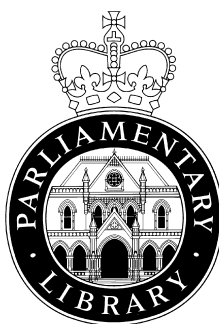


# BILLS DIGEST

**WASTE MINIMISATION (SOLIDS) BILL 2006**  
*(Member's Bill – Nandor Tanczos)*

**Date of Introduction: 04 May 2006**

**Bills Digest No. 1371**



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**WASTE MINIMISATION (SOLIDS) BILL 2006**

Date of introduction:	04 May 2006
Member:	Nandor Tanczos
Select Committee:	As at 16 May, 1 <sup>st</sup> reading not held.

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**PURPOSE**

The purpose of the Bill “... is to protect the environment by minimising the amount of material resources used and the amount of solid waste disposed of in landfills, cleanfills, and incinerators, in line with targets and dates to be set, through instituting measures to give full effect to the principles of the New Zealand Waste Strategy (*Part 1, Clause 3. the “purpose” clause*).

**BACKGROUND**

In a media release<sup>1</sup>, the Green Party’s Environment Spokesperson Nandor Tanczos said the Bill would see the development of a national waste minimisation framework “with teeth to enforce its implementation”. Mr Tanczos said: “The Bill would also see the introduction of rules about what can go into landfills. For example, stuff that can be reused or recycled could not get dumped as it does now. It will also create a mandatory requirement for extended producer responsibility. This means brand owners would be responsible for the waste created in the manufacture and across the life cycle of their products. They will be given the opportunity to work out how to do that themselves”. “An example of this could be the reintroduction of a bottle deposit that would see containers returned to retailers in exchange for the return of a small deposit. The present voluntary Packaging Accord has proved to be a remarkable failure. While some companies have made progress, they have been penalised because their competitors have made no efforts”, Mr Tanczos said.

**MAIN PROVISIONS****Commencement**

The Bill comes into force twelve months after the date on which it receives the Royal assent (*Part 1, Clause 2*).

**The Waste Minimisation Authority**

The Bill establishes the Waste Minimisation Authority (the Authority), consisting of no fewer than eight and no more than ten members appointed by the Minister (taking into consideration the need to represent the private, public and community sectors and

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<sup>1</sup> Media release, Nandor Tanczos MP, Green Party Environment Spokesperson, *A lot less crap in future*, 4th May 2006.

the need to include members with specified knowledge or experience). Provision is made for the appointment by the Minister of a chairperson and deputy chairperson and the authority of those officers. The Authority is a public authority for taxation purposes. The Authority is a body corporate with perpetual succession and is a Crown entity for the purposes of the Public Finance Act 1989. Its function is to encourage, promote, facilitate, and support the achievement of the minimisation of material resource use and waste production by various means including:

- advising the Minister on any matter relating to, or affecting, the use of material resources, the generation, processing, disposal, and cost of waste, including the setting of the level of the waste disposal levy (see below), the functions of the Authority, the prohibiting of certain materials from being delivered to or accepted at a disposal facility;
- monitoring and reviewing the state of waste generation and resource use in New Zealand;
- monitoring progress in minimising waste, including comparing performance with minimisation targets;
- administering, facilitating, and supporting the implementation of the New Zealand Waste Strategy<sup>2</sup> and updating it at intervals not exceeding five years;
- setting percentage and time targets for the reduction of waste disposal;
- developing criteria for assessing the effectiveness of the waste disposal levy; and
- administering the waste disposal levy, increasing public awareness in New Zealand of how persons and organisations can minimise waste and resource use, arranging for the conduct of research, assessments, demonstrations, and studies, promoting practices and technologies to enable waste minimisation and resource use reduction, and reviewing, approving, and monitoring product stewardship programmes (*Part 2, Clauses 7, 8 and 11 – 16; Schedule to the Bill*).

### **Powers of the Authority and its duties in relation to the Government**

The Bill provides that the Authority has the rights, powers, and privileges of a natural person and otherwise has the power to receive money, to make grants, awards, or loans of money, to enter into agreements for the administration of grants, awards, and loans, and to acquire, hold, lease, dispose of, or occupy any land, buildings, or real or personal property as the Authority considers necessary. In the performance and exercise of its functions, duties, and powers, the Authority must give effect to the policy of the Government as it affects the functions of the Authority and comply with any directions relating to the policy of the Government that are given by the Minister

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<sup>2</sup> There appear to be no substantive provisions in this Bill concerning the New Zealand Waste Strategy, apart from the obligation placed on the Authority to implement and review it and obligations placed on Waste Control Authorities to carry out their functions consistently with it. However, there appears to be no provisions relating to what the New Zealand Waste Strategy is, who creates it, how legal effect is given to it, and what that legal status might be.

to the Authority in writing, provided that these instructions are not contrary to this or any Act. The Minister must, as soon as practicable after giving the direction, publish a copy of it in the *Gazette* and present a copy of it to the House of Representatives. The Authority must report to the minister annually. The Minister must present a copy of such report to the House of Representatives (*Part 2, Clauses 9 and 10 and 17*).

### **Waste Control Authorities**

The Bill provides that every territorial authority is the Waste Control Authority in its territory. Territorial authorities may form joint Waste Control Authorities with other territorial authorities to exercise waste minimisation and management functions over the joint territory of the co-operating territorial authorities. Every Waste Control Authority has responsibility for overseeing and regulating waste minimisation and management in its territory and must:

- promote effective and efficient waste minimisation and management in its territory in accordance with the principles outlined in the New Zealand Waste Strategy;
- by 30 June 2006 adopt and implement a waste minimisation and management plan that is consistent with the New Zealand Waste Strategy (see below);
- in adopting and implementing such a waste minimisation and management plan, every Waste Management Authority must have regard for the environmental, social, cultural and economic costs and benefits associated with the plan “for its territory, New Zealand, and the Earth” and ensure no danger is posed to public health and no nuisance is created;
- review its waste minimisation and management plan at intervals not exceeding three years and amend the plan to maintain consistency with the New Zealand Waste Strategy and amend its plan if it is proving ineffective as assessed using criteria to be specified within the plan;
- in adopting and implementing a plan or amending its plan, use the special consultative procedure specified in Part 6 of the Local Government Act 2002 (*Part 3, Clauses 20 and 21*).

### *Comment*

There appear to be no substantive provisions in the Bill relating to the creation and legal effect of the New Zealand Waste Strategy.

### **Waste minimisation and management plans**

The Bill provides that every waste minimisation and management plan must, *inter alia*:

- make provision for the minimisation of waste disposal through public education, through supporting organisations striving to reduce waste through product, process, or system design or redesign and through the development of systems for reduction, reuse, recycling and composting, material recovery, and energy recovery;

- make provision for the collection of waste, require the licensing of every collector, transporter, transfer station operator, and disposal facility operator, and require the separation at source of the “organic fraction”, “reusable, recoverable, or recyclable fraction” and the “residual fraction”, require that the separate fractions be kept separate by collectors and delivered to appropriate facilities and make provision for the appropriate processing of the organic fraction, recovery of the reusable, recoverable, and recyclable fraction, and treatment and disposal of the residual fraction;
- provide for the effective and efficient implementation of the plan, or for activities considered appropriate by the Waste Control Authority for that purpose to be undertaken by, or under contract to, the Waste Control Authority and provide for the Waste Control Authority to monitor compliance with requirements for the separation and appropriate handling of different types of wastes, and prohibitions on disposal of materials; and
- provide for the payment and collection of any levy on waste disposal (*Part 3, Clause 22*).

### **Powers in respect of waste minimisation and management**

The Bill provides the Waste Control Authority with the powers to enter into legal relations, to make by-laws as necessary, and to issue appropriate licences, to carry out certain functions (*Part 3, Clauses 23 – 25*).

### **Collection of waste**

The Bill provides that the collection of waste for any of the purposes listed in the waste minimisation and management plan must be executed promptly, efficiently, and at regular and prescribed intervals to the satisfaction of the Medical Officer of Health having jurisdiction in the territory. If, in respect of any premises, the collection of waste is not executed efficiently or at the prescribed intervals, the occupier or a Health Protection Officer may serve notice on the Waste Control Authority and:

- if the collection service for the premise in question is carried out by the Waste Control Authority itself, remove the waste within 24 hours of receiving the notice;
- if the collection service for the premise in question is carried out under contract to the Waste Control Authority, inform the contractor within twelve hours of the notice being received by the Waste Control Authority and require the contractor to remove the waste within twelve hours of being so informed;
- if the collection service for the premise in question is carried out under a licence issued by the Waste Control Authority but not under contract to it, inform the licensee within twelve hours of the notice being received by the Waste Control Authority and require the licensee to remove the waste within twelve hours of being so informed;
- if the waste is not removed within the period, the Waste Control Authority, contractor, or licensee respectively commits an offence against the Bill (*Part 3, Clause 27*).

**Offences and penalties**

The Bill provides for specific offences in relation to waste disposal and sets penalties (generally, a fine of \$10,000 and \$10,000 for every day an offence continues (*Part 3, Clause 32*)).

*Comment*

The levels of fine are mandatory under Clause 32 (and also Clauses 47 and other clauses) on conviction and the Court has no jurisdiction to impose fines at a lower level.

**Prohibition on disposal of materials**

The Bill seeks to prevent materials which can be reused, recycled, or composted, or from which materials can be recovered, or from which energy can be biologically recovered, using existing systems or systems which could be readily developed, from being disposed of in waste disposal facilities. Offences and penalties are also provided for (*Part 4, Clauses 33 – 36*).

**Waste disposal levy**

The Bill imposes a levy on the disposal of residual waste so as to discourage its generation and to provide funding to support processes, systems, and products that minimise resource use and waste production. Every disposal facility must operate a weighbridge to weigh the material received by it for disposal. Every operator of a disposal facility must keep a full and accurate record of the weight of waste received by the facility for disposal and report a monthly summary of this record to the relevant Waste Control Authority (*Part 5, Clauses 37 – 39*).

**Imposition of levy**

The Bill provides that a levy must be charged by the operator of a disposal facility at a rate set annually by the Governor-General by Order in Council on the recommendation of the Minister. The levy is initially to be set at a rate of \$25 per tonne and is paid monthly. Every Waste Control Authority must transfer to the Authority monthly, 50% of the amount of levies it receives. The Authority must use this money, in priority:

- to fund the establishment, on-going operation, and fulfilment of functions of the Authority;
- in the first two years after this Bill comes into force, to subsidise businesses, and public and community organisations having twenty or more full-time equivalent workers to develop organisation waste minimisation plans and initiatives and to otherwise comply with the Bill;
- in the third to fifth years after this Bill comes into force, to subsidise businesses, and public and community organisations having 5 or more full-time equivalent workers to develop organisation waste minimisation plans and initiatives and to otherwise comply with the Bill;
- in the sixth to tenth years after this Bill comes into force, to subsidise businesses, and public and community organisations having fewer than five

full-time equivalent workers to develop organisation waste minimisation plans and initiatives and to otherwise comply with the Bill (*Part 5, Clauses 40 – 44*).

### **Offences and penalties**

Certain offences against the levy provisions carry maximum penalties of fines of \$100,000 or six months imprisonment and loss of licence (*Part 5, Clause 47*).

### **Extended producer responsibility**

The Bill requires producers of goods to take responsibility for their products throughout the lifecycle of the products including the responsibility to avoid disposal of the products when they become non-functional, out-dated, or unwanted. A brand-owner must not sell, offer for sale, or otherwise distribute a product, for which a product stewardship programme is required, in New Zealand, unless the brand-owner operates a product stewardship programme, with respect to the product, approved under the Bill. Where a product stewardship programme is required, brand-owner and a product stewardship organisation must confirm a chain of responsibility for the product. A product stewardship programme is a programme in which the brand-owner of a product assumes responsibility for the environmental impact of the product throughout its life, including after it is no longer wanted by, or no longer fulfils the purpose of, the consumer (*Part 6, Clauses 48 – 67; Part 1, Clause 5, definition of “product stewardship programme”*).

### **Organisational waste minimisation plans**

The Bill provides that “every business organisation” or “public organisation”<sup>3</sup> existing on the date on which this Act comes into force must develop, adopt, and implement an organisational waste minimisation plan that is consistent with the New Zealand Waste Strategy within specified times (1 January 2008, if the organisation employs more than 19 full-time equivalent people, 1 January 2011, if the organisation employs from 5 to 19 full-time equivalent people, and 1 January 2016, if the organisation employs fewer than 5 full-time equivalent people). New organisations must adopt and implement an organisational waste minimisation plan before commencing operation (*Part 7, Clauses 64 – 67*).

### **Public procurement policy**

The Bill provides that every public organisation must have a procurement policy that explicitly demonstrates its commitment to the principles of the New Zealand Waste Strategy by requiring any purchasing of goods and services to give preference to those goods and services that in themselves facilitate a decrease in waste generation and by requiring any purchase of goods to also give preference to those goods that are able to be repaired should they cease to function as intended, are able to be reused, recovered for material or energy, or recycled once they are considered no longer suitable for their intended use and are made from recovered or recycled materials (*Part 8, Clause 69*).

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<sup>3</sup> The Bill defines the term “public organisation” as “... any Crown organisation [i.e. a Crown entity, government department, or government-related organisation] and every territorial authority, local government organisation, council-controlled organisation, council-controlled trading organisation, and council organisation (as those terms are defined in section 5 of the Local Government Act 2002)” (*Part 1, Clause 5, definitions of “Crown organisation” and Crown organisation*”).

**Public reporting**

The Bill requires “public organisations” to report on their waste generation and resource use (*Part 9, Clauses 70 – 72*).

**Regulations and Ombudsmen**

The Bill provides that the Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, make regulations for specified appropriate purposes. The Authority is made subject to the Ombudsmen Act 1975 and the Official Information Act 1982 (*Part 10, Clauses 73 – 79*).