



Interim Regulatory Impact Statement: Amendment of waste legislation 2025

Decision sought	Release of a public consultation document
Agency responsible	Ministry for the Environment
Proposing Ministers	Minister for the Environment
Date finalised	27 March 2025

Briefly describe the Minister's regulatory proposal

The overall proposal is to amend existing legislation (Waste Minimisation Act 2008 and Litter Act 1979) (the Acts) and merge into a single, modernised, and fit-for-purpose Act that addresses known issues and limitations and enables tools that can address present and future waste-related challenges.

Summary: Problem definition and options

What is the policy problem or opportunity?

There are several components to the policy problem. In part, there are multiple issues stemming from limitations of the existing (and old) legislation (Waste Minimisation Act 2008 (WMA) and Litter Act 1979), which has restrictions to effectively address environmental harm from waste and litter. This issue is coupled with an issue of market failure whereby voluntary and market-led mechanisms are not effective in supporting widespread waste minimisation outcomes (and broader waste-related outcomes) on their own.

A change is required to modernise and improve existing legislation, make it fit-for-purpose and equip users of legislative provisions with effective tools to respond to current and future waste-related challenges. Use of both Acts over many years has revealed their shortcomings across a range of areas, as experienced by a range of parties (local and central government, regulated parties, and others in the waste sector). For example, the ability to ensure compliance with legislative provisions (including secondary legislation) and applying commensurate penalties/offences, effectively manage litter and dumping, ensure waste-related activities can be funded without having significant costs fall on local communities, and the ability to implement regulations in a timely manner (such as product stewardship schemes). There is an opportunity to improve waste disposal and resource recovery outcomes with a revised legislative framework that overcomes these shortcomings within existing legislation.

Based on previous engagement, regulated parties and the wider waste sector are generally supportive of efforts to improve outcomes for the sector through regulatory mechanisms.

This support reflects the need to ensure the system is fair and transparent as well as ensuring there is public buy-in and confidence in the waste system, which relies on action at a localised level. Regulatory mechanisms can include: setting a level playing field (such as for operators and facilities); providing clarity on roles and responsibilities; ensuring that operators/parties engaging in misconduct face appropriate consequences; requiring data and reporting that can be aggregated and shared publicly and used to assess the effectiveness of the legislation.

The opportunity is to ensure fit-for-purpose legislation with effective tools for managing waste and broader environmental risks.

What is the policy objective?

The broad intended objective is to establish modern and fit-for-purpose legislation, which will provide the legislative framework for improved waste-related outcomes. Revised legislation is intended to address known issues and limitations and enable tools that can address present and future waste-related challenges.

Fit-for-purpose legislation is one of the key enablers for achieving the outcomes of the (revised) waste strategy.¹ The intended outcomes of the strategy are to: reduce per capita waste disposal; increase reuse and recycling of materials and products so that we retain valuable resources in the economy; minimise emissions and environmental harm from waste and litter; ensure resource recovery and disposal facilities are managed to minimise their environmental impacts; and limit the environmental harm caused by contaminated sites including legacy sites.

Success of this regulatory proposal will be measured through stakeholder support of the legislative reform (from consultation phase to legislative implementation), improved waste-related outcomes (particularly where legislation has a direct impact on those outcomes such as improved compliance activities and reduced instances of littering and mismanaged waste), effective use of legislative provisions (for example, in relation to levy spend parameters, product stewardship schemes), and – over the long term – the longevity of the legislative reform implemented.

What policy options have been considered, including any alternatives to regulation?

Policy options considered include a range of legislative approaches from light-touch to more directive approaches (noting this depends on the type of provision or tool being considered). These are detailed further in the subsequent sections that outline options considered for each topic (ie, proposal), which includes consideration of options against the status quo.

Topics in this RIS are as follows:

- allowing TAs to use levy funds to support a wider range of outcomes
- establishing a graduated compliance model to support compliance monitoring and enforcement activities
- creating an expanded range of tools for addressing littering and dumping.

The status quo (or ‘do nothing’ scenario) essentially involves working within the existing legislative provisions. Key elements of this scenario include, but are not limited to:

¹ The waste strategy states “fit-for-purpose legislation that supports: an efficient market for waste management and recycling; optimal investment decisions; appropriate responsibilities across the supply chain” as part of the means for achieving improved waste outcomes.

- levy funds continue to be allocated based on current methodology to both central and local government, with levy spend parameters being broad for the central government portion and narrow for the local government portion
- levy allocation settings result in significant funding disparities between larger and smaller TAs
- a small number of regulations have been established under the WMA in relation to data and reporting; setting levy rates for waste disposal facilities; restrictions on the sale of certain types of plastic items (plastic bags, microbeads, some single-use plastic items)
- there continue to be limited mechanisms for addressing non-compliant behaviour
- costs associated with clean-up of littering and dumping fall on local communities
- continued development of regulated product stewardship schemes for the six declared priority products (with various challenges and inefficiencies for industry and government as detailed further below).

What consultation has been undertaken previously?

Public consultation took place in late 2021 to seek feedback and ideas on content for the (then) new waste strategy and legislative reform. This was designed to get general feedback to assist the development of proposals for the strategy and the legislation. While the strategy was the focus, the consultation included some high-level proposals for legislative reform. This consultation produced nearly 2,500 submissions from individuals, the waste sector, businesses, and local government. There was a high level of support for transforming the way we manage waste and the moving towards a ‘circular economy’ approach (ie, designing out waste, keeping valuable resources in use for longer), which was a core theme of the waste strategy at the time. A greater focus on mechanisms to reduce waste generation was broadly supported. Most submitters wanted to see more regulatory tools and decisions being made that would deliver outcomes embedded in the upper part of the waste hierarchy. Whilst aspects of this proposal differ from those consulted on in 2021, this previous consultation provides a useful sounding board on stakeholder’s perspectives in waste legislation.

For the proposals currently being considered, the Ministry has engaged in targeted engagement with three key stakeholder groups in December 2024 (Waste Advisory Board, representatives from WasteMINZ’s territorial authorities officers forum, representatives from the Waste and Recycling Industry Forum). This entailed separate meetings to present the proposals and seek written feedback. The majority of the feedback received supported the proposals on waste legislation reform and also encouraged careful consideration of how the proposals would be implemented.

Public consultation on the full suite of legislative proposals is expected to be undertaken commencing April 2025, subject to Cabinet decisions.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Within the suite of proposals, the preferred option in the Cabinet paper is the same as the preferred option in this interim RIS, which entails:

- allowing TAs to use levy funds to support wider range of activities
- establishing a graduated compliance model
- creating an expanded range of tools for addressing littering and dumping.

Summary: Minister's preferred options in the Cabinet paper

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

An increase in compliance tools will likely result in more compliance activity to ensure a level playing field and non-compliant activities (such as dumping of waste materials or levy avoidance activities) are managed appropriately. Based on current settings (not proposed to change), these activities are funded through the waste levy and undertaken by the Ministry for the Environment. Regulated parties that are non-compliant would be expected to experience an increase in enforcement activities in response to non-compliant actions (with the adoption of a graduated compliance model this could range from directive notices to requiring costs for clean-ups, with actual costs subject to further decisions).

Broader use of levy funds for TAs, may result in a net reduction in waste minimisation activities that have been historically funded at the local level. However, given the increase in levy rates and projected increase in levy revenue over the next 4-5 years, actual waste minimisation expenditure is likely to be variable across different TAs.

Costs associated with secondary legislation (regulations established through enabling provisions) are not included as these can vary in scope significantly and will be assessed at the time of any of these enabling provisions being used.

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

Changes to the use of levy funds will likely create some distributional impacts as levy funds allocated to TAs will be used to support a broader range of environmental outcomes, not exclusively waste minimisation outcomes as per the status quo. Benefits will accrue to those groups/organisations that are directly impacted (ie, funded entities) as well as to local communities that may be indirectly impacted.²

Regulated parties that are compliant with existing requirements will see enhanced mechanisms to ensure there is a fair and level 'playing field' for the market. This should improve competition as improved compliance tools will help ensure that non-compliant operators are not able to 'undercut' competitors through improper behaviour. Also, there will be a reduced risk of levy avoidance, which will ultimately impact the amount of levy funding allocated to a broad range of environmental outcomes.

² For example, this could be proximity to contaminated sites that are remediated, or in relation to improved waste clean-up activities (such as following an emergency event or dumping of waste materials).

Local communities will experience a reduction in littering and dumping in their communities as a result of improved powers to tackle mismanaged waste. There will also be appropriate penalties for those responsible for littering and mismanaging waste, which will help support confidence in the wider waste management system.

Benefits associated with secondary legislation (regulations established through enabling provisions) are not included as these can vary in scope significantly and will be assessed at the time of any of these enabling provisions being used.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

Based on available information, the benefits of the Minister's preferred options are likely to outweigh the costs.

Implementation

Not applicable for this interim RIS as per advice from the Ministry for Regulation.

Limitations and Constraints on Analysis

This is an interim RIS to support the release of a consultation document and will be updated as appropriate to support Cabinet's consideration of policy proposals to support the legislation drafting process.

As policy development has occurred over an extended period, proposals that have been included in an earlier RIS (March 2023) and are consistent with current proposals included in the consultation document are not included in this interim RIS. Those proposals covered a range of topic areas and culminated in Cabinet decisions on those policy proposals³, but did not proceed to drafting due to a change of government.

Following briefings and discussions with the Minister during policy development, some of the earlier proposals will not be retained and are not included in consultation document (for example, proposals that could impose a significant regulatory burden on affected parties). Further details of these earlier proposals are outlined in the appendix. Minor changes and technical refinements to existing legislative provisions are not included in the consultation document or in this impact analysis.

This interim RIS comprises proposals that are additional to (or replace) earlier decisions, which includes:

- use of levy funds by territorial authorities
- tools for compliance monitoring and enforcement
- tools for addressing littering and dumping.

The consultation document is framed as seeking feedback on a suite of specific proposals (rather than presenting a range of possible options). The analysis in this and previous RIS documents, and subsequent ministerial decisions, have refined the scope. The suite of proposals in the consultation document covers aspects that would be specified within the new primary legislation and aspects that create enabling powers with further detail to come

³ CAB-23-MIN-0002, CAB-23-MIN-0004, CAB-23-MIN-0005, CAB-23-MIN-0006.

if, and when, they are adopted (this would be undertaken in detail at the time of developing regulations and are subject to multiple variables that cannot be analysed in this impact analysis). Therefore, the analysis reflects this mix.

The analysis assumes the WMA and the Litter Act will be consolidated rather than continue as two separate legislative instruments.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

**Signed by the responsible
Manager(s)**



Date:

27 March 2025

Quality Assurance Statement

Reviewing Agency: Ministry for the Environment

QA rating: Partially meets

Panel Comment:

Given this is an interim RIS to assist with seeking approval to consult, and the government priorities are constraining the scope/options, the panel is comfortable with a partial meetings ranking.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

1. New Zealand's current waste-producing, linear, 'take-make-dispose' system approach relies heavily on extracting virgin materials/resources and enables continuous consumption and replacement over the efficient use of resources, the reduction of the use of harmful substances and keeping products and materials in use for as long as possible. Our current waste management system causes environmental harm, greenhouse gas emissions, and economic losses. It is not sustainable over the long term without continued harm to the environment.
2. New Zealand generates significant volumes of waste, most of which is disposed of in landfills. We dispose of more municipal waste per capita than Australia and many other Organisation for Economic Co-operation and Development (OECD) countries and recover and recycle less. For comparison, we disposed of around 706 kilograms of waste in municipal landfills per capita (FY2022/23). South Australia in 2016 sent around 360 kilograms of waste to landfill per capita and achieved over 80 per cent diversion from waste disposal.
3. This poses both economic and environmental challenges and is a matter of substantial public concern. Environmental challenges include inappropriate use and management of plastics; greenhouse gas emissions; impacts of inappropriate disposal including litter; and harm caused by legacy sites.

Legislative context

4. The core regulatory framework for waste and litter comprises the Waste Minimisation Act 2008 (WMA) and Litter Act 1979 (Litter Act), with additional regulations that have been established under the WMA.⁴
5. The broad functions of the Litter Act include: defining who can appoint or, by virtue of their office, be a Litter Control Officer (LCO) and Litter Warden, where they can act and what powers they have on public and private land; establishing a statutory provision for promotion of litter control to a named entity (currently Keep New Zealand Beautiful); clarifying powers and duties of public authorities and others; assigning penalties to littering offences ranging from infringements through to prosecutions.
6. The WMA sets waste-related responsibilities for central and local government, contains enabling provisions for several waste minimisation tools (such as product restrictions and establishing regulated product stewardship schemes), and establishes the framework for the waste disposal levy (the levy). The levy is an economic tool to disincentivise waste being disposed of to landfill and to encourage alternative approaches to producing, using and managing products and materials at their end of life. Provisions in the WMA establish core levy settings (eg, purpose of the levy, distribution of levy revenue, use of levy funds) with further details specified in secondary legislation (eg, regulations to set differential levy rates applied to different classes of landfills).

⁴ Including: Waste Minimisation (Information Requirements) Regs 2023; Waste Minimisation (Tyres) Regs 2023; Waste Minimisation (Plastic Shopping Bags) Regs 2018; Waste Minimisation (Microbeads) Regs 2017; Waste Minimisation (Calculation and Payment of Waste Disposal Levy) Regs 2009.

7. While the WMA does include a range of enabling powers to support waste minimisation policies and activities, these have had limited use over the past 17 years.⁵ To date, their use has been limited to:
 - establishing regulations for product stewardship schemes for priority products
 - phasing out the distribution of some single-use plastic products (ie, products containing microbeads, plastic bags, single-use produce bags, straws and other plastic utensils)
 - creating record keeping and reporting requirements
 - setting levy rates to be applied at different classes of disposal facilities.
8. Other legislation forms part of the wider regulatory framework. For example, landfills and waste disposal are also subject to regulation as part of the Emissions Trading Scheme in relation to greenhouse gases generated through the anaerobic breakdown of organic materials in landfills. Additionally, the Resource Management Act 1991 which covers a range of landfill operational matters such as requirements for managing discharges to land, air, and water.

How is the status quo expected to develop?

9. Experience from working within the existing legislative provisions has revealed many limitations in terms of scope of provisions, restrictions with enabling powers, ability to affect desired change in a timely manner, and mechanisms for addressing non-compliance. Based on current legislative parameters, the status quo is expected to develop as set out below:
 - levy funds continue to be allocated based on current methodology to both central and local government (50:50 split), with levy distributed to individual TAs resulting in significant funding disparities between larger and smaller TAs (the latter often have difficulty funding waste minimisation activities, particularly those with seasonal population spikes)
 - levy spend parameters are broad for central govt portion (following amendments in 2024) and narrow for the local government portion (the latter restricted to waste minimisation activities)
 - continuation of a small number of regulations established under the WMA (listed above)
 - there continues to be limited mechanisms for addressing non-compliant behaviour
 - costs associated with clean-up of littering and dumping fall on local communities
 - continued development of regulated product stewardship schemes for the six declared priority products (with various challenges and inefficiencies for industry and government as detailed further below)
 - continuation of existing processes, such as: TAs engaging with local communities to develop waste management and minimisation plans (WMMPs); Minister for the Environment setting central govt waste investment priorities via Gazette; the Waste Advisory Board providing advice to the Minister upon request
 - likely overall marginal improvements to volumes of waste disposal, but this is largely dependent on response to incentives and disincentives in the system.

⁵ This is reflective of practical limitations of enabling provisions (eg, development of regulated product stewardship schemes) and also indicative of a limited appetite by successive governments to use these powers (eg, levy rates remained at \$10 per tonne for over 10 years, creating little disincentive to disposal; regulations on waste data reporting have only been recently implemented).

Previous government decisions, legislation and impact analysis relevant to this problem

10. The previous government had commenced reform of the WMA and Litter Act, which progressed to confirmed Cabinet policy decisions⁶ to inform drafting of a Bill for introduction to the House of Representatives. However, given the change of government in late 2023 this was not able to progress further.
11. In May 2024, amendments to the WMA (Waste Minimisation (Waste Disposal Levy) Amendment Act 2024) were passed under urgency as part of Budget night legislation, which enabled the central government portion of the levy to be spent on a wider range of environmental activities and, in doing so, enabled savings to the Crown through broader use of levy funds.⁷ Additionally, the amendment included incremental increases to levy rates (scheduled for 2025 to 2027), which will increase levy revenue and create a greater disincentive to waste disposal.
12. Following the WMA amendments, the government also commissioned independent reviews into the performance of government spending/investment funded by the levy (undertaken by Sapere) and the investment decision-making process and back-office functions in the Ministry for the Environment relating to the levy, with a focus on value for money (undertaken by KPMG). The purpose of these reviews was to ensure that levy investment and administrative activities were (and continue to be) managed effectively and efficiently and deliver value for money. The independent analyses by KPMG and Sapere indicated that the levy is administered and invested efficiently and effectively by the Ministry and is delivering net positive outcomes. The Sapere report concluded that levy investment delivers a net positive outcome to society (cost-benefit analysis of 1.37) and did not find any evidence that ‘crowding out’ of private investment has occurred as a result of investment of the levy.
13. Cabinet has recently published a revised waste strategy,⁸ which replaces the strategy the previous government published in 2023. The revised strategy sets out the following outcomes to be achieved:
 - a reduction of waste disposal per person
 - increasing reuse and recycling of materials and products so that we retain valuable resources in the economy
 - minimising emissions and environmental harm from waste and litter
 - ensuring resource recovery and disposal facilities are managed to minimise their environmental impacts
 - limiting the environmental harm caused by contaminated sites including legacy sites.
14. These outcomes are intended to be achieved through:
 - fit-for-purpose legislation that supports: an efficient market for waste management and recycling; optimal investment decisions; appropriate responsibilities across the supply chain

⁶ Suite of Cabinet papers, minutes and RIS available [here](https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/cabinet-papers-seeking-policy-decisions-on-the-content-of-new-waste-legislation/): <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/cabinet-papers-seeking-policy-decisions-on-the-content-of-new-waste-legislation/>

⁷ The central government portion of levy funds can be used for: activities that reduce environmental harm or increase environmental benefits; some local authority emergency event waste-related costs; the costs related to the Ministry’s waste and hazardous substances functions; and duties and projects that provide for the remediation of contaminated sites.

⁸ New Zealand waste and resource efficiency strategy (2025) [Waste and resource efficiency strategy | Ministry for the Environment](#)

- cost-effective, outcomes-focused investment of the waste disposal levy in infrastructure, innovation and local projects
 - working with the sector, business, local government and communities to develop and implement practical cost-effective solutions
 - where necessary, targeted policy/regulatory measures
 - using the waste hierarchy to guide decision-making, enabling resources to be retained in the economy at their highest value where possible.
15. In November 2024, Cabinet approved⁹ the government’s waste and resource efficiency work programme (also referred to the waste and resource efficiency action plan), which includes:
- ensuring fit-for-purpose waste legislation (modernising the WMA and Litter Act)
 - investment of the waste disposal levy
 - reducing waste emissions (implementation of actions from ERP 1 and 2)
 - continued development of regulated product stewardship schemes.
16. Collectively, the government’s waste strategy, waste and resource efficiency work programme, and earlier legislative amendments help set the direction and overall objectives for the waste portfolio (including the proposals in scope for this current legislative reform).
17. Previous impact analysis documents that relate to the current proposals include:
- Regulatory Impact Statement: Proposals to support a transformation in waste management in New Zealand (finalised in March 2023).
 - Extended Producer Responsibility, stage 1 cost recovery impact statement (finalised in 2023)
 - Supplementary Analysis Report for Waste Minimisation (Waste Disposal Levy) Amendment Bill 2024 (finalised in May 2024).¹⁰

What is the policy problem or opportunity?

18. There are several components to the policy problem. In part, there is an issue of regulatory failure due to limitations of the existing legislation (Waste Minimisation Act 2008 (WMA) and Litter Act 1979), which has restrictions to effectively address environmental harm from waste and litter. This issue is coupled with market failure whereby voluntary and market-led mechanisms are not effective in supporting widespread waste minimisation outcomes (and broader waste-related outcomes) on their own.
19. Use of the WMA and Litter Act over many years has revealed their shortcomings across a range of areas, particularly in relation to ensuring compliance with legislative provisions (including secondary legislation) through applying commensurate penalties and offences, managing litter and waste dumping in a range of scenarios, and ensuring levy funding settings are fit for purpose. There is an opportunity to improve waste disposal and resource recovery outcomes with a revised legislative framework that overcomes these and other shortcomings.
20. Poor waste management contributes to climate change and pollution, harm to human health and directly affects many ecosystems and species. Landfills containing organic matter, (disposal considered the last resort in the waste hierarchy), release methane, a very

⁹ These decisions also involved rescinding previous Cabinet decisions to implement kerbside recycling services and the planned phase-outs of hard-to-recycle and single-use plastics.

¹⁰ Supplementary Analysis Report for 2024 WMA amendment [here](https://environment.govt.nz/assets/publications/Supplementary-Analysis-Report-Waste-Minimisation-Waste-Disposal-Levy-Amendment-Bill-2024.pdf)
<https://environment.govt.nz/assets/publications/Supplementary-Analysis-Report-Waste-Minimisation-Waste-Disposal-Levy-Amendment-Bill-2024.pdf>

powerful greenhouse gas linked to climate change. Waste is not only a problem for the environment, but it also represents lost economic opportunities. Waste is a by-product of production and consumption and once produced, costs are incurred to manage it. An alternative, where practical, is for the waste from one process to provide resources as inputs to other processes through recycling.

21. New Zealand has growing levels of litter.² There are several environmental and human health harms associated with litter and waste dumping. For example, plastic can break down into microplastics over time which can contaminate the environment and enter the food chain. Even biodegradable organic waste such as garden waste has the potential to spread invasive plant species and other pest organisms. Some litter and dumped waste can also be hazardous, such as demolition waste containing asbestos. 'Mismanaged waste' is a term to describe the waste that does not enter the formal waste management system – such as litter, dumped waste and escaped waste (blown by the wind or carried by water). Mismanaged waste in the environment is a sign that the formal waste management system is not working as intended.
22. The existing legislative framework for compliance monitoring and enforcement is very limited and does not equip users with the appropriate tools to address non-compliant behaviour across a range of scenarios. The costs of cleaning up litter and waste dumping fall on councils, public and private landowners, communities, and volunteers. Although the exact figure is unknown, the national annual cost likely amounts to millions of dollars. Auckland Council reportedly cleans up an average of 136 tonnes of illegally dumped waste every month, costing around \$2.6 million per year.¹¹
23. In recognition of these and other waste-related costs (such as remediation of contaminated sites and emergency waste clean-ups), and the challenging financial context facing TAs, there is opportunity to expand the use of levy funds to support a broader range of TAs' activities. This would build upon changes already made to the central government portion of levy funds.
24. Current Acts (WMA and the Litter Act) have limited tools to effectively address these environmental issues. Consequently, they need modernising to ensure they have tools to address waste-related challenges, provide clarity on roles and responsibilities (particularly for central and local government), amend levy-related settings to enable TAs to undertake their legislated responsibilities, and to equip users with appropriate powers to support effective regulatory compliance monitoring and enforcement.
25. Sector stakeholders have frequently advocated for more effective use of regulatory provisions across a range of areas (eg, in relation to extended producer responsibility schemes, ensuring an even playing field for waste operators, and compliance tools to address littering and dumping).
26. Similarly, from an agency point of view, experience in working with the Acts over several years has highlighted how provisions – those in primary legislation and also enabling provisions to establish regulations – are not appropriate for current challenges and have limitations to effective use.¹²
27. Revised legislation does not preclude complementary non-regulatory tools and voluntary measures also being applied where relevant. Non-regulatory tools and voluntary measures can be an effective accompaniment to a clear regulatory framework. This includes investment to support recycling and reuse initiatives (eg, Waste Minimisation Fund), data

¹¹ Auckland Council waste assessment (2023) [Waste Assessment 2023](#)

¹² For example, this includes a more effective legislative framework for industry-led extended producer responsibility schemes (compared to the current framework for product stewardship that both industry and government have found problematic).

provision to support markets, mechanisms to ensure a level playing field, and industry-led initiatives to promote positive waste-related credentials.

What objectives are sought in relation to the policy problem?

28. The overall objectives sought in relation to the policy problem are as follows:
- minimise and manage waste, through appropriate mechanisms
 - minimise greenhouse gas emissions and other environmental harm from waste-related activities
 - ensure clear roles and responsibilities are set for obligated parties
 - enable effective tools and powers to address present and future waste-related issues.
29. The objectives for legislative amendments are to create modernised, fit-for-purpose legislation that addresses known issues and limitations and enables tools that can address present and future waste-related challenges.
30. These objectives are aligned with the Government's priorities and intentions for waste, as outlined in the waste strategy and stated in other related documents.

What consultation has been undertaken?

31. Public consultation on a previous proposal took place in late 2021 to seek feedback to assist the development of proposals for the waste strategy and to guide legislative reform. This consultation produced nearly 2,500 submissions from individuals, the waste sector, businesses, and local government. There was a high level of support for transforming the way we manage waste and the moving towards a 'circular economy' approach (ie, designing-out waste, keeping valuable resources in use for longer), which was a core theme of the waste strategy at the time.
32. The consultation covered a mix of high-level proposals for legislative reform and some specific, detailed proposals. Submitters wanted to see more regulatory tools and decisions being made that would deliver outcomes embedded in the upper part of the waste hierarchy (ie, a greater focus on reducing waste generation and for waste to be 'designed out' of the system where possible). Note that the package consulted on in 2021 had some similar, but some differing, components to the current proposals.
33. Following public consultation and subsequent advice, Cabinet made policy decisions to guide drafting of the Bill. However, this was not able to progress to further due a change of government.
34. The current suite of proposals for legislative reform have been subject to further briefings to the Minister for the Environment seeking approval to progress policy development on particular components for reform – these represent a mix of proposals consistent with earlier ones and some new proposals.
35. For the proposals currently being considered, the Ministry engaged in targeted engagement with three key stakeholder groups in December 2024 (Waste Advisory Board, representatives from WasteMINZ's territorial authorities officers forum, representatives from the Waste and Recycling Industry Forum). The purpose was to test proposals, seek written feedback and share the revised waste strategy (there had been no public consultation on the revised waste strategy).
36. Proposals that received broad support during this engagement included:
- establishing a modern and more effective compliance regime: all stakeholder groups consider compliance powers within the Litter Act and WMA are not fit for purpose, and

therefore support a graduated range of compliance monitoring and enforcement (CME) tools

- improved control and enforcement of littering and other types of mismanaged waste: stakeholders groups (in particular, representatives from TAs that most likely to deal with littering/dumping in their communities) supported a reform of the Litter Act, acknowledging that current powers to act are outdated and weak.

37. There was also broad support for earlier proposals (ie, those covered in the previous RIS) including: 9(2)(ba)(i)

and improved enabling tools for addressing harmful products and materials, including through establishing extended producer responsibility schemes.

38. Proposals that attracted more divergent views included:

- widening the use of levy funds for TAs – some stakeholder groups noted the risk that levy funds could be readily consumed by other activities (whether environment-related or broader), while others supported it
- responsibilities of TAs, such as where they may act as market participant while also setting ‘rules’ via bylaws and/or collecting data from other market participants.

39. Public consultation on the full suite of legislative proposals is expected to commence in April 2025, pending Cabinet decisions.

40. Additionally, public consultation in recent years on other related topics (for example, emissions reduction plan, phase-out of problematic plastics, regulated product stewardship schemes) has also informed the current legislative proposals.¹³

41. Informal consultation has occurred with public authorities who appoint Litter Control Officers and use provisions in the Litter Act (eg, territorial authorities and the Department of Conservation). Informal consultation on the bylaw provisions of the WMA has only occurred with two technical specialist groups: the Taituarā Regulatory Bylaw Reference Group and the Bylaw Special Interest Group.

42. Informal feedback on the use of the current WMA provisions has also been received through development of regulatory product stewardship schemes, implementation of other regulations under the WMA and compliance monitoring and auditing of levy payments by registered Disposal Facility Operators.

Section 2: Assessing options to address the policy problem(s)

What criteria will be used to compare options to the status quo?

43. Criteria are linked to overall objectives and are as follows:

- Effectiveness in supporting positive environmental outcomes – assessed in terms of supporting improved waste minimisation and related environmental outcomes (such as greenhouse gas emissions reduction); whether the option makes measurable improvements to current situation
- Efficiency in system implementation and operations – assessed in terms of level of complexity, time and costs to implement and/or operate; administrative burden on regulators and/or regulated parties

¹³ For example, the practicality of some enabling provisions that establish regulations (eg, to place restrictions/bans on products; to establish regulated product schemes, which requires multiple consultation steps).

- Flexibility and adaptability to present and future needs – assessed in terms of likelihood of being able to provide effective tools and powers to address present and future waste-related issues (insofar as these can be anticipated).
44. These criteria are broadly consistent with the approach in the previous RIS, while also aligned to the direction and priorities of the Government.

What scope will options be considered within?

45. Policy development has occurred over an extended timeframe (spanning two governments) with many of the current proposals being consistent with the earlier decisions. Therefore, the overall scope has been shaped to some extent by earlier policy development. Following briefings and discussions with the Minister, some earlier proposals are not being progressed (for examples, proposals that would likely impose a significant regulatory burden on affected parties).
46. Stakeholder engagement (as discussed above) has also informed policy development and individual proposals included in the consultation document.
47. In terms of government decisions, the starting point for the present analysis is Cabinet’s decision to reform waste and litter legislation, which is included as a key component of the Government’s waste and resource efficiency work programme. Additionally, the revised waste strategy lists ‘fit for purpose revised waste legislation’ as one of the key enablers for achieving the desired outcomes of the strategy (discussed further in previous sections).
48. Amendments to the WMA in 2024 (progressed under urgency and without public consultation) have also shaped the scope of options being considered. This relates to type of policy proposals (such as opportunities for expanding use of levy funds) as well as the process followed (that is, many sector stakeholders have requested that any further legislative change allows for public consultation). These aspects also need to be balanced against the need for the planned Bill to progress in a timely manner through all stages.
49. More generally, relevant experience from other countries and jurisdictions provides a useful comparison or benchmark for options identification as there are common approaches to enabling waste minimisation outcomes using a mix of regulatory and market mechanisms. Therefore, non-regulatory options are discussed where relevant for each proposal (eg, educational tools, investment).
50. Additionally, given the nature of the problem, the analysis involves assessment against retaining the status quo, which has proven to be largely ineffective and problematic across a range of issues.

Previous regulatory impact analysis

51. Most of the proposals presented in the consultation document have been subject to consideration via an earlier RIS. Therefore, they are not duplicated here. The full suite of proposals is listed in the appendix.

Topic 1: Use of levy funds by territorial authorities

52. The levy is a hypothecated (ring-fenced) instrument that collects a differential fee on waste disposed of at registered disposal facilities. Currently, the WMA requires that 50 per cent of the levy is allocated to the central government, while 50 per cent of the levy is allocated to territorial authorities (TAs) to spend on waste minimisation activities.
53. In 2024, targeted amendments were made under urgency to the WMA to enable the central government portion of the levy to be spent on a wider range of environmental activities. The

levy rates were also increased incrementally from July 2024 to July 2027, which will generate more levy revenue. The 2024 amendments did not affect legislated levy provisions for the TA portion of the levy.

54. The range of options explored consider several factors: increase in levy revenue forecast for the next few years; a broad range of environmental challenges that TAs are increasingly having to deal with (many of which are exacerbated by the effects of climate change, aging infrastructure and a lack of investment in infrastructure over many decades); and the broader financial context facing TAs and their local communities (increasing debt, rates increases).
55. On the latter point, work is underway, led by the Department of Internal Affairs, to reset the core obligations of councils (as set out in the Local Government Act 2002) and how these are funded. Any resulting changes, likely over the medium- to long-term, may have a consequential impact on waste management and minimisation responsibilities undertaken by TAs and the use of levy funds that currently support some of these activities.
56. These options are also linked to legislated roles and responsibilities, reporting and accountability requirements, and bylaw-making provisions. As such, it will be necessary to consider the preferred option in conjunction with these other proposals for overall coherence. We expect that these proposals as presented in the consultation document will generate some useful feedback during public consultation. The options considered (as outlined below) are based on expanding status quo settings in recognition of the above points.¹⁴

What options are being considered

Option One – Use of levy funds is limited to waste minimisation activities in accordance with each TA’s waste management and minimisation plan [Status Quo]

57. Currently, the WMA requires that each TA may only spend levy funds on matters to promote or achieve waste minimisation and are in accordance with its waste management and minimisation plan (WMMP) (section 32). Additionally, when considering funding decisions, TAs must consider the effects that the decision may have on any existing waste minimisation services, facilities, and activities (section 32 (2)).
58. The WMMP is intended to be the guiding document for councils to promote and achieve effective and efficient waste management and minimisation within their districts. The WMA also sets out requirements for what the WMMP should contain as well as the process for developing, reviewing and adopting it. TAs’ levy spend is also reported to the Ministry and subject to audits.
59. As increases to levy rates are implemented (scheduled increases will continue to 2027), the increased levy revenue will result in significantly more funds available to TAs for waste minimisation purposes.

Option Two – Allow use of levy funds to include wider waste-related activities

60. This option would expand upon Option One to include spending levy funds on:
 - costs associated with the management of emergency waste and to repair or replace waste management and minimisation infrastructure damaged by an emergency
 - remediation of contaminated sites, including vulnerable landfills
 - waste-related compliance monitoring and enforcement activities.
61. This scope reflects some of the expanded scope for the central government portion of the levy, noting that those amendments ultimately benefit local government. The Contaminated

¹⁴ As at time of drafting this RIS, further legal advice on expansion of levy funds was pending.

Sites and Vulnerable Landfills fund is available for territorial and regional councils to apply to and the funding for emergency waste is intended to support local authorities with the costs associated with managing waste following a declared emergency event. It is assumed that this option may trigger revisiting the criteria for those centrally managed funds.

62. This option would afford TAs the expanded scope and autonomy to allocated funds to the broader range of waste-related activities. It would also provide TAs with a specific funding source for their current compliance monitoring and enforcement activities for mismanaged waste. The Litter Act does not provide for a funding mechanism for this local government mandate; therefore, TAs use general rates.
63. Option Two would have implications for existing reporting mechanisms. This option would also ideally entail a clear supporting framework to help prioritise funding decisions (this could be legislated, set by the Minister via Gazette notice, or operational guidance from the Ministry for the Environment).
64. This option introduces the risk of an emergency event or a contaminated site remediation project using all the allocated levy funds for a particular TA for a given year. (Note also that TAs that receive a relatively lower allocation of levy funds may opt to carry over the funding into the next financial year/s until sufficient funding is secured to implement a large project).

Option Three – Allow use of levy funds to include wider waste-related activities and a broad range of environmental activities

65. This option further expands upon Option Two so includes the use of levy funds as described above plus permits levy funds to be used for activities that reduce environmental harm or increase environmental benefits. This replicates an amended provision in the WMA that now allows the Secretary for the Environment to spend the central government portion of the levy on activities that reduce environmental harm or increase environmental benefits (section 30(i)(c)(iv)). The objective of this 2024 amendment was to enable savings to the Crown, as this provision enabled established environmental activities and initiatives that were previously Crown funded to be funded by levy revenue.
66. Option Three would also have implications for existing reporting mechanisms. This option would also ideally entail a clear supporting framework (legislated or otherwise) to help prioritise funding decisions.
67. This option, in addition to the option described for Option Two, also potentially introduces a greater risk of inconsistent application of the broadened scope across 67 individual TAs; it is unclear if waste minimisation activities would continue to be a priority area in this scenario where multiple environmental activities can be supported by levy funds. This could be partially mitigated through use of an appropriate decision-making framework for use of levy funds.

Option Four – Allow use of levy funds to include any activities undertaken by TAs

68. This option would effectively remove restrictions on the use of levy funds and permit TAs to allocate this funding to any service or activity it has responsibility for.
69. This option would have significant implications for legislative design as the levy essentially becomes a general tax and may require changes to related provisions (eg, function and process for WMMPs, responsibilities of TAs, how and where the levy is collected/who pays for it). This in turn, may also risk the achievement of the other purpose of the WMA (to encourage waste minimisation and a decrease in waste disposal in order to protect the environment from harm and provide environmental, social, economic, and cultural benefits), in that the levy on waste is a purely economic incentive to decrease the disposal of waste and increase waste diversion.

How do the options compare to the status quo?

	Option One [<i>Status Quo</i>]	Option Two	Option Three	Option Four
Effective in supporting waste-related environmental outcomes	0	++ Allows for levy to be spent on wider range of waste-related outcomes	+ Likely some diminished focus on waste-related outcomes, given broader scope of levy spend	-- Likely significantly diminished focus on waste-related outcomes, given broader scope of levy spend
Efficiency of implementation and operation	0	- Some levels of additional complexity; assumed to trigger changes to WMMP process and status quo reporting requirements	- Some levels of additional complexity; assumed to trigger changes to WMMP process and status quo reporting requirements	-- Greater levels of additional complexity; assumed to trigger changes to WMMP process and status quo reporting requirements
Flexibility and adaptability	0	++ Funds able to support wider range of waste-related outcomes	++ Funds able to be used for wider range of environmental activities and adaptable to future needs, though may be expense of waste-related outcomes; additional complexity to prioritisation and decision-making processes	+ Funds able to be used for wider range of activities as needed, though likely at expense of waste and wider environmental outcomes; additional complexity to prioritisation and decision-making processes
Overall assessment	0	++	++	--

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

70. From a purely waste minimisation and management perspective, the preferred option is Option Two (allow use of levy funds to include wider waste-related activities) as this strikes the best balance between maintaining support for critical waste-related activities while also expanding this to areas of increasing need (remediation of contaminated sites and vulnerable landfills, costs associated with managing emergency waste, and providing funding for compliance activities to address waste dumping and other mismanaged waste).
71. While Option One does allow all TA levy funds to be allocated towards waste minimisation purposes there are likely to be limits to its effective investment over the long term (note the parallels with investment of the central government portion of levy funds). Additionally, not

allowing TAs to use some funding for the remediation of contaminated sites and emergency waste costs will likely result in the central government portion of levy funds for these purposes being over-subscribed.

72. Option Two also attempts to balance the objectives of ensuring that levy funds are used to support priority waste-related outcomes while also helping to relieve some financial pressure on local government. Note that some emergency waste costs can be covered by insurance and the contribution of costs for contaminate site remediation does not remove any relevant obligations for landowners (such as under the Resource Management Act 1991).
73. The 2021 consultation showed broad support from local government submitters to use levy funds to address concerns over historic or vulnerable landfills and contaminated sites and for the enforcement of litter abatement. However, during consultation on the second Emissions Reduction Plan (in 2024), local government also expressed concerns that amending the levy to include spending on a wider range of (non-waste related) activities could limit the amount of funding available for waste minimisation activities. They highlighted the waste infrastructure deficit in New Zealand (estimated at \$2.1 to \$2.6 billion)¹⁵ that would persist if funding was directed to other priorities and result in continued restrictions to improved waste minimisation outcomes over the longer term.
74. Targeted consultation (with the Waste Advisory Board, representatives from WasteMINZ's territorial authorities officers forum, and representatives from the Waste and Recycling Industry Forum) in December 2024 resulted in most responders supportive of the Option Two approach. While some expressed significant concern that widening the use of levy funds too much (as in Option Three and Four) could result in the funding of a variety of low-value activities at the expense of waste and environmental outcomes, other responders suggested that the suite of waste activities could be broader still, to include complementary infrastructure.
75. Additionally, significant changes to the levy spend parameters and other waste reform proposals may have a consequential effect on the Government's ability to meet the waste-related actions in the Emissions Reduction Plans 1 and 2. For example, a combination of not having mandatory kerbside organic waste collections (as announced in late 2024) together with enabling TAs to spend the levy on other matters at their discretion, may result in some of the TAs with existing kerbside organics collections opting to cease these services and reprioritise their levy spend elsewhere.
76. Option Three also has advantages and offers a greater degree of flexibility by allowing individual TAs to support a wider range of environmental outcomes with levy funds, which has the potential to reduce the rates burden for local communities in some instances.
77. More generally, the extent to which benefits are realised may be variable, given the range of levy funds allocated to TAs and a wider scope for levy spend. However, councils would likely still need to meet broader local expectations to provide waste minimisation services, such as recycling collections (recognising the existence of private collection services that individuals can purchase). The benefits may also be impacted by any changes to legislated responsibilities of local government (as set out in the Local Government Act 2002) and how core and non-core activities can be funded.¹⁶
78. In general, levies should be imposed only if it is appropriate for a certain group to contribute money for a particular purpose (ie, there is a relation between the levy being charged and

¹⁵ Grant Thornton (2020): Report on waste disposal levy investment options [Waste disposal levy investment options | Ministry for the Environment](#)

¹⁶ Minister for Local Government's proposals for reform: [Government getting local government back to basics | Beehive.govt.nz](#).

the particular objective). The amount of the levy imposed on a particular group should be commensurate with the degree of connection between the group and the objective or function concerned.¹⁷

79. Possible detriments of widening the scope of levy spend too far would include:

- challenges with oversight and accountability of levy spend¹⁸
- a decrease in public support for the levy system
- councils needing to manage a broader array of competing funding priorities
- reduced longer term investment in waste minimisation as demand for use of the levy broadens and increases, including increased political influence in what it is spent on
- unclear implications for any existing consultation and reporting requirements (ie, legislated requirements for WMMP development and consultation; levy spend reporting as established through regulations).

80. To help mitigate these risks we propose a supporting process such as decision-making framework to help with prioritising and associated changes in reporting requirements.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

81. For the purposes of the consultation document, the Minister's preferred approach is to propose Option Three. This will be presented to seek feedback on the components of the proposed widened scope (eg, the status quo use of levy funds, allowing use of levy funds for wider waste-related activities, and allowing use of levy funds for a broader range of environmental activities). As discussed above, there are some trade-offs for each option and further feedback from affected parties would assist subsequent advice on this proposal.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups		n/a	
Regulators		n/a	
Others (eg, wider govt, consumers, etc.)	Possible reduction in waste minimisation activities, in lieu of other activities	Low-medium	Low

¹⁷ Written advice from LDAC (not available as at time of RIS drafting), which has cautioned against scenarios where a 'levy' effectively functions as a tax.

¹⁸ Note that any decision-making that is consistent with the legislation is unlikely to be challenged.

<i>For fiscal costs, both increased costs and loss of revenue could be relevant</i>	(contaminated site remediation; emergency waste costs; other environmental activities)		
Total monetised costs		n/a	
Non-monetised costs		Low-medium	
Additional benefits of the preferred option compared to taking no action			
Regulated groups		n/a	
Regulators	Increase in funding to support TA regulatory functions	Medium	Medium
Others (eg, wider govt, consumers, etc.)	Local Government and local communities – increased ability to support activities that may otherwise be part-funded via rates	Medium	Medium
Total monetised benefits*		n/a	
Non-monetised benefits		Medium	

**Note: levy revenue forecasts can estimate monetised benefits (ie, levy funds allocated to TAs over a given period), however, it is not possible to separate this scenario (where funds can be spent on wider range of activities) from status quo scenario (where these funds can be spent on waste minimisation activities only).*

Topic 2: Tools for compliance monitoring and enforcement (CME)

82. Current mechanisms for compliance within the WMA are very limited, which means it is not possible for the regulator (currently the Ministry for the Environment) to ensure effective monitoring and compliance across a range of activities and operators. The regulator function is varied and involves a cross-section of New Zealand society, including overseeing the actions of landfill operators, manufacturers of specified products, retailers and the public.
83. Offences in the WMA are not well designed, with the prohibited actions not directly related to the harm. The WMA provides for prosecution as the main means of addressing non-compliance, with a \$100,000 maximum fine across all main offences at a central government level (section 65) and a maximum fine of \$20,000 for a breach of bylaws (section 66).
84. Some of the risk areas include levy avoidance behaviour (which can potentially reduce levy revenue intake) and improper disposal of waste materials (which can result in environmental harm and associated clean-up costs).
85. To illustrate, there is currently no legislative ability to compel disposal facilities to pay the levy, except with recovery of debt through court proceedings which is time consuming and costly (section 36). Without stronger CME powers, there is no low-cost method to obtain the levy from disposal facilities.

86. With increasing levy rates and other regulatory costs (such as health and safety, emissions, consents, and monitoring) there is also a risk of improper behaviour (such as through illegitimate disposal of materials) by some operators wanting to be seen as a 'cheaper' service provider, resulting in unfair advantage. Furthermore, waste operators who follow the rules will see illegitimate operators not being penalised for breaching the rules, given the current lack of powers. With an increase in waste levy, legitimate waste operators will expect that illegitimate operators will be compelled to pay their share of the levy.
87. The Litter Act also has CME limitations that impact the ability of Litter Control Officers (LCO) from several public authorities from efficiently and effectively preventing, controlling or deterring littering or dumping of waste (as the detection, infringement and prosecution rates are very low) and from recovering the costs of cleaning up mismanaged waste.
88. This is partly due to the Litter Act being introduced in a time when littering was considered unsightly and unhygienic, rather than pollution that harms wildlife and contaminates soils and waterways. Some of the shortfalls of the Litter Act are listed below:
- the inability for a LCO to enforce littering penalties due to the difficulty in identifying the offender and offending and the high bar for evidence of littering
 - inability to issue infringements to the owner of the vehicle involved in the littering/dumping of waste. Therefore, even if a LCO can identify the vehicle involved, no further action can be taken unless the driver can also be identified and stopped
 - inadequate provisions for preventing and enforcing litter that spills over or is blown over from private land on to public or private land
 - the inability to require a person to clean up the littered/dumped waste from public land (the current requirement is too high a threshold to meet) and set a timeframe within which that must occur
 - insufficient cost recovery provisions for CME and clean-up
 - no ability for seeking compensation if the littering causes environmental harm
 - the need for a suite of tools for CME rather than only prosecution including information sharing among regulators.
89. The WMA CME framework must bridge a range of regulatory tools to be effective in minimising waste and controlling mismanaged waste. Part A of the Government Expectations for Good Regulatory Practice¹⁹ contains expectations for the design of regulatory systems. These expectations specify the need for clarity, flexibility and accessibility including the ability of regulated communities to clearly understand their obligations and what sanctions they may face as a result of any wrongdoing.
90. The current WMA and Litter Act compliance provisions do not meet these expectations. A modernised framework would have greater powers to detect non-compliance, include a mix of criminal and civil approaches, and provide the ability to use appropriate penalties. This would ensure all regulated parties have clear obligations and understand what enforcement action may be taken.
91. Note that while there are two options presented below, in practical terms there may be multiple variations within Options Two that are possible.

What options are being considered

Option One – Retain current legislated compliance framework [Status Quo]

92. As outlined above, existing provisions in the Acts for addressing non-compliance are very limited. Prosecution is the only remedy available, but often prosecution would be a disproportionate response. This means that in cases where non-compliance falls below a

¹⁹ [Good regulatory practice | The Treasury New Zealand](#) page 2, April 2017.

prosecution threshold, there is no consequence. Accordingly, there is little incentive for the waste sector or the public to comply with the WMA and Litter Act.

93. Additionally, the status quo entails a broader framework of processes to help regulated parties understand and comply with their obligations (some or all of these processes could also be used with Option Two). This includes:

- onboarding and education to ensure that the sector understand their legislative obligations as the levy has expanded
- monitoring through audits to confirm compliance of facility operators
- intelligence-lead compliance by monitoring trends and identifying areas where sector engagement and education is required
- alleged breach notification to the Ministry – reporting of non-compliance, and follow up investigations.

94. Balance is required between educational approach and enforcement tools, which is currently limited to prosecution only. Most investigations and compliance do not meet the threshold for making a prosecution and the cost of taking a case to Court is prohibitive for LCOs, particularly with no effective provisions for cost recovery or compensation for environmental damage.

Option Two – Establish a graduated compliance model with greater data sharing and reporting requirements

95. This option entails adding compliance tools that are commonly used in legislation into the WMA. This would include a graduated response model to provide a range of tools and powers to the regulator²⁰ for CME (rather than just prosecution) and enabling greater information sharing provisions between regulators for CME purposes. Additionally, this option would include a requirement for the regulator to annually report on CME performance which would enable the assessment of the effectiveness of the CME tools.

96. The graduated response model would recognise different levels of offending and allow for appropriate means of intervening through use of compliance guidance, risk management tools, warnings and directive notices, punitive sanctions, and remediation requirements.

97. Given the substantial links between the WMA and Litter Act with other environmental legislation (eg, RMA and HSNO Act), there is an opportunity to create information sharing obligations through legislative provisions to help ensure that there are no gaps in addressing non-compliant behaviour across the whole environmental system. For example, this could enable LCOs the ability to seek advice and assistance from the Ministry as central government regulator in certain circumstances, such as for complex mismanaged waste cases, where there is suspected levy avoidance activity, or where mismanaged waste cases span multiple public authority jurisdictions.

98. Non-compliant behaviour in a waste context can often mean also breaching the law in other legislation. For example, a non-compliant landfill may be breaching land use and discharge rules under the Resource Management Act 1991, or an illegal stockpiling operation may also breach resource management and/or workplace safety regulations. Therefore, enabling information-sharing and cooperation between regulators is vital for a coherent regulatory system and appropriate responses to non-compliant behaviour.

99. The purpose of legislated performance reporting is to maintain public confidence in the regulator functions, which are critical to effective deterrence and helping the regulated community and other stakeholders understand how the regime works and what outcomes the processes achieve. Reporting also enables the regulator to assess the effectiveness of

²⁰ Regulator refers to current regulator under the WMA and any public authority warranted Litter Control Officers – currently provided for under the Litter Act.

CME measures and the rate of compliance and non-compliance. 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.

Option considered and discarded

100. Earlier in the policy development process, officials had also considered the adoption of a ‘duty of care’ model to support improved responsibility and, ultimately, more effective compliance monitoring and enforcement. This approach was outlined in the previous RIS and the framework based on that used in the United Kingdom.
101. While this approach does have some benefits, it also has inherent complexities. To briefly illustrate, the framework would entail several overarching duties (applicable to specific parties) consisting of a:
- general duty to manage and dispose of waste appropriately
 - duty to pass waste to an authorised operator or facility
 - duty to recycle properly.
102. Each of these overarching duties would be supported by specific requirements setting out more detailed obligations with corresponding offences and penalties. The specific requirements would be in primary legislation and regulations would provide additional detail on exemptions, supporting infringement schedules for lower-level offending and when the obligations will come into force. The duty of care system would also rely on other supporting regulations to establish a national licensing scheme and national environmental standards.
103. Based on further consideration of the duties of care model, including discussions with LDAC (this information was not available at the time of the drafting the 2023 RIS), we concluded that there were other more effective approaches to improving compliance mechanisms.

How do the options compare to the status quo?

	Option One [<i>Status Quo</i>]	Option Two
Effective in supporting waste-related environmental outcomes	0	++ Greater ability to detect non-compliance, which will help avoid (or address) environmental harm
Efficiency of implementation and operation	0	+ Has some additional complexity that may take time to bed-in; some education of regulated parties may be required; more efficient system in med- to long-term
Flexibility and adaptability over time	0	++ Permits a tiered graduated response approach; inherently flexible with several tools available to address non-compliance
Overall assessment	0	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

104. Option Two is the preferred approach. A modernised CME framework would provide greater powers to detect non-compliance, encourage fairness and consistency across the sector and wider waste system and enable a proportionate response to non-compliance whilst reducing the risk of levy avoidance behaviour and reduced levy revenue.
105. Option Two would provide a wider range of tools within the WMA, for the detection of non-compliance that is proportionate to the level of offending. The graduated response model would strike the right balance between low level offending (with an educational approach or infringements) to gain compliance, with the highest level of offending continuing to be addressed through prosecution.

Is the Minister's preferred option in the Cabinet paper is the same as the agency's preferred option in the RIS.

106. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups	Nature of the cost or impact related to non-compliant activity	Low-Medium	Medium
Regulators	Likely increased use of compliance tools; guidance and education of regulated parties may be required	Medium	Medium
Others (eg, wider govt, consumers, etc.) <i>For fiscal costs, both increased costs and loss of revenue could be relevant</i>	Impact related to any non-compliant activity	Low	
Total monetised costs	Unable to quantify costs; note that compliance activities are currently levy funded (no additional costs to tax- or rate-payers for improved compliance activities.	n/a	
Non-monetised costs		Low-Medium	

Additional benefits of the preferred option compared to taking no action			
Regulated groups	Fair playing field for all; assurance that non-compliant parties are penalised appropriately	Medium	
Regulators	Appropriate tools available to address non-compliant actions and behaviour	High	
Others (eg, wider govt, consumers, etc.)	Increased trust and confidence in waste system; Reduced risk of levy avoidance	High	
Total monetised benefits	Levy avoidance behaviour reduced	Unknown	Unable to quantified
Non-monetised benefits		High	

Topic 3: Tools for addressing littering and dumping

107. Littering and dumping of waste can harm the environment and human health and costs the Crown and communities millions of dollars per year to clean up. There are several environmental and human health harms associated with litter and waste dumping. For example, plastic can break down into microplastics over time which can contaminate the environment and enter the food chain. Even biodegradable organic waste such as garden waste has the potential to spread invasive plant species and other pest organisms. Some littered and dumped waste can also be hazardous, such as demolition waste containing asbestos. Based on available data New Zealand has increasing levels of litter.²¹
108. Littering is currently enforced by a range of public authorities who appoint Litter Control Officers (LCOs) (with enforcement powers) or Litter Wardens (with no enforcement powers). In addition, other persons, by virtue of their office, are deemed to have been appointed as LCOs. This includes police constables, warranted Conservation Officers, National Park and Reserves Rangers and Harbourmasters.
109. The costs of cleaning up litter and dumped waste falls on councils, public and private landowners, communities, and volunteers. Although the exact figure is unknown, the national annual cost likely amounts to millions of dollars. Auckland Council reportedly cleans up an average of 136 tonnes of illegally dumped waste every month, costing around \$2.6 million per year.²²
110. Existing provisions in the Litter Act and WMA are ineffective in preventing, controlling or deterring this behaviour. There is a limited range of offences and the threshold for evidence of an offence is very high (as discussed further in this and subsequent sections).
111. This proposal for littering and dumping considers approaches to address known issues with existing legislative provisions.
112. Legislative provisions that enable a range of offences to be enforced (from small-scale littering to large-scale dumping, which can also be considered levy avoidance behaviour) would assist in addressing several known issues with current provisions:

²¹ The total number of individual items, the weight and estimated volume of litter nationally all increased per 1000 m², since 2019: [Keep New Zealand Beautiful National Litter Audit | Ministry for the Environment](#)

²² [Waste Assessment 2023 \(aucklandcouncil.govt.nz\)](#)

- preventing and enforcing litter that spills over or is blown over from private land on to public or private land (without the owner's permission)
 - the inability to require a person to clean up the littered/dumped waste from public land and set a timeframe within which that must occur and seek compensation from
 - insufficient cost recovery provisions for CME and clean-up
 - the inability for a LCO to enforce littering penalties due to the difficulty in identifying the offender and offending (the current requirement in section 14 of the Litter Act is for the LCO to observe a person committing an infringement offence or have reasonable cause to believe such an offence is being or has just been committed by that person)
 - potential for compensation if the littering and dumping causes environmental harm
 - limited information sharing among regulators.
113. This topic is closely linked to the compliance monitoring and enforcement (CME) topic as most of the litter control and management provisions are CME tools. Note that while there are two options presented below, in practical terms there are multiple variations within Options Two that are possible.

What options are being considered

Option One – Current legislative settings [Status Quo]

114. The Ministry for the Environment has administered the Litter Act 1979 since 2014 when the legislation was transferred from the Department of Internal Affairs. In the 1970s, litter tended to be framed as unsightly and unhygienic, rather than pollution that harms wildlife and contaminates soils and waterways. This framing of litter is reflected in the design of the Litter Act and the limited tools it provides.
115. The Litter Act was established to make better provision for the abatement and control of litter. It bans littering and dumping in public places and on private land without the owner's consent. The Act enables public authorities the power to appoint LCOs or Litter Wardens and a range of people are deemed to be LCOs by virtue of their office.
116. Some of the key features of the Litter Act include:
- public authorities must provide, maintain and empty suitable litter receptacles at every public place where littering is likely to occur
 - where it can be shown that excessive litter is coming from any land or premises, the relevant public authority may require the occupier of the land or premises to provide and maintain litter receptacles of suitable as may reasonably be necessary to ensure that the public place may be kept free of that litter. Where any occupier fails to comply with any such request, the public authority can provide and install those receptacles and may recover the cost from the occupier as a debt due to the public authority.
 - if litter is considered to 'grossly deface or defile an area', the territorial authority may serve a clean-up notice to the occupier of the land
 - LCOs may issue infringements where they observe a person committing an infringement offence or have reasonable cause to believe the offence is being or has just been committed
 - littering on public land or private land without consent has a fine not exceeding \$5,000 or \$20,000 for a body corporate. The penalty is higher where the litter is likely to endanger any person or to cause physical injury or disease or infection to any person coming into contact with it (being in particular any bottle whether broken or not, glass, article containing glass, sharp or jagged material, or any substance of a

toxic or poisonous nature). In such circumstances a person is liable to a fine of up to \$7,500 and a body corporate is liable to a fine of up to \$30,000.

Option Two – Create an expanded range of tools for addressing littering

117. This option includes several mechanisms for addressing littering and dumping. A core component is to ensure legislation can be applied to a range of ‘mismanaged waste’ scenarios (in part through including this in the Purpose of the amended waste legislation). The Litter Act provides a very broad definition of litter, which includes waste matter. The WMA defines waste which also encapsulates littering. Therefore, we propose not to carry over the definition of ‘litter’ and to define ‘mismanaged waste’ instead. This would entail expanding upon the current narrow characterisation of ‘littering’ being a minor act with inconsequential environmental impact and to ensure the definition captures waste that has ‘leaked’ or has the potential to ‘leak’ (intentionally or not) from the formal waste management system into the environment (air, water and soil).
118. Mismanaged waste could vary by volume, type and harm in the following ways:
- litter (smaller amounts and typically pieces of discarded packaging waste)
 - dumped waste (larger volumes, such as construction and demolition (C&D) waste, deliberately discarded out of sight and often avoids the appropriate disposal fee and levy)
 - ‘escaped’ waste or waste that has the potential to escape (typically C&D or packaging waste) that is blown by the wind or carried by water away from one site to elsewhere due to inappropriate management and storage of the waste
 - litter and waste that is particularly harmful to humans and the environment such as hazardous waste, syringes, broken glass or invasive weeds/non-native species in dumped green waste
119. The level of harm caused through mismanaged waste could be reflected through tiered penalty provisions (discussed in previous sections).
120. This option would also enable improved data and reporting tools. Current data on litter and dumped waste is inconsistent, and incomplete, with no centralised collation or reporting. It is not possible to determine the total waste disposed of, the level of illegal disposal, and whether existing policy interventions are having the desired effect. Therefore, this option would extend the current WMA data and reporting mechanisms to littering and dumping.
121. Additional mechanisms and refinements in this option include:
- use vehicle ownership details for the CME of littering and dumping
 - clarify which public authorities can warrant LCOs
 - remove the statutory responsibility for one organisation (Keep New Zealand Beautiful) to be the body primarily responsible for the promotion of litter control
 - clarify the roles, responsibilities and CME tools for regulators and public authorities who manage and enforce littering and dumping.
122. This option reflects sector feedback. The Ministry held a series of workshops between April and June 2023 with LCOs from a range of public authorities that helped identify the proposals for consultation. The workshops were attended by the Council or other public authority representative with responsibility for litter enforcement. The current Litter Act provisions were presented and attendees invited to share their shortcomings, challenges they face with littering compliance monitoring and enforcement, and their suggestions to improve the Litter Act.

How do the options compare to the status quo?

	Option One – [<i>Status Quo</i>]	Option Two
Effective in supporting waste-related environmental outcomes	0	++ Improved range of tools expected to reduce littering and mismanaged waste
Efficiency of implementation and operation	0	+ Ability to tackle non-compliant activities with costs falling on non-compliant parties; may require some time to bed-in new powers
Adaptable to range of scenarios over time	0	++ Broader range of tools available will overcome limitations of current provisions
Overall assessment	0	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

123. The preferred option is Option Two. This provides stronger mechanisms for addressing littering and dumping with a wider scope (different types of mismanaged waste) and ability to detect offences.
124. For the status quo, most councils, and other public authorities (such as the Department of Conservation), report challenges with using the existing legislative provisions, partly because an infringement can only be issued in a narrow set of circumstances and requires that the LCO has observed someone in the act of littering or dumping (section 14 of Litter Act). Other reported challenges include:
- no mechanisms for issuing clean-up notices (where the litter defaces or defiles an area which is a high bar to meet and does not reflect the environmental harm that may be caused by the mismanaged waste),
 - ineffective mechanisms for preventing or enforcing ‘escaped’ waste from private land on to public land,
 - ineffective cost-recovery provisions for clean ups,
 - infringements can only be issued upon conviction which does not allow a LCO to use a range of compliance and enforcement tools to deter offences, and no mechanism for information sharing between LCOs to detect repeat offenders.

Is the Minister’s preferred option in the Cabinet paper the same as the agency’s preferred option in the RIS?

125. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups	Low evidence certainty as not possible to estimate how many people might have been deterred from committing a littering offence	High for those that commit an offence. Low for others	Low
Regulators	Ongoing due to prevalence of littering and dumping activities. Limited evidence certainty as actual clean-up and enforcement data not routinely collected; reliant on anecdotal sources May be impacted by increasing levy rate and cost of living (and therefore incentive to mismanage waste).	Medium Range of activities: direct costs for clearance, education, enforcement activities due to increasing levy rate and cost of living (and therefore incentive to mismanage waste).	Low-medium
Others (eg, wider govt, consumers, etc.) <i>For fiscal costs, both increased costs and loss of revenue could be relevant</i>		High for those that commit an offence. Low for others	
Total monetised costs		n/a	
Non-monetised costs		Medium	
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Incentivised to prevent mismanaged waste and not commit an offence as likelihood of detection and infringement higher.	Medium	Medium
Regulators	Reduced costs of taking enforcement action to issue an infringement as Court action only a response for the most serious of offences.	Medium	
Others (eg, wider govt, consumers, etc.)	Improved environmental outcomes from reduced mismanaged waste and littering, Increased awareness and	Medium	

	understanding of mismanaged waste issues, likely causes and potential prevention measures through improved data collection and reporting		
Total monetised benefits		n/a	
Non-monetised benefits		Medium-High	

Section 3: Delivering an option

How will the proposal be implemented? How will the proposal be monitored, evaluated, and reviewed?

126. Not applicable for this interim RIS as per advice from Ministry for Regulation.

Appendix: Additional information on earlier proposals considered for legislative amendments

A summary of proposals considered but not progressed is outlined below:

Measures related to regulating products and materials

- Proposals for enabling powers to: place restrictions on the sale/distribution of products or materials in New Zealand; include stronger information requirements on specified products and materials; establish environmental performance standards for specific products.

Measures related to regulating how waste is managed

- Proposals for enabling powers to: establish a national waste licensing scheme; establish a waste tracking system for specified waste types; create national standards that could apply to waste sector sites and/or activities.

Measures related to recognising the Treaty of Waitangi in legislation

- Proposals to recognise the Treaty of Waitangi and the interests of Māori in effective waste minimisation and management outcomes (such as via a descriptive Treaty clause or a general operative clause).

Measures related to referencing the waste hierarchy in legislation

- Proposal to incorporate the waste hierarchy for specific provisions to help inform decision making for those provisions.

Measures related to strategic direction

- Proposals to require a national waste strategy to be produced, how often it is reviewed, and its scope.
- Proposal to allow for directing and/or intervening in WMMP process.

For reference, a summary of the proposals presented in the March 2023 on legislative reform is outlined below.²³

Setting roles and responsibilities

Central government

- Option 1 – Status quo: Ministry for the Environment retains existing central government waste functions
- Option 2: Ministry for the Environment expands to take on increased central government waste functions (either by expanding the current division or setting up a new business unit)
- Option 3: Separate departmental agency, hosted by Ministry for the Environment, but with operational autonomy
- Option 4: Policy functions remain with Ministry for the Environment; most operational activity is carried out by EPA (preferred)

²³ Available here: <https://environment.govt.nz/assets/RIS-proposals-to-support-a-transformation-in-waste-management-in-nz.pdf>

Note: This earlier preferred option is not being carried forward to consultation; no change to the status quo.

Local government

- Option 1 – Status quo: Broad, non-specific responsibility for TAs
- Option 2: Focused responsibility for TAs (preferred)
- Option 3: Reduced responsibility for TAs

Waste levy settings

Hypothecation of levy revenue

- Option 1 – Status quo: all levy funding is hypothecated for waste purposes (preferred)
- Option 2: some levy funding is hypothecation for waste purposes, the remainder returned to the general budget
- Option 3: no levy funding is hypothecated, with all levy funding directed to the general budget. Funding for waste purposes would need to be appropriated through the budget process or included in baseline funding within the relevant appropriation.

Note: This preferred option was in-part supplanted by amendments to the WMA in 2024.

Controls on use of funds

- Option 1 – status quo: waste levy to be used to promoting or achieving waste minimisation, but cannot be used for compliance management and enforcement (CME) or anything that isn't considered a project
- Option 2: waste levy to continue to be used to promote or achieve waste minimisation, but allow waste levy to also be spent on research and aspects of CME
- Option 3: broaden how waste levy funds can be used in alignment with the Waste Strategy and the new legislation (preferred) PLUS listed controls for central and local govt

Note: This preferred option was supplanted by amendments to the WMA in 2024 for central government use of levy funds.

Allocation of levy funds

- Option 1 - Status quo: Waste levy funds are evenly split between central and local government (preferred)
- Option 2: Waste levy funds are entirely managed centrally and distributed to territorial authorities based on need
- Option 3: Reduced allocation of waste levy funds available to territorial authorities; remaining levy funds managed centrally
- Option 4: Waste levy funds are split evenly between three pools: central government (its costs and general funding activity); local government (its costs, community funding); contestable investment fund focused on infrastructure.

Distribution of levy funds to TAs

- Option 1 - Status quo: A distribution based solely on population

- Option 2: Allocate the local government portion with a combination of a percentage (20 per cent) distributed equally between all territorial authorities, and the remainder (80 per cent) distributed using a population-based calculation (preferred)
- Option 3: Allocate the local government portion with a combination of a percentage distributed (33 per cent) based on a flat rate for all, a percentage (33 per cent) available through a contestable territorial authority only fund, and the remainder (33 per cent) distributed using a population-based calculation.

Removal of waste to energy exclusion

- Option 1 – Status quo: All forms of waste-to-energy remains excluded from the waste levy
- Option 2 – Remove the blanket exclusion of waste-to-energy from the waste levy, with application to specific types of facilities and technologies to be implemented through regulations. (preferred)

Regulatory tools

Measures to promote better use of products and materials

- Option 1 - Status quo: Tools currently available in the WMA
- Option 2 – expanded range of tools, including extended producer responsibility framework. (preferred)

Note: Some components of the earlier preferred options are not being carried forward to consultation.

Measures to regulate how people manage waste (multiple tools considered against status quo)

- Option 1 – Status quo: Tools currently available in the WMA
- Option 2 – Duties of care framework (preferred)
- Option 3 – National standards for recycling and waste disposal (preferred)
- Option 4 – Waste tracking system (preferred)

Note: The earlier preferred options are not being carried forward to consultation; no change to the status quo.