



Submission on the proposed amendments to New Zealand's waste legislation

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Submitter details

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Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment was established under the Environment Act 1986. As an independent Officer of Parliament, the Commissioner has broad powers to investigate environmental concerns and is wholly independent of the government of the day. The current Parliamentary Commissioner for the Environment is Simon Upton.

Introduction

The Ministry's consultation on amendments to New Zealand's waste legislation includes a broad suite of proposals. This submission focuses on just two of them – changes to who pays the waste levy and how the resulting revenues are used. I comment on each of these in turn below.

Before I do, let me provide my support for the proposed 'Green-farms' regulated product stewardship scheme that is being consulted on separately. The proposed mandatory scheme would cover agrichemicals, their containers and some farm plastics. Given the known environmental harms caused by mismanaged waste generally, and particularly that of hazardous chemicals and plastics, this scheme seems like an efficient and cost-effective way of attempting to mitigate some of those. In future, the scheme should be expanded to include a wider range of agricultural products.

Expanding how waste levy funds can be spent by territorial authorities

At present, waste levy funds distributed to territorial authorities can be used for a sole purpose – to promote waste minimisation.

This was a deliberate decision by the Act's architects. As Nandor Tanczos – the member of Parliament who introduced the Waste Management Bill in 2006 – noted during the Bill's second reading, funds raised by the waste levy "can be spent only on waste minimisation initiatives, and there are powers to withhold funds from councils if the money is being diverted to other

things”. He hinted at the rationale for this during the Bill’s first reading, pointing out that certain industrial interests were supportive of the levy so long as it did not “go into the council coffers to be spent on who knows what”.¹ It is clear from Hansard records at the time that hypothecation was central to the broad political acceptability of creating the levy.²

The current consultation proposes allowing councils to use waste levy funds for four additional purposes:

- the costs associated with managing emergency waste
- activities that provide for the remediation of contaminated sites and vulnerable landfills
- compliance, monitoring and enforcement of mismanaged waste
- activities that reduce environmental harm or increase environmental benefits.

At the outset, let me say that I do not support the proposal to use waste levy funds for any project outside of the waste sphere that reduces environmental harm or increases environmental benefits. I am aware this proposed change is consistent with the change made by the Government to the Waste Minimisation Act last year. This allowed central government to spend its portion of the funds on any environmental cause. However, given that change happened under urgency, this is the first opportunity for comment. Even if one were to accept the argument to remove hypothecation for central government, it doesn’t follow the same arguments that apply to local government. I will return to this point below.

My main concern is the very broad range of purposes to which waste levy funds could potentially be put. In the context of territorial authorities, this could include everything from increased staffing for resource consent processing and monitoring to helping maintain local stormwater infrastructure. Councils already have well established (and more appropriate) means of funding these sorts of activities. The risk of adding the waste levy to the list is that public acceptability of the scheme itself is undermined.

In addition to that, allowing waste levy revenues to be spent on environmental projects generally will create issues for evaluation. At present, section 39 of the Waste Minimisation Act requires the Ministry for the Environment to evaluate the effectiveness of the waste levy every three years. Historically at least, that has entailed answering a reasonably straightforward question: is the levy and the resulting use of funds leading to improved waste outcomes in New Zealand? If levy funds are to be directed to a broader range of purposes, that question will inevitably become more challenging.

I am also unconvinced that waste levy funds should be available for the remediation of contaminated sites.

Historically at least, these sites have often resulted from the inappropriate disposal of mining or industrial wastes by commercial interests or even councils themselves. Stockpiling of mining residues at the Stockton coal mine and burial of horticultural chemicals at the former Fruitgrowers Chemical Company site in Mapua are two such examples.

¹ [Waste Minimisation \(Solids\) Bill — First Reading - New Zealand Parliament](#)

² Nicky Wagner – the then deputy chair of the Environment Committee had the following to say during the Committee of the Whole House: “Territorial authorities can spend levy money only to promote or achieve waste minimisation, in accordance with their waste management and minimisation plans. That was a really important ring-fencing of the money. Many people who made submissions to the Local Government and Environment Committee were nervous about the waste levy, but were much happier if they thought it would be applied only to waste minimisation projects.”

The solution to this issue is not greater recourse to public funds. Rather, councils need to ensure polluting firms and industries are made responsible for any damage they cause by imposing tougher resource consent conditions and – where appropriate – requiring bonds to be paid. Providing access to a pot of remediation money does not foster this sort of approach. At the very least, I think any use of waste levy funds for these purposes should be restricted to legacy sites. And where the legacy is a result of local or central government decisions, it is appropriate that ratepayers or taxpayers foot the bill.

That said, I support the proposal to expand how councils can spend their share of waste levy funds to: (i) the costs associated with managing emergency waste, (ii) activities that provide for the remediation of contaminated sites and vulnerable landfills *where the exacerbator can no longer be held accountable*, and (iii) compliance, monitoring and enforcement of mismanaged waste.

Generally, the Treasury position is to oppose hypothecation of funds for a variety of reasons, which I fully understand and appreciate. This position was presumably the justification for the changes to central government spending last year. However, there are a few reasons to support the hypothecation of waste levy funding:

- transparency in the expenditure of funds coupled with public support for the levy
- heading off any attempts to circumvent the waste levy (fly tipping, unconsented landfills or burning waste); and
- investment in infrastructure that enables New Zealand to recycle and reuse more of its waste.

These points are analogous to the conversation about the need for complementary policies to reduce climate emissions: a price is important but it won't achieve everything.

Transparency

Hypothecation does improve transparency and accountability for the money spent. As a result, it often increases public support for environmental taxation. If we subscribe to the polluter pays principle, environmental taxes should continue to rise over time, and the waste levy is no exception. I have [pointed out previously](#) that New Zealand is behind the rest of the developed world in imposing environmental taxes. As a result, we don't get the same level of benefits, such as environmental improvements and additional revenue raised for the Crown, that other countries do. Hypothecating the waste levy gives the public confidence that money raised in the name of environmental clean-up will be spent there. While the current approach appears to continue the practice of hypothecation, making levy funds available for "any project that reduces environmental harm or increases environmental benefits" is just too broad and will likely undermine public confidence in the levy.³

I understand that concerns have been raised in the past about the effectiveness of how the waste levy has been spent. I share those concerns. But they won't be addressed by what is proposed. Broadening the category of eligible uses risks making the levy look like a slush fund for whatever environmental activity a government is not prepared to fund. One could make an argument that there are other checks and balances on spending which makes hypothecation unnecessary. I'm not convinced of this argument with respect to central government, but the argument is significantly weaker again for local authorities.

³ <https://cdn.who.int/media/docs/default-source/health-financing/technical-briefs-background-papers/whr-2010-background-paper-51.pdf>

Currently, work by the Ministry for the Environment on waste levy spending provides a level of scrutiny and, as mentioned above, the changes proposed here would render that impossible to replicate in the future. In my view, removing hypothecation risks undermining public acceptability of the scheme altogether and makes it harder to assess value for money and the effectiveness of the spend.

Heading off attempts to circumvent the waste levy

Part of the rationale for Extended Producer Responsibility (such as the Green Farms scheme above) is to head off attempts to circumvent the waste levy. While the waste levy is designed to internalise externalities, one possible response is to dispose of waste illegally and thereby avoid the charge. This line of reasoning suggests that it is reasonable to expand the use of the waste levy for compliance, monitoring and enforcement of mismanaged waste.

It also provides a reason to invest in other ways to encourage people to dispose of waste appropriately, particularly for any products that would pose a serious public health risk from inappropriate disposal. Put another way, the waste levy is a flat rate per tonne of waste and there may be some waste products that create more externalities per tonne than the waste levy collects. This might justify spending some of the revenue from the levy to ensure that high-risk waste is captured and disposed of appropriately. Batteries are a good example here.

Investing in infrastructure

While the waste levy provides an incentive to reduce, reuse and recycle, sometimes there can be large barriers to doing so. Investing in infrastructure or new technologies can help overcome these barriers and increase the potential for managing waste here in New Zealand.

While the export of waste may make sense in some circumstances, it is vulnerable to supply chain disruption. One particularly pertinent example was China's refusal to accept our plastic, textiles and paper for recycling. This came after New Zealand shut down home-grown recycling efforts (e.g. paper) in favour of sending waste overseas. Given an increasingly disrupted world, there is value in thinking about resilience and constantly reevaluating whether we can do more recycling here.

It is worth noting that resilience to international supply shocks is a key focus of the Government's recently published minerals strategy. While this centres on developing an internationally competitive minerals industry in New Zealand, it also includes objectives relating to resource recovery and recycling. One such objective is to "support innovation in minerals recycling, recovery, and reuse through science and regional development mechanisms". Such initiatives would be obvious candidates for funding from the waste levy.

As mentioned above, there is an analogy here with some of the arguments around complementary climate policies. Historically, there have not been mitigations available for agricultural emissions, so there has been a reason to invest in finding some. The same goes for waste that we currently cannot reuse or recycle. It makes sense to invest in finding ways to manage these waste streams here in New Zealand. In particular, this applies to waste streams that will grow in the future – for example, electric car batteries and solar panels.

Investing in infrastructure and encouraging compliant management of high-risk waste is not an easy task. Continuous improvement requires a process of experimentation, evaluation (which, as I note, Ministry for the Environment does) and sharing of good practice. This is all much easier to achieve within an ecosystem where spending is constrained by a degree of hypothecation.

I recommend allowing councils to spend their share of waste levy funds on, (i) the costs associated with managing emergency waste, (ii) activities that provide for the remediation of contaminated sites and vulnerable landfills where the exacerbator can no longer be held accountable, and (iii) compliance, monitoring and enforcement of mismanaged waste.

I do not support the levy being spent in a broad, ill-defined and untargeted way that extends to “activities that reduce environmental harm or increase environmental benefits”.

Expanding the waste levy to waste to energy facilities

I agree that waste to energy facilities should pay the waste levy. This will ensure they compete on a level playing field with landfills, and that their future adoption does not cannibalise the (waste levy) funding for waste minimisation, monitoring and enforcement, recycling facilities, etc.

The purpose of the waste levy – as far as I understand it – is to ensure the external costs of waste disposal are incorporated into decisions about whether to reuse, recycle or throw things away. This is reinforced by the Waste Minimisation Act, which identifies the fact that “disposal imposes costs on the environment, society, and the economy” as one of two reasons for imposing the levy.⁴

While landfills manage many of the externalities associated with burying waste, even the best ones cannot manage them all. Hence it is appropriate to charge a levy.

The same point applies to waste to energy facilities. While some of the externalities will be managed, it is not possible to manage them all. Depending on the waste to energy process involved, airborne particulate emissions, gaseous chemical pollution and leftover residues (e.g. fly ash) are of concern. Until there is clear proof that the externalities are lower, waste to energy should pay the full waste levy.

I am aware there is an argument being made that certain types of waste to energy facilities should be excluded from paying the waste levy on the basis of the greenhouse gas emissions they avoid. This argument does not stand up to scrutiny – for two reasons.

The first is that greenhouse gas emissions are already priced in New Zealand via the ETS. As such, firms that substitute low carbon waste products for fossil fuels should already be rewarded financially.

Second, I am sceptical about some of the claims being made about the emissions reductions likely to be associated with waste to energy plants. As recent research by Eunomia demonstrated, much depends on the carbon content of the waste being used as feedstock. The authors concluded that, “the key takeaway from the modelling is that if the waste that is treated has a high fossil carbon content (for example plastics or rubber), then WtE technologies will have higher carbon emissions than landfill”.⁵

⁴ The other being to raise revenues to fund waste minimisation and related activities. [Waste Minimisation Act 2008 No 89 \(as at 01 July 2024\), Public Act 3 Purpose of this Act – New Zealand Legislation](#)

⁵ [Waste to energy technology implications in the Aotearoa New Zealand context](#)

The final argument offered is that waste to energy is less wasteful as it creates energy. However, this is also no reason to reduce the waste levy as the energy is rewarded by selling it on the open market.

Compliance monitoring and enforcement (CME)

I cautiously support the proposals to strengthen the CME regime, although I note that the consultation document doesn't provide a lot of detail on this. The recently released consultation Q&A document attempts to fill in the gap by providing a few examples of compliance tools in the tiered compliance framework.⁶ It is important that the final decisions are informed by robust considerations and analysis.

Data collection and sharing

The discussion document contains several proposals that mention improved data collection and sharing, including addressing data gaps for mismanaged waste, enabling regulations for the collection of data on littering and dumping, improving data collection for stockpiling and clarifying data-sharing provisions in the context of CME. I support the proposals that aim to generate more data and information and fill in the vast gaps with regards to waste that exist in this country. As I have noted in previous reports, high-quality information should form the foundation for any management – yet, the quality of environmental information in New Zealand is often not fit for purpose.

Roles and responsibilities

The discussion document proposes to clarify roles and responsibilities in the waste legislation. I support the proposal to enable the Waste Advisory Board to provide advice to the Minister or Ministry on its own initiative.



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Te Kaitiaki Taiao a Te Whare Pāremata

⁶ [MfE 2025. Proposed waste legislation amendments: Consultation questions and answers](#)