
Waste Minimisation Act 2008

Enforcement Decision-making Policy



Ministry for the
Environment
Manatū Mō Te Taiao

New Zealand Government

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Contents

Purpose	4
Roles and responsibilities	5
Enforcement decision-making	6
Enforcement Decisions Group (EDG)	7
Objectives	7
EDG membership	7
Scope for decision-making	8
EDG procedure	8
Appendix 1 – Enforcement criteria and tools	10
Enforcement criteria	10
Enforcement tools	13

Purpose

This policy sets out the scope and procedure for making enforcement decisions under the Waste Minimisation Act 2008 (the WMA) and related regulations. If an enforcement decision relates to prosecution, you should also refer to the Ministry's [Waste Minimisation Act 2008: Prosecutions Policy](#).

This policy also sets out the terms of reference for Enforcement Decisions Groups (EDGs).

Roles and responsibilities

Role	Responsibilities
Lead investigator	<ul style="list-style-type: none"> → Appointed as an enforcement officer under section 76 of the WMA → Presenting investigation report to Manager of Waste Operations to decide whether to take low-level enforcement action or refer a matter to an EDG → Presenting investigation report to EDG and answering their questions → Managing the implementation of enforcement
Manager, Waste Operations	<ul style="list-style-type: none"> → Appointed as an enforcement officer under section 76 of the WMA → Notifying the EDG of all investigations launched → Assessing investigation report and deciding whether to take low-level enforcement action or refer a matter to an EDG → Seeking a criminal liability legal opinion if a prosecution is recommended → Notifying the EDG of a matter referred to it, and calling a meeting → Member of the EDG
Enforcement Decisions Group	<ul style="list-style-type: none"> → Hearing investigation reports → Meeting within 10 working days of a matter being referred (urgent meetings may at times be necessary) → Deciding on appropriate action in accordance with this policy
Project/Business support coordinator	<ul style="list-style-type: none"> → Coordinating EDG meetings → Recording the minutes and decision of the EDG
Ministry legal team	<ul style="list-style-type: none"> → Providing legal advice when sought
Crown prosecutor	<ul style="list-style-type: none"> → Providing criminal liability legal opinion if a prosecution is recommended, and taking any prosecutions

Enforcement decision-making

Once an investigation is completed, the lead investigator assigned to the case will present their report and recommendation to the Manager of Waste Operations.

If the manager agrees to take low-level enforcement action in accordance with the enforcement criteria and tools (see [appendix 1](#)), the lead investigator will manage the matter alongside the manager. Low-level actions are restricted to tools 1 to 4 in appendix 1. If there is doubt about whether to take such an action, the matter should be referred to an EDG.

If the manager agrees with the lead investigator that the matter should be referred to an EDG, the manager will notify the chair of the EDG.

If the recommendation is to prosecute, a legal opinion will be sought before referring the matter to the EDG.

Enforcement Decisions Group (EDG)

Objectives

The EDG's objective is to promote robust, independent and accountable decision-making in carrying out the Ministry's role as a regulator under the Waste Minimisation Act.

To deliver on this, the EDG will:

- make decisions in line with legal advice, the Solicitor-General's Prosecution Guidelines, the Ministry's Prosecution Policy, and WMA Compliance Strategy
- make decisions independently, free of political interference
- be informed of all investigations into issues under the WMA
- ensure that decisions are made in a proportionate manner and are well documented.

EDG membership

The EDG will have three members. The director responsible for waste operations will be the chair. The other two members will be:

- Director, Legal
- Manager, Waste Operations.

The members must be collectively qualified to make informed decisions on enforcement action. Key requirements are:

- significant experience in compliance, monitoring and enforcement
- specialist knowledge of the Waste Minimisation Act
- strategic knowledge of the Ministry at a senior level.

If an EDG member cannot attend, they may delegate to a person on an equivalent tier, or a sufficiently senior member of the legal team for the Director, Legal. The EDG must ensure that the delegate has the required knowledge and experience.

Scope for decision-making

The EDG has authority to consider and decide on using the enforcement tools available in relation to the WMA. The EDG will consider factors including:

- the Ministry's WMA enforcement criteria and available enforcement tools (see [appendix 1](#))
- the deterrence or disciplinary value of taking action
- the educational value of taking action
- the ability to give effect to any enforcement action, including consideration of limitation issues
- which action represents the most effective use of the Ministry's resources
- the appropriate person to charge in the circumstances
- whether the action is proportional to the alleged actions or breaches.

When making a decision, the EDG must consider the criminal liability legal opinion, the [Solicitor-General's Prosecution Guidelines 2013](#), and the Ministry's [Waste Minimisation Act Compliance Strategy](#) and [Prosecution Policy](#).

EDG procedure

Meetings

The EDG will meet on an exceptional basis as compliance issues are escalated from investigation. If a matter is referred to the EDG by the Manager of Waste Operations, the EDG must meet within 10 working days of that date.

All three members of the EDG or their substitutes must be present to form a quorum. If a quorum is not achieved, they must reschedule the meeting.

EDG meetings must be attended by the members and the investigator presenting the case. An EDG member or investigator may invite others (eg, subject matter experts) to give relevant information.

The lead investigator will present the findings of the report to the EDG and will answer their questions. Once the EDG has enough information to decide on the case, members will vote on the action to pursue. The group will reach decisions by a simple majority.

A project coordinator or equivalent business support person will administer the EDG, including taking minutes and recording the decision. They will circulate the minutes and the record of decision to the group before the documents are finalised.

Implementing decisions

- The lead investigator manages the implementation of the decision.
- In the case of a prosecution:
 - the Director of Legal instructs a prosecutor, being a local Crown solicitor, to undertake a prosecution
 - the prosecutor advises what charges to bring, and files the charges with the relevant court.

Updating the EDG on investigations

The Manager of Waste Operations will update the EDG on all investigations. Updates will be by email at the time of the investigation being launched, outlining:

- who is being investigated
- which offence under the WMA is being investigated
- a brief description of the issue.

The purpose is to ensure that the EDG is informed of any sector-wide issues or issues about specific entities.

Appendix 1 – Enforcement criteria and tools

Enforcement criteria

1. The purpose of the Waste Minimisation Act 2008 (the WMA) is 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. The Ministry for the Environment takes any breach of the WMA seriously.
2. The Ministry will obtain information to carry out its enforcement function through lawful monitoring and investigation, information provided to the Ministry by informants, and through its work with other agencies.
3. Taking enforcement action ensures fair treatment to those who comply with the WMA, as well as ensuring those who do breach the WMA are held to account and that others are deterred from doing so.
4. When considering enforcement action, the Ministry will balance a range of factors to make sure the action is proportional and targets the greatest risks to the purpose of the WMA.
5. The Ministry will make enforcement decisions based on the particular circumstances of an issue, but will likely consider:

- a. the seriousness of the conduct
- b. the public interest
- c. the reliability and strength of the evidence.

Seriousness of the conduct

6. The EDG is most likely to take action where the suspect's conduct is serious or threatens public confidence in the WMA.
7. Factors include:
 - a. a person has deliberately or recklessly breached the law
 - b. a person has provided the Ministry with information that turned out to be inaccurate or incomplete in a material way
 - c. if the conduct resulted in levy money not being paid
 - d. if the conduct involves the misuse of public funds
 - e. there have been repeated breaches or an ongoing disregard for the Ministry's compliance, monitoring and enforcement role under the WMA
 - f. whether the person has taken action to remedy or mitigate the breach.

The Evidential Test

8. The EDG will consider the reliability and strength of the evidence that has been collected when determining what enforcement action to take, in accordance with the Solicitor-General's Prosecution Guidelines.
9. Factors include:
 - a. evidence sufficiently identifies that a particular person is responsible
 - b. whether the evidence was lawfully obtained and will be admissible in court
 - c. the credibility of the evidence
 - d. whether the evidence provides a reasonable prospect of conviction beyond reasonable doubt
 - e. whether the evidence supports the charges, including if you can identify a person or entity that you can lay charges against
 - f. if there are any gaps in the evidence.

The Public Interest Test

10. The EDG will consider the public interest before taking any enforcement action, and in deciding what action is appropriate and proportionate.
11. Factors include:
 - a. the seriousness of the offence
 - b. if the conduct may be repeated across the regulated community
 - c. the harm or potential harm arising from the breach
 - d. the deterrence or educational value of taking action
 - e. public confidence in the waste minimisation regime
 - f. the likely penalty
 - g. the offender's circumstances
 - h. the use of the Ministry's resources in taking the action
 - i. whether there is a suitable alternative to a prosecution (including civil action).

Assessing the options

12. The Ministry will make enforcement decisions using the full range of tools, and take a graduated approach to non-compliance. The tools are set out below, with guidance on use.
13. In the case of a prosecution, the Ministry will also consider and recommend the most appropriate person to charge, noting that the WMA provides for the liability of principals for the acts of agents.¹

¹ Section 70 of the WMA

Enforcement tools

Enforcement tools	When tool may be used
General	
1 No further action warranted	<p>No breach or offence.</p> <p>Insufficient evidence to pursue breach.</p> <p>Not in public interest to pursue.</p> <p>Breach not serious enough to commit further resources.</p> <p>Limitation period expired and no other suitable enforcement option.</p>
2 Referral to another agency	<p>Another agency has appropriate jurisdiction and/or more appropriate enforcement powers.</p>
3 Compliance letter Advise of breach, educate and/or warn the person	<p>Require action to remedy breach and/or develop compliance programme.</p> <p>Suitable for minor breaches, or alongside other enforcement options.</p>
4 Formal warning	<p>Breach which is serious enough to warrant a warning but does not meet the threshold for a prosecution.</p> <p>Deterrence value.</p>

Enforcement tools	When tool may be used
<p>5 Procedural offences</p> <p>Prosecutions for criminal offences. Maximum penalty is \$5000:</p> <ul style="list-style-type: none">→ Intentionally prevents enforcement officer or auditor from carrying out their statutory duty→ Refuses to give information when required by an enforcement officer or auditor acting under section 79 of the WMA→ Intentionally supplies false or misleading information to an enforcement officer or auditor acting under section 79 of the WMA→ A person who incites any other person to do the above acts <p><i>Sections 65(3)(a) to (c) of the WMA</i></p>	<p>Situations where an enforcement officer or auditor is prevented from performing their functions or duties under the WMA.</p> <p>Decisions made in accordance with the Solicitor-General's Prosecution Guidelines and the Ministry's Prosecution Policy.</p>

Enforcement tools	When tool may be used
<p>6 Criminal offences under the Crimes Act 1961</p> <p>Section 111 – False statement or declaration (imprisonment up to 3 years)</p> <p>Section 228 – Dishonestly using a document (imprisonment up to 7 years)</p> <p>Section 240 – Obtains by deception</p> <ul style="list-style-type: none"> → 7 years’ imprisonment where value >\$1000 → 1 year imprisonment where value >\$500 and up to \$1000 → 3 months’ imprisonment where value up to \$500 	<p>Where an enforcement officer lawfully collects information under the WMA and uncovers evidence of a crime. Decisions must be made in accordance with the Solicitor-General’s Prosecution Guidelines.</p> <p>Person is required or permitted by law to make any statement or declaration before any officer or person authorised by law to take or receive it and the statement or declaration would amount to perjury.</p> <p>Dishonestly uses a document with intent to obtain a service, pecuniary advantage or valuable consideration.</p> <p>By deception:</p> <ul style="list-style-type: none"> → obtains ownership or possession of, or control over, any property, pecuniary advantage, benefit or valuable consideration; or → induces or causes any other person to deliver over, execute, make, accept, endorse, destroy, or alter any document or thing capable of being used to derive a pecuniary advantage; or → causes loss to any other person.

Enforcement tools	When tool may be used
Waste levy compliance	
<p>7 Civil proceedings to recover unpaid levy</p> <p><i>Section 36 of the WMA</i></p>	<p>Where it is established that levy has not been paid in accordance with the WMA and regulations, and an amount can be ascertained.</p> <p>There is merit in taking action in accordance with the enforcement criteria.</p>
<p>8 Prosecution for criminal offence. Penalties can include fine of up to \$100,000</p> <p>A person contravenes regulations made under section 86(1)(a) or (b) of the WMA.</p> <p>A person who, in providing records or other information required by regulations made under section 86(1) (a), (b) or (c) of the WMA knowingly:</p> <ul style="list-style-type: none"> (i) supplies false or misleading information, or (ii) makes any material omission. <p><i>Section 65(1)(e) and (f) of the WMA</i></p>	<p>Serious breach of the regulations.</p> <p>Solicitor-General's Prosecution Guidelines and the Ministry's Prosecution Policy have been met.</p> <p>Legal opinion agrees that a prosecution should be laid.</p>
<p>9 Seek court order for commercial gain resulting from breach of the WMA</p> <p><i>Section 67 of the WMA</i></p>	<p>Can be sought when someone has been convicted of an offence.</p> <p>The EDG must be satisfied that on the balance of probabilities the contravention occurred in the course of producing a commercial gain.</p>

Enforcement tools	When tool may be used
Territorial authorities	
<p>10 Secretary for the Environment must retain levy money in the following situations:</p> <p>(a) at the time the payment is to be made, the territorial authority has not:</p> <p>(i) adopted a waste management and minimisation plan, or</p> <p>(ii) reviewed its waste management and minimisation plan under section 50 of the WMA, if a review was required before the time for payment</p> <p><i>Section 33 of the WMA</i></p>	<p>Mandatory if conditions met.</p>
<p>11 Minister may direct Secretary for the Environment to retain payment to territorial authority if the TA has not met any of the following requirements or under the WMA:</p> <p>(a) the requirement to spend levy money in accordance with section 32 of the WMA</p> <p>(b) a performance standard set by the Minister under section 49 of the WMA</p> <p>(c) any prescribed requirement to provide records or information</p> <p><i>Section 37 of the WMA</i></p>	<p>Process and criteria to be established.</p>

Enforcement tools	When tool may be used
Plastic bag ban	
<p>12 Prosecution for criminal offence. Penalties can include fine of up to \$100,000</p> <p>A person who knowingly contravenes regulations made under section 23(1)(b) of the WMA</p> <p><i>Section 65(1) of the WMA</i></p>	<p>Serious and repeated breach of the regulations.</p> <p>Tests within the Solicitor-General's Prosecution Guidelines and the Ministry's Prosecution Policy have been met.</p> <p>Legal opinion agrees that a prosecution should be laid.</p>
Waste Minimisation Fund	
<p>13 Enforce contractual conditions</p>	<p>Enforcement option will depend on the circumstances of each case and the terms of the contract.</p>
Product stewardship²	
<p>14 Revocation of scheme accreditation</p> <p><i>Section 18 of the WMA</i></p>	<p>Process and criteria to be established.</p>

² A scheme set up under Part 2 of the WMA.

Enforcement tools	When tool may be used
<p>15 For regulated product stewardship only</p> <p>Prosecution for criminal offence. Penalties can include fine of up to \$100,000</p> <p>A person who contravenes regulations made under section 22(1)(a) of the WMA</p> <p>A person who contravenes regulations made under section 23(1) (c), (d), (e), (f) or (i) of the WMA</p> <p><i>Section 65(1)(a) and (c) of the WMA</i></p>	<p>Serious breach of the regulations.</p> <p>Solicitor-General's Prosecution Guidelines have been met.</p> <p>Legal opinion agrees there is a case to bring.</p>

