to-date knowledge of the interventions that effectively drive behaviour change.	Ensuring proposals including tools reflect modern practice and draw on successful application in other similar regimes.
Ensuring just distribution of costs and benefits Ensuring the costs and benefits of proposals are given due consideration at all stages of development helps to formulate an effective basis for compliance and avoids unreasonable distributional impacts on vulnerable parts of society or areas of the sector that are most likely to be not for profit.	Ensuring a default approach of polluter or beneficiary pays mechanisms.
Maintaining stability through non-regression Where established processes are in place and well understood, they will only be varied where necessary to retain stability and support the transition in due course.	Rollover provisions to vary parts of the proposed legislation covering administrative processes by exception will be favoured to maintain stability. This principle will underpin the commencement, savings and transitional arrangements which I seek delegated decision-making to determine across the regime.
Maintaining consistency across the regime wherever possible The mixed nature of the regime (regulating many things across many sectors and involving many duty holders) can give rise to a highly complex regulatory regime. This can make communicating obligations challenging and lead to high levels of non-compliance through a lack of understanding. A design principle is to keep tools and processes simple and standardised wherever possible, utilising a core/common/unique framework.	A single infringement regime would likely serve the entire regime's low-level offending rather than contemplating a proliferation of separate but similar interventions.

Operationalising the proposed institutional arrangements for compliance

- 52 I have sought via the first paper in this set (*Paper 1: Waste Legislation 1: Overview and overarching provisions*) that the following agencies have responsibility for compliance related functions:
- 52.1 the Ministry for the Environment as the primary policy agency and system steward
 - 52.2 Environmental Protection Authority (EPA) taking on the majority of central government operational and enforcement functions under the proposed legislation
 - 52.3 local government enforcing aspects of the proposed legislation in addition to bylaws.
- 53 As discussed in *Paper 1: Waste Legislation 1: Overview and overarching provisions* further changes may be needed to ensure other government agencies have the necessary powers and functions to ensure an effective overall regime, for example New Zealand Customs (Customs) in respect of import and export restrictions. As noted in that paper, I have asked officials to provide me with further advice on potential implications for other agencies and options for addressing those in the new legislation.

Warrant power

- 54 I propose a broad warranting power that recognises the mixed model approach and best supports an effective regime.
- 55 I propose the warranting power should be disaggregated. This means that I propose the warranting power can be applied to a variety of circumstances, including a limited suite of powers for litter wardens through to the ability to collect samples and execute a search warrant when obtained for an investigator under the proposed legislation.
- 56 The delineation will be expanded upon in operational policy and compliance communication to make the roles and responsibilities clear to the public and regulated communities.

Performance reporting

- 57 Maintaining public confidence in a regulator is critical to effective deterrence and helping the regulated community, stakeholders and the wider public to understand how the regime works and what outcomes the processes achieve. Over the long term, the system will need to demonstrate its performance and ensure flows of information and obligations for reporting that are essential to a robust regime.
- 58 A statutory obligation to publish details of compliance activities is common in waste legislation globally. In New Zealand, agencies such as the EPA are commonly subject to transparency obligations (for example, section 343K of the RMA requires that 'the annual report of the EPA under section 150 of the Crown Entities Act 2004 must include information about the performance of the EPA's enforcement functions, including the number and type of enforcement actions executed by the EPA').

Information sharing and cooperation

- 59 Enabling information-sharing and cooperation between regulators is vital for a coherent regulatory system. Non-compliant behaviour in a waste context can often mean also breaching the law in other regimes. For example, a non-compliant landfill may be breaching land use and discharge rules under resource management legislation, or an illegal stockpiling operation may breach resource management, Hazardous Substances and New Organisms Act 1996 (HSNO) and workplace safety regulations as well.
- 60 Given the substantial links of waste legislation with other New Zealand legislation, there is an opportunity to enable information sharing in the legislation to help ensure that there are no gaps in addressing non-compliant behaviour across the whole environmental system and that information is available for other purposes, such as assessing policy effectiveness.
- 61 I consider that it will be important for agency functions and obligations to be clearly set out in the legislation (including system steward, regulators etc). I propose the legislation contain a suite of compliance-related functions explicitly defined to ensure ongoing prioritisation of the regulatory role. These functions include that the agency/agencies must:
- 61.1 discharge the compliance monitoring and enforcement role
 - 61.2 steward and keep under review the regulations and processes associated with the regime (see for example Financial Markets Authority Act 2011)
 - 61.3 report on compliance activities at least annually to the public and oversight agencies (e.g., MfE)
 - 61.4 cooperate with other agencies including via a presumption of information sharing, noting any relevant restrictions to protect privacy.

Powers

- 62 Powers to detect non-compliance are a critical element of any compliance regime. The design of powers of search (and seizure) has important interplays with section 21 of the New Zealand Bill of Rights Act 1990, which protects citizens against 'unreasonable search or seizure'.
- 63 Two primary objectives for search powers exist – to enter land and/or require information to determine whether a subject is compliant (auditing and inspection to inform a determination of compliance) and entering land, requiring information or similar where a belief or suspicion exists that an offence has occurred or is occurring (generally for evidence-gathering). Both powers are required for different purposes. The extent of such powers needs to be proportional and appropriate to the context.
- 64 I am concerned with ensuring that the public interest importance of enforcing a regulatory system is balanced carefully against these assurances.
- 65 I propose that audit and inspection to determine compliance with the proposed legislation, the regulations, or any associated instrument (e.g., standards) is provided for via a general power of entry for information gathering to determine compliance. A general power of entry to determine compliance is consistent with most environmental statutes.

- 66 The initial and general power of entry is not proposed to apply to dwelling houses or marae). A search warrant would be required before entry to those places was able to be lawfully executed.
- 67 Compliance with section 21 of the New Zealand Bill of Rights Act 1990 is achieved through recognition that:
- 67.1 those subject to a regulatory regime should have reasonable expectation of inspection
 - 67.2 that the general power of entry to determine compliance will exclude dwelling houses and marae
 - 67.3 that the facility being inspected can be provided reasonable notice (except where notice would defeat the purpose of inspection).
- 68 This initial general power of entry to determine compliance would be supported by a further enforcement power when there is suspicion of wrongdoing.
- 69 I propose the threshold for entering a site once suspicion is in play should be where the regulator has 'reasonable grounds to suspect an offence has been, will be, or is being committed'. I propose this power of entry would require a search warrant.
- 70 I consider these two key powers strike an appropriate balance between the need to uphold the rule of law and the protection of rights.
- 71 I seek delegated decision-making power to refine the expression of these powers in the proposed legislation, in consultation with the Ministry of Justice.

Liability and offences

- 72 For the compliance regime to work, it is important to ensure the behaviours the regime seeks to most discourage are linked to suitable and proportionate sanctions. I consider the development of the regime should:
- 72.1 include a mix of criminal and civil approaches to recognise the significance of the policy objectives that underpin waste legislation, including to bring about the avoidance of harm to society
 - 72.2 contain a mix of strict liability offences and offences that reflect a mens rea element where they are most serious to ensure egregious behaviour can be proportionally and effectively addressed but that the public interest in environmental protection is assured regardless of intent
 - 72.3 leverage the efficacy of interventions nested within a licensing regime such as suspension or revocation of license to manage non-compliant behaviour
 - 72.4 address corporate offending effectively with robust vicarious liability provisions
 - 72.5 include a limitation period of two years for criminal offences, and six years for civil approaches, consistent with policy decisions made for the draft NBA to be appropriate in this instance

- 72.6 specific wording of offences will be developed in association with the Ministry of Justice's Offences and Penalties team. I seek delegated decision-making powers to ensure the offences and penalties regime is robust and proportionate.

Tools and sanctions (general and specific)

- 73 A modern and effective compliance regime comprises a range of graduated interventions that ensure the regulator has the right tool for the right task in bringing about compliance by duty holders. The tools can be broadly divided into four key groups:

73.1 risk management tools

73.2 warnings and directive notices

73.3 punitive sanctions

73.4 remediation requirements.

- 74 In accordance with the design principle of ensuring consistency where possible and considering the importance of being able to communicate the compliance regime clearly and effectively, I propose a simple tiered framework.

- 75 Table 4 contains an indicative depiction of a tiered model with four tiers recognising different levels of offending and ensuring broad consistency across the regime. Appendix 1 contains a tabulated picture of the overall regime against the tiers for illustrative purposes.

Table 4: Key tiers of the proposed general compliance regime

Tier	Explanation of tier
Tier 3	Most severe and intentional offending with significant risk of harm (e.g., deliberate levy avoidance, fraud, large scale, or high harm illegal dumping)
Tier 2	Mid-range offending where most severe penalties may not be appropriate (e.g., careless management of waste in a licensing context)
Tier 1	Low level punitive interventions that are designed for minor offending (e.g., illegal plastic bags)
Cautionary tools	Warnings and directive notices to place members of regulated community 'on notice'

- 76 The purpose of a tiered model is to have the ability over time to constrain discretion as to sanctions for specific purposes, given the high reliance on secondary legislation and the need to establish a clear and cogent compliance framework to enable regulated communities to understand their obligations and liabilities. Outside of this prescription, regulator discretion will be preserved by default.

- 77 Appendix 1 contains a summary of the overall regime. Appendix 2 contains a table of the tools proposed to be included in the new legislation broken down inclusive of relevant appeal rights.

- 78 I seek approval for a tiered compliance system and for the inclusion of the tools set out in Appendix 2 inclusive of any associated regulation making powers required

(e.g., infringement fee regulations). I seek delegated decision making powers to determine specific aspects of the tools proposed through the drafting process.

Maximum penalties (fines, pecuniary penalties, and prosecution)

- 79 The provisions enable infringement fee regulations and the use of pecuniary penalties and prosecution as tools. All have fee maximums associated with them and these must be set in primary legislation. This section discusses the fee levels recommended, delineating between individual offenders and corporate offenders as in similar legislation (e.g., Natural Built Environment Act).
- 80 The existing legislation carries a maximum fine of \$100,000 upon conviction, has no infringement regime or other financial penalties. These low or non-existent penalties limit the ability of regulators to control poor behaviour in the system and maintain an even playing field. I consider a modern and effective compliance regime should address these deficiencies.
- 81 A key set of decisions are what the maximum financial penalties are. The diversity of requirements under the proposed legislation does require some flexibility to be provided for and for discretion to be applied by the regulators in practice.
- 82 A brief analysis of comparative jurisdictions identifies a wide range of fine maxima related to waste and the administration of instruments like levies and product bans.
- 83 The New South Wales Protection of the Environment Operations Act 1997 is the primary legislation controlling illegal dumping in NSW. It prescribes offences and penalties including:
- 83.1 a maximum instant fine of \$7,500 for individuals and \$15,000 for corporations (when issued by the NSW EPA)
 - 83.2 a strict liability offence of illegal dumping which makes an individual liable on conviction for a \$250,000 fine or \$1 million for a corporation
 - 83.3 a continuing offence of \$60,000 per day for individuals or \$120,000 for corporations
 - 83.4 a range of offences that attract both the potential for fines and significant prison sentences (e.g., 7 years) delineated by whether they are wilful or negligent. Wilful corporate offending attracts a maximum fine of \$5 million for instance
 - 83.5 penalties for knowingly making false or misleading declarations attracting maximum fines of \$500,000 for a corporation, or \$240,000 and an 18-month prison sentence for an individual.
- 84 The South Australia Environmental Protection Act 1993 provides for offences and penalties for activities with similarities to what is proposed in this paper, including:
- 84.1 operating without a license carries a maximum fine of \$120,000 for a body corporate and \$60,000 for individuals
 - 84.2 operating a collection depot without necessary approval carries a maximum fine of \$60,000 for a body corporate or \$30,000 for an individual.

- 85 The United Kingdom Environmental Protection Act 1990 provides for a range of offences and penalties including:
- 85.1 unlimited fines for allowing activities other than those permitted by a waste management license
- 85.2 unlimited fines for a failure to comply with the duty of care imposed upon households to ensure responsible management of waste.
- 86 As above, penalties internationally vary considerably for comparative offences. Similar regimes in New Zealand were analysed to consider how the proposed penalty levels compare.
- 87 The Resource Management Act 1991 prescribes a maximum fine of \$300,000 for individuals and \$600,000 for companies. Its replacement, the Natural and Built Environment Bill proposes these be increased to \$1 million and \$10 million respectively.
- 88 The Hazardous Substances and New Organisms Act 1996 addresses many related aspects of waste management and carries maximum fines of \$500,000 for individuals and \$10 million for companies.
- 89 I propose the following fee maxima in the legislation:
- 89.1 I am of the view that the maximum infringement fees should be \$1,000 for individuals and \$3,000 for corporates/non-natural persons. Within those envelopes, specific tiers of offending from minor litter infringements through to the most serious matters that may warrant an infringement fee will be articulated. It is proposed these would be set via regulation.
- 89.2 The maximum fine per offence on summary conviction is proposed to be \$250,000 for individuals and \$1 million for companies. For simplicity, I consider the pecuniary penalties should also have a consistent cap (\$250,000/\$1 million).
- 90 Proposed fine levels are summarised in Table 5. These penalties will exist alongside a range of other tools to ensure the right intervention is available to address the broad range of potential offending under the proposed legislation. The provision for an additional fine to address continuing offences will encourage rapid rectification of compliance issues by the sector and limit the risk of harm.
- 91 I seek delegated decision making power to support any minor decisions arising from reflecting the proposed fee maxima through the drafting process.

Table 5: Summary of proposed fine maximums for tools proposed for the new waste legislation

	Infringement fee (\$)	Pecuniary penalty (\$)	Prosecution fine (\$)
Individual	Up to 1,000	250,000	250,000
Corporate	Up to 3,000	1,000,000	1,000,000
Continuing/day	300	10,000	10,000

Rights of appeal, review, and complaint

- 92 Processes providing for rights of appeal, review of decisions and an ability to lay complaints help to ensure the robust and fair exercise of public power. They are particularly important in a compliance regime, given the broad discretion and degree of power traditionally nested with a regulator including the proposed powers of entry.
- 93 Appendix 2 contains an indication of general appeal provisions. The only tool not proposed to have a right of appeal is an enforceable undertaking as they are offered by the person who has committed the offence, rather than imposed.
- 94 I seek delegated decision-making power to ensure clear and unambiguous drafting of matters relating to appeal, review and complaint.

Rollover provisions

- 95 In accordance with the design principle of maintenance of stability, I seek a rollover provision for the compliance related aspects of the existing WMA. Part 3 of the WMA applies specifically to the levy and the compliance-related processes that underpin it.
- 96 Other compliance related sections include:
- 96.1 section 67 Additional monetary penalty for contravention involving commercial gain (will be largely supplanted by monetary benefit orders)
 - 96.2 section 68 Strict liability
 - 96.3 section 69 Defences
 - 96.4 section 70 Liability of principals for acts of agents
 - 96.5 section 71 Limitation period (with modifications as set out in this paper)
 - 96.6 section 72 Injunctions
 - 96.7 section 73-75 Infringement offences (with modifications as set out in this paper)
 - 96.8 section 86-88 Regulation making powers for keeping records, and the basis of the auditing programmes (with modifications as set out in this paper).
- 97 I propose the above provisions are rolled over in the proposed legislation, varied by exception to give effect to:

- 97.1 any proposed changes in policy intent
- 97.2 any proposed changes to relevant regulation making powers
- 97.3 any modernisation of language and expression
- 97.4 any other changes to ensure efficacy and effectiveness of levy provisions.
- 97.5 further discussions with the Ministry of Justice on detailed aspects of the new regime.

Provisions for emergency situations

- 98 The repeal and replacement of the current legislation provides an opportunity to ensure that we have the correct amount of flexibility in the Act to allow for emergency situations. It will be important to consider how emergencies may arise in the context of new proposals such as licensing and tracking obligations, in addition to others, including levy payment and reporting obligations.
- 99 Officials are still working through the best provisions that should apply to emergency situations, and how to provide for that in the legislation. This paper seeks delegated decision-making authority to the Minister for the Environment to make policy decisions and issue drafting instructions on this matter.

Implementation

- 100 This section outlines the implementation of the two sets of proposals, noting that there is an existing and active regulatory regime in place under both the WMA and the Litter Act 1979. This section addresses how the state changes outlined will be operationalised.
- 101 The proposed legislation will be implemented by the Ministry and the EPA in addition to local government. I am proposing that EPA be eventually responsible for most of what is outlined in this paper.
- 102 It is expected that the Ministry compliance function including staff and management, all administrative frameworks, guidance material, IT systems and contractual relationships will be shifted from the Ministry to the EPA. A comprehensive transition and implementation plan will need to be developed to support these processes, with dedicated funding and technical expertise.
- 103 A change management process to support staff and maintain continuity for the regulated community will be essential.

Operationalising the new regime

- 104 Levy and information obligations will, by the time the proposed legislation is introduced, already apply to approximately 800-1000 facilities. Introducing the proposed legislation will entail significant operational changes depending on the settings in primary and secondary legislation.
- 105 The Ministry's waste compliance team presently implement all aspects of the levy other than fund allocation. Stability and functionality of the existing regime will be critical to maintain while the proposed legislation is brought in, particularly alongside

the significant proposed shift in institutional arrangements (central compliance functions, currently 20 FTE, transitioning to the EPA).

- 106 Those changes will occur alongside the introduction of national licensing, likely phase out of local licensing, introduction of new controls on products and materials in the economy and the advent of new product stewardship schemes. It will be important to understand and appreciate the aggregated impact of these changes on the sector.
- 107 The proposed legislation sets out significant changes to the compliance regime in respect of where responsibility lies to implement it, the powers, and tools available, and the scope and scale of the regime to be implemented. The operationalisation of the new compliance regime will be implemented by an existing function with a high level of expertise and will be set out in a comprehensive transition and implementation plan.

Financial Implications

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

Legislative Implications

- 109 See *Waste Legislation 1: overview and overarching provisions* for details of the legislative timetable.

Regulatory, climate and population impact analysis

- 110 The impact analyses for the overall reform are set out in *Waste Legislation 1: Overview and overarching provisions*.
- 111 The specific population impacts of the continued collection of the levy depend on the way in which waste operators pass the cost of the levy onto users of those services. In general, large producers of waste will continue to incur highest levy costs while specific household impacts are likely to be more limited. Levy is proposed to be able to be applied to a broader range of facilities which may increase the levy quantum, generating more levy to be distributed for waste minimisation initiatives.
- 112 The population impacts of the compliance regime will be generally confined to that are subject to audit or the subject of enforcement proceedings. Analysis to date has not demonstrated that the above elements are particular to any subgroup of the population or require any specific consideration of distributional impacts.

Human Rights

- 113 This is set out generally in *Waste Legislation 1: Overview and overarching provisions*.
- 114 Specific considerations are required for the compliance regime, as it is necessary to analyse where tools such as search powers may engage the New Zealand Bill of Rights Act 1990. Powers of entry do not apply to dwelling houses or marae unless and until a search warrant is obtained on the basis of reasonable suspicion. This proposal is consistent with similar environmental legislation.

s 9(2)(h)

Consultation

116 This is set out in *Waste Legislation 1: Overview and overarching provisions*.

Communications, proactive release

117 See *Waste Legislation 1: Overview and overarching provisions*.

Recommendations

The Minister for the Environment recommends that the Committee:

Part 1 – Levy proposals (collection, administration, and monitoring)

- 1 **agree** that the waste disposal levy should be able to be applied to any facility for the final disposal of waste;
- 2 **agree** that the current exclusion of all waste to energy facilities from the levy be removed, so that future governments can apply the levy to disincentivise undesirable types of waste to energy facilities;
- 3 **agree** that the Act should enable regulations to set:
 - 3.1 the waste disposal facilities or waste types to be subject to the levy and related information obligations;
 - 3.2 the levy rates to be paid by the facilities covered and how levy obligations are calculated;
 - 3.3 the administrative processes levy and information obligated facilities must follow;
 - 3.4 processes to be followed where failures to report and pay occur including for the recovery of levy.
 - 3.5 exemptions and processes for waivers;
- 4 **agree** that regulations setting the rate of the levy will be a confirmable instrument;
- 5 **agree** to the Environmental Protection Authority being identified as the Levy Collector and discharging the required functions including:
 - 5.1 to collect the levy and associated information;
 - 5.2 to administer any permitting or application-based processes related to the collection of the levy and associated reporting obligations;

- 5.3 to estimate and recover levy, inclusive of recovery as debt;
- 6 **agree** that the Environmental Protection Authority will have the responsibility of collection, administration, and monitoring of the waste levy including permitting and compliance functions;
- 7 **agree** to a rollover of Part 3 of the Waste Minimisation Act 2008 (WMA) which applies specifically to the levy and the compliance related processes that underpin it. I propose the above provisions are rolled over in the proposed legislation, varied by exception to give effect to:
 - 7.1 any approved policy changes;
 - 7.2 any modernisation of language and expression;
 - 7.3 any other changes to ensure efficacy and effectiveness of levy provisions;
- 8 **authorise** the Minister for the Environment to make further decisions on the transitional arrangements to carry over existing regulations into the new regime, in order to maintain stability in the existing levy regime. This would apply to all secondary legislation at the time of royal assent;
- 9 **authorise** the Minister for the Environment to further develop the details of proposed levy collection, administration and monitoring regime during the drafting process, including matters relating to the transition of the existing system to the new one proposed;
- 10 **authorise** the Minister for the Environment to further develop the details of the levy regime during the drafting process;

Part 2 – Improved record-keeping and reporting provisions

- 11 **note** the importance of waste and resource recovery data for designing and evaluating effective policy, and for compliance monitoring and enforcement;
- 12 **agree** the new waste legislation will establish parties who may have regulated record-keeping and reporting obligations; the types of information that may be required of these parties; and the purposes for which information can be required;
- 13 **agree** primary legislation includes regulation-making provisions for record-keeping and reporting obligations to be placed upon:
 - 13.1 disposal facility operators (for records and information on waste and materials and site management, to enable monitoring of obligations under the Act and gain understanding of environmental impacts);
 - 13.2 waste facility operators (for records and information on waste and materials, transported, managed or disposed of, and site management, to provide information on the circulation of materials within the economy, to enable monitoring of obligations under the Act, and gain understanding of environmental impacts);
 - 13.3 territorial authorities (for records and information on waste management and minimisation services, facilities and activities; spending of levy money; performance against performance standards set by the Minister; and to report

on progress; to enable monitoring of obligations under the Act, and to enable planning of services, facilities and activities);

- 13.4 any class of person regulated under the new legislation (for records and information relating to regulated obligations, to assist with monitoring of obligations under the Act);
- 13.5 any class of person (for information required for the prescribed purposes, including the circulation of materials within the economy and their status and fate, to allow the Secretary to compile statistics to: assess progress at meeting the purpose of the Act; report on the state of New Zealand's environment and circularity of the economy; assess New Zealand's performance in waste minimisation and decreasing waste disposal; and identify improvements needed in infrastructure for waste minimisation);
- 14 **authorise** the Minister for the Environment to further develop the details of proposed record-keeping and reporting obligations during the drafting process, including matters relating to the frequency of reporting obligations, any provisions necessary to ensure the effective management and sharing of data, and the circumstances under which the Government Statistician should be consulted;
- 15 **authorise** the Minister for the Environment to further develop the details of the proposed national waste report during the drafting process;

Part 3 – Compliance regime – a modern and effective framework to support a circular economy

- 16 **agree** to the four key design principles to support the development of the compliance regime which are:
 - 16.1 undertaking evidence-led regulatory design;
 - 16.2 ensuring just distribution of costs and benefits;
 - 16.3 maintaining stability through non-regression;
 - 16.4 maintaining consistency across the regime wherever possible;
- 17 **agree** that compliance provisions including Part 3 of the WMA are rolled over to the proposed legislation, varied by exception to give effect to:
 - 17.1 any proposed changes in policy intent;
 - 17.2 any proposed changes to relevant regulation making powers;
 - 17.3 any modernisation of language and expression;
 - 17.4 any other changes to ensure efficacy and effectiveness of levy provisions;
- 18 **agree** to allocating the Minister for the Environment delegated decision-making power to propose any consequential changes to other legislation to enable the decisions to be operationalised including:
 - 18.1 the role of the EPA;
 - 18.2 the role of other agencies with duties in or adjacent to the regime;

- 18.3 any other matters;
- 19 **agree** to a broad warranting power which is disaggregated, enabling officers and others charged with enforcement duties to be conferred all or some of the powers under the proposed legislation and for these to be geographically as appropriate (e.g., to public land in the case of litter wardens);
- 20 **agree** to the proposed legislation containing a suite of compliance-related functions explicitly defined to ensure ongoing prioritisation of the regulatory role. These functions include that the agency/agencies must:
- 20.1 discharge the compliance monitoring and enforcement role;
 - 20.2 steward and keep under review the regulations and processes associated with the regime (see for example Financial Markets Authority Act 2011);
 - 20.3 report on compliance activities at least annually;
 - 20.4 cooperate with other agencies including via a presumption of information sharing while ensuring appropriate protection of privacy;
- 21 **agree** that warranted officers under the proposed legislation (where provided for in the scope of their specific warrant) can exercise:
- 21.1 a general power of information gathering to determine compliance with the proposed legislation, regulations, or associated instrument (e.g., national standard);
 - 21.2 a general power of entry to private land for the purposes of determining compliance with the proposed legislation, regulations, or associated instrument (e.g., national standard, deed of funding) excluding dwellinghouses and marae;
 - 21.3 the power to apply for a search warrant where the officer has 'reasonable grounds to suspect an offence has been or is being committed';
- 22 **agree** to the following framework elements for the compliance framework within the legislation, being:
- 22.1 inclusion of a mix of criminal and civil approaches to recognise the significance of the policy objectives that underpin waste legislation, including to bring about the avoidance of harm to society;
 - 22.2 contain a mix of strict liability offences and offences that reflect a mens rea element where they are most serious to ensure egregious behaviour can be proportionally and effectively addressed but that the public interest in environmental protection is assured regardless of intent;
 - 22.3 address corporate offending effectively with robust vicarious liability provisions;
 - 22.4 include a limitation period of two years for criminal offences, and six years for civil approaches, consistent with policy decisions made for the draft Natural and Built Environment Act (NBA) to be appropriate in this instance;

- 23 **agree** to the development of a four-tier compliance regime to maintain consistency and coherence across a complex suite of interventions;
- 24 **agree** to the inclusion of the following tools in the compliance regime to address offending (see Appendix 2):
- 24.1 formal warning;
 - 24.2 directive notice;
 - 24.3 infringement fee;
 - 24.4 enforceable undertaking;
 - 24.5 adverse publicity order;
 - 24.6 monetary benefit order;
 - 24.7 pecuniary penalty;
 - 24.8 prosecution;
 - 24.9 license suspension;
 - 24.10 license revocation;
- 25 **agree** that the above tools will be subject to a right of appeal, apart from:
- 25.1 formal warnings;
 - 25.2 enforceable undertakings;
- 26 **note** that delegated decision-making powers are sought to enable detailed decisions to be made on the above tools, including in relation to appeal rights, in alignment with the Legislation Design Advisory Committee Guidelines;
- 27 **agree** to the following fine maximums for individuals:
- 27.1 infringement fees (up to \$1,000) – with an internally tiered framework set in regulation with the ability to serve them per day for continuing offences (\$300 per day);
 - 27.2 pecuniary penalty (\$250,000);
 - 27.3 prosecution (\$250,000);
 - 27.4 continuing offence (\$10,000/day);
- 28 **agree** to the following fine maximums for non-natural persons:
- 28.1 infringement fees (\$3,000) - with an internally tiered framework set in regulation;
 - 28.2 pecuniary penalty (\$1,000,000);
 - 28.3 prosecution (\$1,000,000);

- 28.4 continuing offence (\$10,000/day);
- 29 **agree** to a rollover provision for the compliance related aspects of the existing Act. These include:
- 29.1 section 67 Additional penalty for contravention involving commercial gain (which will be largely supplanted by monetary benefit orders);
 - 29.2 section 68 Strict liability;
 - 29.3 section 69 Defences;
 - 29.4 section 70 Liability of principals for acts of agents;
 - 29.5 section 71 Limitation period (with modifications as set out in this paper);
 - 29.6 section 72 Injunctions;
 - 29.7 section 73-75 Infringement offences (with modifications as set out in this paper);
 - 29.8 section 86-88 Regulation making powers for keeping records, and the basis of the auditing programmes (with modifications as set out in this paper);
- 30 **agree** that the above provisions are rolled over in the proposed legislation, varied by exception to give effect to:
- 30.1 any approved changes to policy;
 - 30.2 any modernisation of language and expression;
 - 30.3 any other changes to ensure efficacy and effectiveness of levy provisions;
- 31 **authorise** the Minister for the Environment to further develop the details of proposed compliance regime during the drafting process, including matters relating to the transition of the existing system to the new one that is proposed;
- 32 **authorise** the Minister for the Environment to further develop the details of the compliance regime during the drafting process;

Provisions for emergency situations

- 33 **note** that the WMA provides for only very limited flexibility in emergency situations such as natural disasters.
- 34 **note** that officials are still working through the best provisions should apply to emergency situations and how to provide for this in the new waste legislation.
- 35 **agree** to delegate authority to the Minister for the Environment to make policy decisions and issue drafting instructions on emergency provisions.

Drafting

- 36 **invite** the Minister for the Environment to issue drafting instructions to Parliamentary Counsel Office to give effect to the proposals in this paper, as part of the *Responsibility for Reducing Waste Bill*;

- 37 **authorise** the Minister for the Environment to further clarify and develop matters relating to proposals in this paper, in a manner consistent with the agreed policy recommendations, and develop commencement, transitional and any other provisions with Parliamentary Counsel Office, through the drafting process;
- 38 **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

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Appendices

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Appendix 1: Overall compliance regime (TAs = territorial authorities, including unitary authorities)

Compliance arrangements for...	Indication of the types of offences requiring enforcement	Compliance agency/ies	Tier 1 Minor	Tier 2 and 3 Mid-range to severe/recidivist	Bespoke compliance interventions
Duties of care	<i>A failure to comply with a duty of care requiring someone to dispose of rubbish responsibly</i>	TAs EPA	Warning Directive notice Infringement fee	Enforceable undertaking Adverse publicity order Monetary benefit order Pecuniary penalty Prosecution	
National licensing	<i>A failure to comply with licensing obligations, including the requirement to become licensed.</i>	EPA	Warning Directive notice Infringement fee	Enforceable undertaking Adverse publicity order Monetary benefit order Pecuniary penalty Prosecution	Suspension of a license Revocation of a licence
Levy collection, administration, and monitoring	<i>A failure to keep and provide records and/or a failure to pay the levy</i>	EPA	Warning Directive notice Infringement fee	Adverse publicity order Monetary benefit order Pecuniary penalty Prosecution	Levy estimation Levy recovery
Illegal dumping (including 'littering')	<i>A failure to appropriately dispose of waste, including hazardous waste including large scale dumping</i>	TAs EPA (similar role to RMA, backstop)	Warning Directive notice Infringement fee	Enforceable undertaking Adverse publicity order Monetary benefit order Pecuniary penalty Prosecution	
Track and trace	<i>A failure to trace materials as required by regulations pertaining to track and trace</i>	EPA	Warning Directive notice Infringement fee	Adverse publicity order Monetary benefit order Pecuniary penalty Prosecution	
Products and materials controls	<i>A failure to comply with regulatory obligations controlling the import, supply, sale, manufacture etc of products and materials</i>	EPA	Warning Directive notice Infringement fee	Adverse publicity order Monetary benefit order Pecuniary penalty Prosecution	
Regulated Product Stewardship	<i>A failure to comply with a statutory obligation by either a PSA or another person</i>	EPA	Warning Directive notice Infringement fee	Adverse publicity order Monetary benefit order Pecuniary penalty Prosecution	Scheme intervention power
Container Return Scheme	<i>A failure to comply with a statutory obligation by either a PSA or another person</i>	EPA	Warning Directive notice Infringement fee	Adverse publicity order Monetary benefit order Pecuniary penalty Prosecution	Scheme intervention power
Bylaws enforcement	<i>A failure to comply with a rule in a bylaw, where it constitutes an offence under the proposed legislation</i>	TAs	Warning Directive notice Infringement fee	Enforceable undertaking Adverse publicity order Prosecution	

Compliance arrangements for...	Indication of the types of offences requiring enforcement	Compliance agency/ies	Tier 1 Minor	Tier 2 and 3 Mid-range to severe/recidivist	Bespoke compliance interventions
Waste planning	<i>A failure of a TA to meet planning obligations under the proposed legislation, including obligations to receive levy.</i>	EPA	Warning	Adverse publicity order Withhold levy	Discretion to withhold levy (all or in part) inclusive of discretion to backpay Discretion to recover levy

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Appendix 2: Compliance tools – purpose and overview

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

	instead of, or in addition to, a fine). They are typically a direction to publicly announce offending, its impact and how the recipient has changed or will change their behaviour.	wording is generally to the satisfaction of the judge so as to guard against it being warped into a positive news story.	<i>result of proceedings generally and generally issued together with a fine or other penalty.</i>		
Monetary benefit order	Monetary benefit orders are instruments that allow the recovery of pecuniary gain made in the course of offending. They are heard in the civil jurisdiction and money recovered is centralised in a fund. That fund is often made accessible for initiatives relating to justice.	Monetary benefit orders enable those who profit from unlawful behaviour to be stripped of that gain. The quantum's recovered in this manner can often exceed the fine maximums and provide a powerful means of rebalancing the public interest and ensuring a level playing field for compliant operators.	<i>An example of a monetary benefit order being applied includes where a proponent of a black-market waste operation has carried out significant waste accumulation by undercutting competitors and stockpiling it. Accepting commercial rates for disposal and then failing to carry out that disposal can be a lucrative activity.</i>	Appeals on MBOs should be provided for.	The manner in which the gain is calculated can vary but is proposed to be set out in secondary legislation in this regime. Gain is considered to comprise both profit and averted compliance costs.
Pecuniary penalty	Pecuniary penalties are non-criminal sanctions applied by the court. The civil burden of proof applies to pecuniary penalties – on the balance of probabilities – a lower evidential threshold than criminal proceedings. Their purpose is deterrence, not restitution.	Pecuniary penalties are primarily distinguished from criminal sanctions by the procedure that is followed to issue them, not their size. Many statutes in New Zealand provide for pecuniary penalties (eg, Commerce Act 1986, Biosecurity Act 1993).	<i>Pecuniary penalties are sought in a similar manner to a fine, but via a different process.</i>	Appeals should be provided for on pecuniary penalties	The Law Commission explored Civil Pecuniary Penalties in 2013. Their paper noted that environmental legislation had many examples of comprehensive civil regimes and other Acts which lacked civil remedies entirely. Since this report was produced, guidance on the development of civil remedies has been issued by the Legislation Design and Advisory Committee (LDAC). The proposals in this paper align with that guidance.
Prosecution	Prosecution for criminal offences is provided for in the existing regime and is proposed to be carried over, with higher financial penalties. The purpose of prosecution is to take punitive action to punish an offender and to achieve specific and general deterrence. A successful prosecution yields a criminal conviction for the defendant/s and this has considerable implications for them as an individual or company.	Criminal prosecution with a fine maximum of \$1 million corporates/\$250,000 individuals is a significant sanction. While prosecution is provided for in the existing regime, the penalty is much greater in the proposed legislation. Prosecution would be contemplated in accordance with the Solicitor-General Guidelines for Prosecution in addition to operational policies.	<i>Charges are filed in the District Court in respect of any prosecutable offence in the proposed legislation.</i>	Outcomes of a district court hearing would be able to be appealed to the High Court on a matter of law in the usual manner.	
Specific tools					
License suspension	The purpose of a suspension is as part of a graduated approach to non-compliance, putting an entity 'on hold' until compliance has been achieved.	A suspension would be appropriate as the final step before revocation of a license, or as part of an early intervention option. Suspension of a license would typically be used where compliance can be achieved with some effort and there is evidence of a willingness to comply.	<i>Suspension can close all or part of an operation for a designated period, providing an incentive to achieve compliance quickly to avoid the business impacts. A notice would be served requiring the facility to cease the receipt of waste. Operational policy would guide the decision-making on a case-by-case basis.</i>	For offences where there is a significant risk of environmental harm, it is proposed that an appeal of the notice does not constitute an automatic stay. Otherwise, an appeal would generally have the effect of staying the notice.	A directive notice may be able to have scope to do this action for simplicity.

License revocation	The purpose of revocation is to remove the right to operate. It is one of the most powerful sanctions.	A revocation of a license is a significant intervention and would occur in response to serious and usually recidivist offending.	<i>A notice would be served revoking the license and thus the permission to do any activity where a license is required to operate. If the licensed activity continued, this would constitute a further breach. The proponent would need to reapply for a license once it was revoked and compliance history would be considered as part of that application.</i>	Appeal would need to be provided for in the case of revocation as it is a significant sanction.	A directive notice may be able to have scope to do this action for simplicity.
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