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SUBMISSION TO: Ministry for the Environment

SUBMISSION ON: Proposed Amendments to Waste Legislation

SUBMITTER CONTACT INFORMATION:

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INTRODUCTION

The Building Research Association of New Zealand¹ (BRANZ) welcomes the opportunity to provide feedback on proposals to amend the Waste Minimisation Act 2008 (WMA) and Litter Act 1979 (the Litter Act).

BRANZ is interested in this consultation as our work supports building and construction industry action on waste and helps the industry apply a circular economy approach to their practices. Recently, this has included refreshing the suite of REBRI (Resource Efficiency in the Building and Related Industries) education resources and toolbox², which includes the New Zealand-wide Resource Recovery Map³. REBRI helps to reduce the amount of building waste sent to landfill from construction and demolition sites.

Our responses to the consultation questions are provided below.

Yours sincerely

A handwritten signature in blue ink, appearing to be "CL", written over a light blue horizontal line.

Dr Chris Litten
General Manager, Research

¹ <https://www.branz.co.nz/>

² <https://www.branz.co.nz/reducing-building-material-waste/>

³ <https://experience.arcgis.com/experience/bb89d799d47a491b9fa8da0116ccdf91>

1. Do you support the proposal for a modern EPR framework?

Yes. BRANZ supports the concept of a modern ERP framework. BRANZ would want to ensure that the framework has clear requirements and aligns with international best practice, such as the European Union Waste Framework Directive that includes mandatory performance targets, government-led scheme design and eco-modulated fees, where the cost of ERP fees for packaging are adjusted based on the environmental performance of the packaging, as well as stringent compliance mechanisms. BRANZ would also want to ensure that such a framework enhances sustainability and promotes a circular economy within Aotearoa New Zealand.

However, there are a few things the EPR framework should consider, such as the ambiguity in the process to identify final responsibility. Is it spread over the value chain? or does it only focus on direct retail/ commercial operations? What will be done about enforcement? What can be done to mitigate costs from being transferred to consumers?

2. Do you support discontinuing the government accreditation of voluntary product stewardship schemes?

Unsure. Research has shown that Government accreditation provides recognition and credibility and trust to a scheme. Government accreditation can also help provide an incentive for industry participation. Without accreditation, voluntary schemes may lead to failure to measure effectiveness, poor reporting and an inability to achieve primary goals⁴.

Distribution of levy funds

3. Do you support changing the distribution of levy funds to territorial authorities from a population-based calculation to a combination of a base flat rate (20 per cent) and a population based calculation (80 per cent)?

Yes. BRANZ is supportive especially of a flat base rate competent as it seems like a fairer way to distribute funds. However, consideration is needed for smaller councils who often lack the rates funding base to properly fund waste minimisation initiatives and infrastructure.

Scope of use of levy funds

4. Please indicate your support for changes that would permit territorial authorities to use the levy for:

- a. activities that promote or achieve waste minimisation, in accordance with and as set out in the territorial authorities' Waste Management and Minimisation Plan.**

Yes, but there needs to be consistency and standardisation across councils especially regarding things like Waste Minimisation Plans (WMP) for construction. Using a

⁴ Florin, N., Talwar, S., and Read, R. *Evaluating product stewardship benefits and effectiveness*. Report prepared for the Department of Climate Change, Energy, the Environment and Water, May 2023. This report is available for free download from <https://stewardshipexcellence.com.au/resources/>

standardised WMP, such as the template provided on the BRANZ REBRI resource would enable this and contribute to best practice for industry. We would like to see more collaboration with central and local government with industry to address waste minimisation within the construction sector.

b. costs associated with managing emergency waste.

Yes. BRANZ supports allowing territorial authorities to use levy funds for emergency waste management planning.

c. activities that provide for the remediation of contaminated sites and vulnerable landfills.

Unsure. BRANZ would like to ensure that this proposal is consistent with the Waste Minimisation Act objectives. We feel there should be dedicated funding for prioritising brownfields within urban areas will help ease up land in urban areas for development.

d. compliance, monitoring and enforcement of mismanaged waste.

Unsure. BRANZ agrees that compliance and monitoring and enforcement of mismanaged waste is critical. However, we would like to ensure that funding for these activities does not come from the levy or existing operational funding.

e. activities that reduce environmental harm or increase environmental benefits.

Unsure. 'environmental harm' and 'environmental benefits' are quite broad terms. More specific definitions of what activities would be covered under these terms is critical, especially how they link to the objectives of the Waste Minimisation Act.

5. Please share any suggestions for criteria that could form a decision-making framework for possible spending of the waste levy on environmental benefits and/or reduction of environmental harm.

Environmental benefits	Environmental harm
Circular economy	Carbon footprint
Regeneration	Air quality
Enhanced biodiversity	Water pollution
Enhanced economic and social wellbeing in communities	Biodiversity loss
	Deforestation and land use changes
	Waste generation
	Soil degradation
	Resource depletion
	Chemical pollution
	Noise and light pollution

6. Do you support removal of the current blanket exclusion from the levy for waste-to-energy facilities?

Yes. We should dedicate funds to be used to assist reducing the environmental harms of waste to energy production, such as addressing air pollution, solutions for fly ash as hazardous waste. However, we note that not all 'waste-to-energy' plants create the same outcomes or benefits.

7. Do you agree that the Minister's considerations for a review of the effectiveness of the waste levy should mirror the scope of the purpose of the WMA and the parameters for levy spend (once these are decided)?

Yes. BRANZ agrees it makes sense for the Minister to review the waste levy's effectiveness with the purpose of the Waste Minimisation Act.

8. Do you support changing the timeframe for review of the effectiveness of the waste levy from every three years to at least every five years?

Yes. BRANZ acknowledges that five years is a long time period. We would like to see annual or two yearly KPI-based monitoring of progress as an indicator of progress to track if the levy is on track to meets its goals and objectives.

Use of waivers:

9. Do you support replacing the current levy-waiver requirement of 'exceptional circumstances', instead enabling the Secretary to waive the requirement for an operator to pay any amount of levy in specified circumstances?

Yes. BRANZ supports this proposal. However, for any change, clear guidance is required that outline the circumstances in which a levy waiver may be granted.

10. Do you support limiting the waiver requirement to emergency event situations for which a state of national or local emergency has been declared under the Civil Defence Emergency Management Act 2002 and biosecurity responses have been undertaken under Part 7 of the Biosecurity Act 1993?

Yes. BRANZ supports this proposal. However, there needs to be some process to ensure that non-emergency waste is not incorrectly included under the waiver.

11. Do you agree the waiver requirement for waste from the remediation of a contaminated site should specify any eligibility criteria that an application must meet? If so, please share any suggestions for eligibility criteria.

Yes. Eligibility criteria should include consideration of benefit to community, especially economic and social benefit to the community of the remediation.

Conditions and exemptions:

- 12. Do you support requiring a Minister to consider specific criteria before recommending levy exemption regulations are made (instead of the current requirement that the Minister is satisfied 'exceptional circumstances' exist)?**

Yes, but dependant on what that criteria is. The Ministry for the Environment should seek public consultation on this framework, if adopted.

- 13. Do you support applying a timeframe of a maximum of five years before levy exemptions via regulations must be reviewed or allowed to expire?**

Unsure. BRANZ supports regular review of exemptions, but uncertain on expiry dates, as that can be activity dependant.

- 14. Do you agree that the Minister should be able to impose conditions on levy exemptions?**

Yes. BRANZ supports that the Minister should have the ability to impose conditions on levy exemptions.

Reuse of material at disposal facilities:

- 15. Do we need to clarify in legislation when the levy should be imposed on waste disposed of at a disposal facility, so that waste reuse on site is operationally necessary and reasonable?**

Yes, supporting waste reuse is critical. However, a clear definition on what 'operationally necessary and reasonable' is important to ensure consistent application and enforcement across facilities. We would also like to include better reporting measures for reuse at disposal facilities.

Stockpiling controls:

- 16. Do you support improvements to stockpiling controls by introducing tools such as:**

- a. an approval system with limits and conditions.**
Yes.
- b. changes to the stockpile calculation process to track the throughput of materials.**
Yes.
- c. a stockpile volume threshold limit.**
Yes.
- d. improved data collection, record-keeping and reporting provisions, to increase transparency and traceability of material entering and leaving a site.**
Yes, better data collection is critical to waste reduction and to enable greater visibility over circularity within New Zealand.

- e. **defining/amending the terms ‘diverted material’, ‘accumulation’ and ‘stockpiling’ in the legislation?**

Yes, but their meaning must be constant with other similar jurisdictions, such as Australia.

17. Do you support the proposed changes to the roles and responsibilities for:

- a. **the Ministry for the Environment.**

Yes.

- b. **the New Zealand Customs Service.**

Yes.

- c. **territorial authorities?**

Yes.

18. Do you support a change in the Secretary for the Environment’s ability to retain levy payments to a territorial authority, from mandatory to discretionary?

Unsure. BRANZ believes there should be a criteria that should assist the Minister in making these decisions.

19. Do you support enabling the Waste Advisory Board to provide advice at its discretion?

Unsure. BRANZ would only support this proposal if there is a clear lobbying register and/or guidelines to ensure any advice to government is independent and impartial.

20. Do you agree the regulator should have greater powers to receive data, including the ability to share with other regulators and the Ministry?

Yes. BRANZ supports this proposal, there should also be greater powers to share data with research and scientific organisations to help inform their work, who can also assist government.

21. Do you support the proposed tiered approach to the compliance tools and sanctions?

Yes. BRANZ supports more tools and options for compliance and sanctions dependant on the context and significance of the non-compliance.

Scope of the legislation:

22. Do you support integrating littering and other types of mismanaged waste into the same regulatory framework for waste management and minimisation?

Yes. BRANZ supports all waste provisions within the same regulatory framework.

23. Do you support enabling regulations for the collection of data on littering and dumping?

Yes. BRANZ support enabling better data collection. However, we would want to ensure that data collection and reporting is consistent across New Zealand and shared with territorial authorities and researchers.

24. Do you support expanding the purpose of the WMA to include littering and other mismanaged waste in the new waste legislation?

Yes, however more detail is required.

Roles and responsibilities:

25. Regarding public authorities, do you support:

- a. **limiting the definition of ‘public authority’ as proposed.**

Unsure.

- b. **enabling public authorities (amended as proposed) to warrant Litter Control Officers or appoint Litter Wardens, to manage and enforce littering and other mismanaged waste offences?**

Yes, but they have to have effective powers, rather than just prevention.

26. Do you support removing the assignment of a statutory role for the promotion of litter control to any specific agency or organisation?

Unsure, how will it be guaranteed to take place?

27. Do you support public authorities having a discretion whether they provide waste receptacles in public places but an obligation to empty those receptacles if they provide them?

Unsure. Waste receptacles should be in public places where practical, and councils be responsible for frequent clearing of the receptacles and surrounding areas to minimise littering and waste.

28. Do you support removing the requirement for the Medical Officer of Health to be satisfied that litter receptacles are emptied promptly, efficiently and at regular and prescribed intervals.

Yes.

29. Do you agree that a local or public authority should:

- a. **retain the ability to make grants to any organisation for the abatement or prevention of litter.**

Yes.

- b. **be able to spend such sums of money as it thinks fit on any scheme or campaign for the abatement or prevention of litter.**

Yes, as long any scheme or campaign is monitored and evaluated for effectiveness and provides benefit, especially environmental benefit.

- c. **retain the ability to make bylaws to help reduce littering and dumping, if they are not inconsistent with the provisions of the new legislation.**

Yes

- d. **retain the ability to deter, prevent, require timely clean-up and enforce waste escaping/being carried on to public or private land?**

Unsure. Escaping waste is an important issue, but finding who is responsible can be uncertain. Having severe penalties for repeat offenders or negative environmental harms, for example, hazardous chemicals into water ways etc. would be needed.

- 30. Do you support enabling all types of Litter Control Officers to apply different tiers of compliance tools, where they are authorised to act?**

Yes.

- 31. Do you agree that, in enforcing offences, Litter Control Officers should be able to:**

- a. **use vehicle registration and ownership details.**

Yes

- b. **use appropriate evidence-gathering, search and surveillance powers for vehicles that are implicated in serious dumping offences?**

Yes

Compliance monitoring and enforcement framework:

- 32. Do you support the proposed amendments to the compliance monitoring and enforcement framework for littering and other mismanaged waste offences?**

Yes.

- 33. Do you support lowering the threshold for evidence of a mismanaged waste offence, to allow for effective compliance monitoring and enforcement by Litter Control Officers?**

Yes.

- 34. Do you agree that public authorities should be able to be compensated by the offender if the mismanaged waste offence has caused significant environmental harm?**

Yes.

Cost recovery for removal of waste and correction of damage:

- 35. Do you agree that public authorities, regulators, or occupiers of private land where a littering offence is committed, should be able to recover reasonable costs associated with the removal of the litter/waste and/or the environmental harm caused from the offender? If not, please explain why and provide any suggested alternatives for covering these costs.**

Yes. BRANZ supports this proposal especially for cost recovery and fines and other penalties for repeat offences by the same people or company, and that the fines are reinvested back in waste minimisation.