

Submission

By



to the

Local Government and Environment Committee

on the

**Supplementary Order Paper (SOP) on the
Waste Minimisation (Solids) Bill**

30 October 2007

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**SUPPLEMENTARY ORDER PAPER (SOP) ON THE
WASTE MINIMISATION (SOLIDS) BILL
SUBMISSION BY BUSINESS NEW ZEALAND¹**

1.0 INTRODUCTION

- 1.1 Business New Zealand welcomes the opportunity to comment on the Supplementary Order Paper (SOP) on the Waste Minimisation (Solids) Bill. Given the significance of this issue to business, it is important that the SOP is subject to a thorough consultation process.
- 1.2 Business NZ made both extensive written and oral submissions to the Local Government and Environment Select Committee on the Waste Minimisation (Solids) Bill (August 2006 and February 2007) so it is unnecessary to relitigate the significant issues covered in our earlier submission. Suffice to say that Business NZ strongly opposed the Bill, in particular the introduction of a \$25 per tonne waste levy on waste going to landfill. There is inadequate economic justification for such a levy, given that there are only limited negative effects associated with modern landfills. Any externalities associated with methane from landfills will be covered under the Government's Emissions Trading System (ETS). Business NZ also opposed other elements in the Bill, including proposed requirements for every business (public and private) to set up waste minimisation plans.
- 1.3 Business NZ still stands by all the comments made in our earlier submission including the key recommendations, which were that:

the Waste Minimisation (Solids) Bill not proceed.

Without prejudice to the above recommendation:

Business New Zealand **recommends** that:

- (1) if the Bill is to proceed, then at minimum, a thorough independent cost/benefit analysis be undertaken along similar lines to the recent report by the Australian Productivity Commission².**
- (2) actions other than regulation be considered to help reduce waste, including education initiatives, and website-based advice services.**

¹ Background information on Business New Zealand is attached as Appendix 1.

² Australian Productivity Commission "*Waste Management*" (2006)

- (3) **market driven and industry-led solutions for waste management such as voluntary product stewardship schemes be encouraged, with monitoring of outcomes.**
- (4) **any Government action aimed at reducing waste below normal business practice should be funded through general taxation.**

1.4 There is nothing which has come to hand in the interim period since our original submission was made that would encourage us to change our recommendations. If anything, these recommendations are given more weight, particularly given the in-depth analysis provided through the Australian Productivity Commission's "*Waste Management*" report (2006)³ and the report commissioned by Business NZ (and others) from the New Zealand Institute of Economic Research "*Waste or Rationality? Economic perspectives on waste management and policies in New Zealand*" (February 2007). The Select Committee has had access to both these reports.

Business New Zealand **recommends** that:

the Supplementary Order Paper (SOP) on the Waste Minimisation (Solids) Bill not proceed.

1.5 Notwithstanding the above, the purpose of this submission is to comment on the proposals outlined in the SOP, and seek improvements where appropriate. While Business NZ has significant reservations about the desirability of this SOP (and the original Waste Minimisation (Solids) Bill), our role here is to be constructive towards ensuring that the legislation proposed results in the best possible outcomes for business and the wider public, and achieves the objectives of the Bill in the most cost-effective and efficient manner.

³ It is noted that the Australian Productivity Commission Report "*Waste Management*" (2006) strongly recommended that landfill levies (taxes) be abolished as these are not based on legitimate costs.

2.0 RECOMMENDATIONS

Business New Zealand recommends that:

the Supplementary Order Paper (SOP) on the Waste Minimisation (Solids) Bill not proceed. (p.3)

Without prejudice to the above recommendation:

Business New Zealand recommends that:

any regulations and 'declarations' made under this SOP be subject to a Regulatory Impact Statement (RIS), a Business Compliance Cost Statement (BCCS), and a rigorous cost/benefit analysis. (p.7)

Business New Zealand recommends that:

more effort be made in sending households transparent pricing signals for rubbish collection and disposal before considering interventions such as waste levies. (p.7)

Business New Zealand recommends that:

landfill waste levies (taxes) not be introduced because they are not based on legitimate costs. (p.8)

Business New Zealand recommends that:

before any waste levies are even contemplated, all local authorities which own or operate landfills should be required to demonstrate that its fee structures (including gate fees) reflects the full costs associated with waste disposal thus removing any possible justification for waste levies.

Business New Zealand recommends that:

the purpose (clause 3) of the (SOP) Act be modified to clearly recognise that there will be an optimal amount of waste which is recycled and similarly there will be an optimal amount going to landfills. (p.11)

Business New Zealand recommends that:

only in clear cases of market failure and where voluntary private initiatives have proved unworkable and ineffective should the Minister potentially use his or her powers to declare products ‘priority’ products subject to product stewardship schemes. (p.12)

Business New Zealand recommends that:

clause 7(2)(b) be deleted. (p.13)

Business New Zealand recommends that:

clause 18(1)(a) be deleted.(p.13)

Business New Zealand recommends that:

any Government action aimed at reducing waste disposal below normal business practice be funded through general taxation as there is no justification for taxing households and businesses beyond those landfill fees necessary to pay for the full costs associated with disposal. (p.14)

Business New Zealand recommends that:

If the decision is made to proceed with the proposed waste levy, then the whole of the proposed waste levy (excluding any collection associated costs) go into a contestable fund rather than 50% going to territorial authorities on a per capita basis. (p.15)

Business New Zealand recommends that:

clause 76 contain an explicit requirement for a cost/benefit analysis and recognition of the impact of potential regulation on particular landfill operators, as this may vary across the country. (p.16)

Business New Zealand recommends that:

clause 83 explicitly states the desirability of knowledge and experience in “economics” given that there may well be significant and important economic questions in respect to determining the “optimal” amount of waste, and the trade-offs which may have to be made between greater regulation and control, and the economic costs on the business sector and ultimately the New Zealand economy. (p.17)

3.0 GENERAL DISCUSSION

- 3.1 Business NZ notes, with some comfort, that the SOP proposes significant changes to the original Waste Minimisation (Solids) Bill, in effect replacing the Bill, which will now become the Waste Minimisation and Resource Recovery Bill. Overall, the SOP is a significant improvement on the original Bill from the perspective of the business community. Removed from the original Bill are some of the more draconian measures including the creation of a Waste Minimisation Authority and waste control authorities, requirements for waste management plans for all businesses, public procurement policies and public organisation reporting. All these measures would have increased the cost of doing business for a marginal, if any, real effect on waste minimisation per se.
- 3.2 Before commenting on specific clauses in the SOP, Business NZ would like to raise a few general issues which deserve serious consideration.

Use of Regulation as a “back stop” to voluntary approaches

- 3.3 Business NZ notes that the SOP provides for a potentially wide use of regulations to cover a number of issues outlined in the Bill. While Business NZ is not opposed to regulation per se, Business NZ is very concerned that the SOP gives the Minister extensive powers to regulate provided he or she has obtained and considered the advice of the proposed Waste Advisory Board, and the public has had adequate opportunity to comment.
- 3.4 Similar powers are granted to the Minister in respect to declarations, which can be simply notified in the *Gazette*.
- 3.5 Business NZ is concerned that the potential exists for regulation to be driven by narrow vested interest groups which may well impose costs on other sectors of the economy that the interest groups will not pay for.
- 3.6 While regulation is likely to be used sparingly, the danger is that over time there is the potential for it to be abused. This is all the more worrying given that regulations, like Private Members Bills, are not given the degree of scrutiny that Government Bills receive in respect to the use of Regulatory Impact Statements (RIS) and Business Compliance Cost Statements (BCCS).
- 3.7 Regulations often deal with relatively minor issues such as forms and fees which arguably do not need such rigorous scrutiny. However, in the case of regulations provided for under this SOP, the potential for significant cost impositions on the business sector and households cannot be ruled out.

- 3.8 Business NZ considers there needs to be much more rigorous scrutiny of regulations and ‘declarations’ in the context of this Bill beyond publication in the *Gazette*. Business NZ would support any such regulations being subject to a RIS and BCCS, alongside a rigorous cost/benefit analysis.

Business New Zealand **recommends** that:

any regulations and ‘declarations’ made under this SOP be subject to a Regulatory Impact Statement (RIS), Business Compliance Cost Statement (BCCS), and a rigorous cost/benefit analysis.

Waste pricing signals need attention

- 3.9 Business NZ considers much more effort needs to be made in sending households economically transparent pricing signals for rubbish collection and disposal. Many councils still fund this out of general rates so there is little apparent connection between the amount of rubbish disposed of and the costs faced by households. Significant improvement in pricing is required before considering interventions such as waste levies. This point was made very strongly in the Australian Productivity Commission report on *Waste Management*:

“Getting prices for waste disposal right will help reduce waste generation and achieve an appropriate balance between disposal and recycling. Basic forms of ‘pay as you throw’ pricing for municipal waste, such as charging for larger bins or more frequent services, should be more widely adopted.”

- 3.10 The report also recommended that information on the actual costs for these services should be better communicated to households and recommended abolishing landfill waste levies (taxes) as these are not based on legitimate costs.
- 3.11 Business NZ considers that before any waste levies are even contemplated, all local authorities which own or operate landfills should be required to demonstrate that its fees (including gate fees) reflect the full cost (including any externalities) associated with waste disposal. By charging the full costs associated with disposal should eliminate any rationale for a waste levy and would avoid any need for further interventions as espoused in this SOP.

Business New Zealand **recommends** that:

more effort be made in sending households transparent pricing signals for rubbish collection and disposal before considering interventions such as waste levies.

Business New Zealand **recommends** that:

landfill waste levies (taxes) not be introduced because they are not based on legitimate costs.

Business New Zealand **recommends** that:

before any waste levies are even contemplated, all local authorities which own or operate landfills should be required to demonstrate that its fee structures (including gate fees) reflects the full costs associated with waste disposal thus removing any possible justification for waste levies.

Product stewardship and powers of Minister

- 3.12 The Minister will be allowed to identify 'priority products' for a product stewardship scheme. While the declaration of priority products will require extensive consultation, in essence the Minister will be able to require certain products to have effective product stewardship schemes. The process will be considered to be industry-led or driven, but effectively the Minister will be able to require specific schemes to be developed.
- 3.13 Before making regulations, the Minister will be required to take advice from the Waste Advisory Board, and adequate consultation with those affected by the regulations will need to have taken place. The Minister must be satisfied that:
- without regulation, the objectives of the product steward scheme could not be met;
 - the environmental and economic benefits from implementing the regulations will exceed the environmental and economic costs; and
 - regulations are consistent with NZ's international (e.g. trade) obligations.
- 3.14 While sounding reasonable on the surface, there are some truly draconian clauses in the SOP, for example the Ministerial power to prohibit the sale of a 'priority product' unless it is in an accredited product stewardship scheme (clause 18(1)(a)).

- 3.15 Regulation of priority products and materials could include one or all of:
- disposal bans
 - materials controls
 - take-back service
 - advance disposal fees
 - deposit on products
 - special labelling
 - recycling standards
- 3.16 While the emphasis is on voluntary industry-led approaches to product stewardship, the potential exists for the Minister to introduce an increasing list of so-called priority products for which industry would be required to develop product stewardship schemes, with the threat of regulation if industry does not comply.
- 3.17 The potential for this to add unforeseen costs to doing business in New Zealand has to be considered.

4.0 COMMENTS ON SPECIFIC CLAUSES IN THE SOP

4.1 Notwithstanding Business NZ's primary recommendation that this SOP not proceed, outlined below are some of the more concerning aspects associated with specific clauses along with recommended areas for improvement. It should be noted that the following issues are not an exhaustive list but a focus on some of the more contentious clauses contained in the SOP.

Clause 3: Purpose

4.2 The purpose of the (SOP) Act is stated as being to provide protection for the environment and to provide environmental, social and economic benefits through the more efficient use of resources and reductions in waste and waste disposal.

4.3 While the above objectives might be laudable, they do not provide any sort of sound basis for making waste levies mandatory, or for the other interventions outlined in the Bill.

4.4 There is an "optimal" amount of waste, just like there are an optimal amount of resources that should be spent on crime prevention etc. Waste cannot be completely eliminated, not at least without great cost. Waste may be able to be reduced, but beyond a certain point the marginal cost of taking action to minimise waste becomes progressively higher, while the potential returns from taking action become less. In this respect it pays for companies and individuals to invest in waste minimisation strategies up to the point at which the marginal cost equals the marginal benefits of taking action.

4.5 The Australian Productivity Commission Report on "*Waste Management*" (2006) was instructive in this regard by challenging "...the notion of waste being inherently bad and recycling being inherently good. Policies that minimise waste are not costless and more recycling is not always a better thing."

4.6 Clearly the total costs of time, energy and money need to be considered when making decisions as to whether to dispose of waste in landfills and what types of products may be worth recycling. It is important that in seeking to reduce physical waste we should not waste resources by diverting them from other more valuable uses.

- 4.7 Given the above, Business NZ considers that it would be desirable to modify the purpose of the (SOP) Bill to ensure that it is clear that there will be an optimal amount of waste which is recycled and similarly there will be an optimal amount going to landfill. 'Zero waste' objectives, while well intentioned, are ultimately a nonsense. This needs to be understood explicitly when making regulatory and legislative decisions in respect to waste management.

Business New Zealand **recommends** that:

the purpose (clause 3) of the (SOP) Act be modified to clearly recognise that there will be an optimal amount of waste which is recycled and similarly there will be an optimal amount going to landfills.

Part 2

Product Stewardship

Clause 7: Declaration of priority products

- 4.8 Clause 7 allows the Minister, by notice in the *Gazette*, to declare a product a "priority product" which means in effect that such products will be required to have a product stewardship scheme developed and accredited.
- 4.9 Processes are required to be gone through before the Minister can take this action as outlined in cl 7(2)-(4).
- 4.10 Business NZ has already outlined in this submission concerns in respect to the potential for Ministerial powers to be abused so these are not repeated here, suffice to say that the Minister should face a high threshold test before declaring products to be 'priority products'.
- 4.11 While endorsing the current requirements on the Minister, before declaring a product to be a 'priority product' as outlined in cl 7(2)-(4), Business NZ would endorse additional requirements being imposed on the Minister before such declarations can be made.

- 4.12 In addition to those outlined in earlier in paragraph 3.8 of this submission (that regulations and 'declarations' made in the *Gazette* should first be subject to an RIS and BCCS, alongside a rigorous cost/benefit analysis), Business NZ considers that only in clear cases where voluntary private initiatives have proved unworkable and ineffective should the Minister potentially use his or her powers to declare products 'priority products'. Provision for this should be included within clause 7.
- 4.13 As well, the Australian Productivity Commission Report "*Waste Management*" (2006) outlined concerns in regard to some State and Territory waste management policies, including concerns over "*introducing mandatory product stewardship or extended producer responsibility schemes, where disposal problems have not been adequately demonstrated*".

Business New Zealand **recommends** that:

only in clear cases of market failure and where voluntary private initiatives have proved unworkable and ineffective should the Minister potentially use his or her powers to declare products 'priority' products subject to product stewardship schemes.

- 4.14 The clear message here is that the case for mandatory product stewardship schemes should not be made lightly, based on emotive factors rather than sound science.
- 4.15 In this respect, Business NZ is very concerned that part of the criteria for the Minister to determine whether or not a 'declaration' should be made is if "*there is significant public concern about the nature or level of environmental harm arising from the product at the end of the product's life*" (clause 7(2)(b))
- 4.16 Public opinion provides absolutely no rationale for providing 'declarations' unless such opinion is based on sound scientific data. For example, some wastes that have recently captured public attention make only a small part of landfill volumes, e.g. disposable nappies and plastic bags.
- 4.17 Quite apart from issues surrounding the volumes involved, unless the public are aware of rigorous scientific data providing them with independent information on the potential impacts of products going to landfills, they will not be in a position to make informed decisions on whether or not there is justification for any products to be declared priority products and subject to a product stewardship scheme.

Business New Zealand **recommends** that:

clause 7(2)(b) be deleted.

Clause 18: Regulations in relation to priority products and accredited schemes [and]

Clause 19: Regulations in relation to products (whether or not priority products) and materials

- 4.18 Business NZ notes that these clauses gives the Minister wide powers to regulate in respect to priority products and is concerned that such powers are not abused.
- 4.19 Comment is per what has been said earlier in this submission where paras 3.3 – 3.8 outlined the case for greater controls and requirements in respect to the use of such regulations. Such regulations should only be applied when (a) there is a clear case of market failure and (b) where voluntary arrangements have been pursued and clearly failed.

Business New Zealand **recommends** that:

Clause 18(1)(a) be deleted.

Part 3

Waste disposal levy

- 4.20 Business NZ is totally opposed to the adoption of a landfill levy as outlined in its earlier submission. Our arguments are not repeated here, suffice to restate that the economic justification for such a levy is not clear with this conclusion being supported by Australian Productivity Commission Report on *Waste Management (2006)* which stated that landfill levies (taxes) should be abolished as these are not based on legitimate costs.
- 4.21 Notwithstanding the above, Business NZ considers that clearer pricing signals should be provided to consumers in respect to the disposal of waste as outlined in para 3.9. Currently there are relatively weak pricing signals provided by territorial authorities and these signals often bear little if any resemblance to the actual costs of disposal.

- 4.22 Just to ensure there is no room for misunderstanding, Business NZ supports full-cost pricing of disposal of waste sent to landfills, and the clearer the individual pricing signals there are, the better to ensure individuals, households and businesses are correctly incentivised. However, this should not be confused with waste levies (taxes) which are additional costs over and above the costs associated with disposal.

Business New Zealand **recommends** that:

any Government action aimed at reducing waste disposal below normal business practice be funded through general taxation as there is no justification for taxing households and businesses beyond those landfill fees necessary to pay for the full costs associated with disposal.

The Waste levy

Clauses 21 - 37

- 4.23 The SOP imposes a \$10 per tonne levy on all waste going to landfill. Territorial authorities will be required to collect this levy on all waste going to landfill and pay it to the Ministry for the Environment (MfE). This is expected to raise around \$30 million annually, with businesses paying around 60% and householders the rest.
- 4.24 It is proposed that 50% of the levy be distributed to councils (on a per capita basis) for funding waste minimisation initiatives, while 50% will go into a contestable fund for the development of product stewardship schemes and other waste minimisation initiatives. Councils, communities, businesses and other organisations will be able to apply for funding so that they can improve waste minimisation in their area. A Waste Advisory Board will provide input on the allocation of contestable funding, including priorities for expenditure. The Environment Minister will make final decisions on the allocation of contestable funding, on advice from MfE.
- 4.25 Councils will be required to monitor waste flows, types of waste etc and report this to MfE. This will result in cost increases for some councils for the purchase or upgrade of weigh-bridges and the like. Given the relatively low value per tonne of the waste levy it could result in administrative problems for those with say a boot-load of rubbish (likely to pay significantly less than \$1), so there will be flexibility for councils to decide how they levy customers e.g. whether to have thresholds etc. Council pricing systems are likely to vary. The Bill will also allow councils to charge different rates depending on the type of rubbish produced. In reality however, enforcing such pricing distinctions will probably be uneconomic.

- 4.26 While Business NZ continues to oppose waste levies on the grounds of inadequate economic justification, we consider that if Parliament does introduce waste levies then the whole waste levy (excluding any collection associated costs) should go into a contestable fund. Providing councils with levy funds per capita is likely to result in significant administration costs while the biggest benefits may well occur in one or two concentrated areas. Spreading levy money thinly across councils is likely to be driven solely by political considerations rather than logic.

Business New Zealand **recommends** that:

If the decision is made to proceed with the proposed waste levy, then the whole of the proposed waste levy (excluding any collection associated costs) go into a contestable fund rather than 50% going to territorial authorities on a per capita basis.

Clause 37: Regulations in relation to waste disposal levy and related matters

- 4.27 Please see earlier comments in this submission in respect to regulations (paras 3.3 – 3.8)

Part 6

Reporting and audits

Clause 76: Regulations in relation to records, information, and reports

- 4.28 Business NZ is concerned that the potential exists for regulations made under clause 76 to significantly increase the costs associated with running landfills.
- 4.29 Requirements to provide accurate amounts of the quantity and composition of waste received at landfills may be difficult in many cases and result in the need for a considerable upgrade of plant and equipment utilised on site.
- 4.30 While Business NZ supports better quality data on the types of material going to landfills to provide a greater understanding of waste streams, this needs to be understood in the context of what is reasonably feasible, depending on the nature of landfills, population basis etc.
- 4.31 A “one-size-fits all” approach may not be appropriate in respect to data collection given the varying amounts and composition of material going to landfills.

- 4.32 While the Minister is required to obtain and consider the advice of the Waste Advisory Board and be satisfied that there has been adequate consultation with persons or organisations who may be substantially affected by the regulations, there is no explicit requirement for a cost/benefit analysis, or recognition of the impact on particular landfill operators. This needs to be explicitly included within clause 76.

Business New Zealand **recommends** that:

clause 76 contain an explicit requirement for a cost/benefit analysis and recognition of the impact of potential regulation on particular landfill operators, as this may vary across the country.

Part 7

Waste Advisory Board

- 4.33 Business NZ considers that the Waste Advisory Board will play a critical role in the operation of the proposed Waste Minimisation and Resource Recovery Bill.
- 4.34 The new Bill sets up a Waste Advisory Board with a minimum of 4 and maximum of 8 members, appointed by the Minister for a three year term. The MfE and the Minister will seek the Board's advice on:
- criteria for funding waste projects (the contestability fund);
 - the effectiveness of the waste levy; and
 - priority products and possible stewardship regulations
- 4.35 It will be crucial that the appropriate mix of expertise is retained on the Board.
- 4.36 The Minister, when appointing members to the Board must have regard for the need for a wide range of skills as outlined in clause 83. There is a lack of any mention of the desirability of knowledge and experience in "economics" which would seem a significant oversight given that there may well be significant and important economic questions in respect to determining the "optimal" amount of waste, and the trade-offs which may have to be made between greater regulation and control, and the economic costs on the business sector and ultimately the New Zealand economy. As well, representation from the wider business community is required to minimise the potential for membership of the Board to represent narrow vested interests.

Business New Zealand **recommends** that:

clause 83 explicitly states the desirability of knowledge and experience in “economics” given that there may well be significant and important economic questions in respect to determining the “optimal” amount of waste, and the trade-offs which may have to be made between greater regulation and control, and the economic costs on the business sector and ultimately the New Zealand economy.

APPENDIX 1

BACKGROUND INFORMATION ON BUSINESS NEW ZEALAND

Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 67 member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). An increase in GDP of at least 4% per capita per year is required to achieve this goal in the medium term.

The health of the economy also determines the ability of a nation to deliver on the social and environmental outcomes desired by all. First class social services and a clean and healthy environment are possible only in prosperous, first world economies.