

Departmental Disclosure Statement

Waste Minimisation (Waste Disposal Levy) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

15/5/2024

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Part One: General Policy Statement

The Waste Minimisation Act 2008 (the **Act**) establishes a waste disposal levy (the **levy**) to raise revenue for waste minimisation and to increase the cost of waste disposal. The Act also provides controls on how the levy is allocated between central and local government and how it is spent.

This Bill broadens the scope of activities funded via the levy, while maintaining a strategic link between the levy, waste, and environmental priorities.

Changes to matters for which the Secretary for the Environment can spend levy revenue

The Act currently requires the Secretary for the Environment (the **Secretary**) to distribute and spend levy funds. The Bill provides for the following additional matters to be funded:

- activities that reduce environmental harm or increase environmental benefits;
- waste-related emergency spending;
- funding the Ministry for the Environment (the **Ministry**) to undertake its functions and duties, and exercise its powers, in relation to waste management and minimisation and hazardous substances.

Examples of the type of activities that reduce environmental harm or increase environmental benefits include catchment remediation works and funding to support the management of New Zealand lakes, rivers, streams, groundwater and wetlands.

Emergency events can generate large quantities of waste, outside of the bounds of what can be managed through business-as-usual approaches, and can damage waste management and minimisation infrastructure. The Bill provides for the Secretary to spend levy revenue to deal with these matters.

The Ministry's responsibilities in relation to waste management and minimisation and hazardous substances include policy development and implementation, funding and investment, collecting and publishing data, compliance monitoring and enforcement, education and non-regulatory initiatives, project management, and administrative support.

The additional matters on which the levy can be spent add to the Secretary's operational role and give effect to funding decisions made either through the relevant appropriations or, in the case of emergency waste, through criteria notified by Minister for the Environment (the **Minister**) in the *Gazette*.

Changes to matters for which the Minister for the Environment can approve levy funding

In addition to approving projects to promote or achieve waste minimisation, this Bill will enable the Minister to approve funding of projects to provide for the remediation of contaminated sites (including site investigations, remediation plans and on-site remediation works). Contaminated sites include former mining and industrial sites, and closed landfills that are vulnerable to the effects of severe weather.

Supporting amendments to improve responses to emergency waste and contaminated site remediation

The Bill includes new roles for—

- the Secretary (to approve applications for waivers of the levy for contaminated site remediation works, so that the levy does not become a barrier to remediation works); and
- the Minister (to notify criteria in the *Gazette* for spending levy money on the management of emergency waste and repair or replacement of waste management and minimisation infrastructure, including the types of financial support that would be available for a specific emergency event, and the types of waste generated by an emergency for which funding would be available).

Changes to waste disposal levy rates

The Bill amends Schedule 2 of the Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regulations 2009 to establish incremental levy rate increases in 2025/26,

2026/27, and 2027/28. The additional levy revenue will provide additional opportunities for supporting waste-related and environmental activities and responsibilities.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Report of the Government Inquiry into the Response to the North Island Severe Weather Events: https://www.dia.govt.nz/diawebsite.nsf/Files/Government-Inquiry-into-Severe-Weather-Events/\$file/Report-of-the-Government-Inquiry-into-the-Response-to-the-North-Island-Severe-Weather-Events.pdf	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
Due to the tight timeline for this work, an impact assessment was not provided at the time policy decisions were made. A Supplementary Analysis Report was subsequently completed and will be published at the following link: https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments (soon to be hosted by the Ministry for Regulation).	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
The Treasury RIA team provided advice on the type of content to be included in the Supplementary Analysis Report but did not participate in the assessment of the report.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
As noted, there was no impact assessment. However, the Supplementary Analysis Report covers all relevant policy decisions and there have not been material changes since then.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The Supplementary Analysis Report includes qualitative information on potential costs and benefits.</p> <p>It is not anticipated that any group of persons will suffer a substantial unavoidable loss of income or wealth as a result of this Bill.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Benefits anticipated from increasing the waste disposal levy (levy) will be affected by the response of regulated parties to the changes (including if regulated parties pay the correct levy rate, and if waste disposers alter their behaviour in ways that affect the total quantity of waste disposed – including potential for an increase in resource recovery or inappropriate disposal).</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The policy to be given effect by this Bill is not considered to affect New Zealand's international obligations (as it relates to domestic re-prioritisation of how the waste disposal levy is invested) but there has not been a formal assessment of this.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Bill is not intended to impact the Crown's Treaty settlement obligations. The limited timeframe for developing the Bill did not allow for engagement with iwi/Māori on these proposals or full assessment of possible Treaty impacts.

Treaty impact analysis has been carried out for a related waste legislation project. Broadly the proposal to enable funding of environmental priorities through the waste disposal levy could be seen as aligning with Treaty partners' interests in protecting and sustaining the environment. However, the timeline for these changes has not allowed for any direct engagement with Treaty partners to discuss their views.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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An assessment against the Bill of Rights Act 1990 is in progress. The compliance report for the Bill will be uploaded here when available: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/ .
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p><i>Consultation with government bodies that are not departments</i></p> <p>Consultation on the draft Cabinet papers and draft Bill occurred with the following Crown entities, State Owned Enterprises and Offices of Parliament: Kāinga Ora – Homes and Communities, Waka Kotahi – New Zealand Transport Agency.</p> <p>The Legislation Design and Advisory Committee was informed of an earlier iteration of the proposals (with a narrower scope) and advised it did not have any comment on the overall proposal.</p> <p><i>Public consultation</i></p> <p>In 2021, the Ministry for the Environment consulted the public on proposals for wider waste legislation reform, some of which were also relevant to these targeted amendment proposals. The specific proposals that are the subject of this Bill were not included in the consultation. Further information is provided in appendix one.</p> <p>Given the Budget sensitive nature of the current proposals and the tight timeframe to achieve savings from the 2024/25 financial year, officials have not undertaken any additional engagement as part of development of these proposals.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
Timelines have not allowed for testing of workability and completeness of proposals.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
The Bill includes amendments to the purpose of the Act (section 3) and Part 3 of the Act, which outlines provisions for a waste disposal levy. Additional detail is outlined in appendix two.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
The Bill includes relevant decision-making powers for: <ul style="list-style-type: none">the Secretary for the Environment (in relation to applications for waivers of the levy for contaminated site remediation works); andthe Minister for the Environment (in relation to funding of contaminated site remediation projects and gazetting criteria relating to emergency waste). See appendix two for further information.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill identifies secondary legislation and decision-makers as follows. The Minister for the Environment may, by notice in the Gazette, set and vary criteria for funding management of emergency waste and repair or replacement of infrastructure.</p> <p>Because the matters relate to emergency waste, it is desirable to enable a relatively rapid response (making it less suitable for an order in council to be used). The details such as types of waste, geographic area affected, types of funding support that are needed will vary depending on the nature of the emergency, so this allows such details to be quickly communicated to relevant parties rather than trying to prescribe them in advance in the legislation (or via a longer process such as by order in council).</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

Appendix One: Further Information Relating to Part Three

External consultation – question 3.6

In October 2021, the Ministry for the Environment (the Ministry) released a consultation document, https://consult.environment.govt.nz/waste/taking-responsibility-for-our-waste/supporting_documents/wastestrategyandlegislationconsultationdocument.pdf (the consultation document). The document sought feedback on proposals for a new waste strategy and on issues and options for developing new waste legislation.

The consultation ran from 15 October to 10 December 2021. The Ministry received 2,485 submissions on the consultation document. The Ministry took part in 15 webinars, including several organised by industry, and ran a social media campaign to promote consultation. Most submissions were from individuals, the waste sector, businesses and local government. Individual submissions included 1,862 form submissions that were based on a template provided by Greenpeace.

Amongst other matters, submitters were asked their views on priorities for investment of the levy. Responses included support for funding for waste infrastructure; compliance monitoring and enforcement; and behaviour change activities. Although not prompted by a question, some submitters also referred to the need to support the remediation of contaminated sites and/or landfills vulnerable to the impacts of climate change; while several other submitters did not support the use of levy funds to fund such remediation activities.

This consultation is summarised here: <https://environment.govt.nz/assets/publications/Taking-responsibility-for-our-waste-summary-of-submissions.pdf>.

Appendix Two: Further Information Relating to Part Four

Charges in the nature of a tax – question 4.2

The Bill amends the purpose of the Act (section 3) to broaden the matters the waste disposal levy (levy) may fund. The Bill also repeals section 25 of the Act (which established the purpose of Part 3 of the Act (relating to the levy)). The Bill makes changes to how the Minister for the Environment (Minister) and the Secretary for the Environment (Secretary), respectively, shall spend levy revenue on matters defined within the Act.

The levy is intended to increase the cost of waste disposal, as an economic incentive to encourage resource recovery activities and discourage waste disposal. It also raises revenue for investment on matters outlined in section 3. Recognising that products and materials can generate environmental impacts throughout their life cycle as well as at the time of disposal, the amendment enables investment of the central government portion of the levy into a wider range of waste and environmental priorities.

The local government portion of the levy (50 per cent of the total) will remain hypothecated for waste minimisation purposes, in line with their waste management and minimisation plans.

The Treasury Guidelines for Setting Charges in the Public Sector outline that in practice, fees and levies might not fit into discrete categories and could be considered as being on a spectrum. A fee is a defined payment from a specified party to another in return for the provision of a good or service. The guidelines state that a levy will also be charged to a particular party or group, for a specified purpose, but not necessarily for a specific good or service. Widening the purposes for which the levy can be spent may be regarded as further diminishing the link between those paying the levy and the outcomes being funded. However, applying a levy at the point of disposal is an efficient point at which to collect a levy that can help remedy a range of environmental harms.

Safeguards include statutory decision-making criteria for the Minister when setting or amending levy rates and/or coverage (including consulting a Waste Advisory Board; being satisfied there has been adequate consultation with persons or organisations who may be significantly affected by the regulations; and considering the costs and benefits expected from the changes). In addition, regulations to set or alter levy rates or coverage are confirmable instruments (ie must be confirmed by an Act, as outlined in subpart 3 of Part 5 of the Legislation Act 2019).

In this case, the Bill also establishes changes to waste disposal levy rates directly (rather than through the regulation-making process summarised here).

Significant decision-making powers – question 4.6

The Bill gives decision-making powers to the Secretary, in relation to:

- spending the levy on activities that reduce environmental harm/increase environmental benefits; emergency waste; and funding the Ministry to undertake its functions and duties and exercise its powers in relation to waste management and minimisation and hazardous substances. This is an operational role, as decisions about the quantum of funding available will be determined as part of appropriations and, in the case of emergency waste, guided by detail notified by the Minister by gazette notice;
- approving levy waivers for contaminated site remediation. This extends an existing role undertaken by the Secretary (who can already grant waivers in exceptional circumstances). The Secretary may waive the levy if satisfied that it is reasonable to do so in relation to waste from the remediation of a contaminated site, and may impose conditions. Policies and procedures to support this role will be developed at an operational level.

The Bill also gives decision-making powers to the Minister, in relation to:

- funding of contaminated site remediation projects. This extends an existing role (in approving waste minimisation projects) and will include the same decision-making provisions including the ability to set or vary criteria for approving a project by notice in

the Gazette (having first obtained and considered the advice of the Waste Advisory Board);

- gazetting of matters related to funding for emergency waste. This is a new role. The Bill will establish matters the Minister must consider when making decisions. The Minister may also consider any other matters that they think relevant. The Minister will not be required to consult before making these decisions, because of the need to respond rapidly to an emergency situation. Officials have existing systems in place for engaging with affected parties informally.