



Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020

**Report No. 3, 57th Parliament
Health and Environment Committee
February 2021**

Health and Environment Committee

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All web address references are current at the time of publishing.

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Abbreviations

AMCS	Australian Marine Conservation Society
APCO	Australian Packaging Covenant Organisation Ltd
AS	Australian Standards
Bill	Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020
CCC	Capricorn Conservation Council
COEX	Container Exchange (QLD) Limited
committee	Health and Environment Committee
DES / department	Department of Environment and Science
EDO	Environmental Defenders Office
EHA (QLD) INC	Environment Health Australia (Queensland) Incorporated
EPS	Expanded polystyrene
FBA	Fitzroy Basin Association
HRA	<i>Human Rights Act 2019</i>
LGAQ	Local Government Association of Queensland
LSA	<i>Legislative Standards Act 1992</i>
MRF	Material Recovery Facility
NRA	National Retail Association
NRAIDEC	Natural Resources, Agricultural Industry Development and Environment Committee
NRAIDEC report	Natural Resources, Agricultural Industry Development and Environment Committee: Report No. 8, 56th Parliament - Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020
SCEC	Sunshine Coast Environment Council
RIS	Single-use Plastics Consultation Regulatory Impact Statement
WMRR	Waste Management and Resource Recovery Association of Australia

Chair's foreword

This report presents a summary of the Health and Environment Committee's examination of the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 was examined by the former Natural Resources, Agricultural Industry Development and Environment Committee in the 56th Parliament. That committee tabled its report on the Bill on 28 August 2020.

Given that the Bill is the same Bill that was comprehensively examined by the Natural Resources, Agricultural Industry Development and Environment Committee, the committee agreed to consider the subject Bill and include the former committee's report as part of its report.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank the Department of Environment and Science and our Parliamentary Service staff.

I commend this report to the House.



Aaron Harper MP

Chair

Recommendations

Recommendation 1

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The committee recommends the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 be passed.

1 Introduction

1.1 Role of the committee

The Health and Environment Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

- Health and Ambulance Services
- Environment, Great Barrier Reef, Science and Youth Affairs.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019*
- for subordinate legislation – its lawfulness.²

The committee also has oversight functions in relation to the Health Ombudsman and the health service complaints management system.

The Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly and referred to the committee on 3 December 2020. The committee was required to report on the Bill by 12 February 2021.

1.2 Inquiry process

The Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020, was originally referred to the Natural Resources, Agricultural Industry Development and Environment Committee (NRAIDEC) in the 56th Parliament. The NRAIDEC tabled their Report No. 8, 56th Parliament - Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 (NRAIDEC report) on Friday, 28 August 2020, however, the Bill lapsed before it was debated in the Parliament when the 56th Parliament was dissolved on Tuesday, 6 October 2020.

The NRAIDEC report made five recommendations:

- that the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 be passed.
- that the Bill be amended to include expanded polystyrene takeaway food containers in the first tranche of this legislation.
- that the Department of Education and Science review the exemption of schools from the ban on the supply of single-use plastic items as part of the two year review.
- that the Queensland Government work with local governments, through the Resource Recovery Industry Development Program, to establish a network of material recovery and composting facilities across Queensland.
- that the Department of Environment and Science review the penalties for providing false or misleading information about single-use plastic items as part of the two-year review.³

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

² *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

³ Natural Resources, Agricultural Industry Development and Environment Committee: Report No. 8, 56th Parliament - Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020, 28 August 2020, p v.

Under section 107 of the *Parliament of Queensland Act 2001*, the Hon Leeanne Enoch, then Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts provided an interim response to recommendations directed to Government which stated 'the Government notes the Committee's recommendations and advises that these matters will be further considered prior to any reintroduction of the Bill'.⁴

The Bill before the committee is the same as the Bill examined by the NRAIDEC. The committee agreed to utilise the evidence provided to the NRAIDEC inquiry and to include the NRAIDEC's report as part of its report. The NRAIDEC's report is included in **Appendix B**.

On Monday, 7 December 2020, the committee invited stakeholders and subscribers to again make written submissions on the Bill. A total of 13 submissions were received.

The committee also requested a written brief from the department on the Bill and received written advice from the department in response to matters raised in submissions.

The submissions and correspondence are available on the committee's webpage.

1.3 Policy objectives of the Bill

According to the explanatory notes, the principal policy objective of the Bill is to amend the *Waste Reduction and Recycling Act 2011* to ban the supply of single-use plastic items, starting with straws, stirrers, plates and cutlery. The Bill seeks to achieve a reduction in plastic pollution resulting from single-use plastic by 20% by 2023.⁵

1.4 Government Consultation on the Bill

The explanatory notes state that consultation on the Bill was conducted during March and April 2020. On re-introduction of the Bill, the Minister highlighted additional consultation being undertaken by the Department of Environment and Science (DES/department) in relation to expanded polystyrene takeaway food containers:

During the recent state election our government made a commitment to undertake consultation on including polystyrene in this first tranche of single-use items to be banned. I am pleased to inform the House that this public consultation has commenced, with a survey now available for people to have their say until 15 January 2021.⁶

The department's written briefing on the Bill stated:

To facilitate a comprehensive understanding and consideration of the economic, social and environmental impacts of the proposed ban, a Stakeholder Advisory Group and Inter-Departmental Committee were established in February 2020.

The Stakeholder Advisory Group included peak bodies representing the retail, hospitality, tourism, food service, disability, aged care, local government, and environment sectors. The Stakeholder Advisory Group and Inter-Departmental Committee will continue to meet and advise on various matters for the implementation of the ban.

Public consultation on the proposed ban occurred between 13 March and 30 April 2020 with the release of the Single-use Plastic Items Consultation Regulatory Impact Statement. The Consultation Regulatory Impact Statement put forward four options, which were:

⁴ Hon Leeanne Enoch, then Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts, government response, Natural Resources, Agricultural Industry Development and Environment Committee: Report No. 8, 56th Parliament - Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020, 10 November 2020, p 1.

⁵ Explanatory notes, p 1.

⁶ Hon Meaghan Scanlon, Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs, Queensland Parliament, Record of Proceedings, 3 December 2020, p 325.

- Option 1 – Maintain the status quo.
- Option 2 – Introduce a ban on the supply of single-use plastic straws, stirrers, plates and cutlery.
- Option 3 – Implement non-regulatory approaches, including greater education and awareness.
- Option 4 – Install additional litter collection and clean up infrastructure.

Ninety four per cent of the nearly 20,000 respondents showed overwhelming support for the introduction of a ban. An analysis of the submissions was undertaken and included in a Consultation Report, which was released on 15 July 2020.

Public consultation and stakeholder submissions strongly supported the inclusion of a ban on expanded polystyrene takeaway food containers.

Delivering on the commitment for further consultation to occur prior to consideration of expanded polystyrene being included in the Bill, the Queensland Government commenced public consultation on 30 November 2020. This consultation remains open until 15 January 2021. Further consultation is also being undertaken targeting the retail and business sector. Analysis from this feedback will be considered prior to any amendments to the Bill.⁷

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives it is intended to achieve, and consideration of the information provided by DES, submitters and the findings of the NRAIDEC report, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 be passed.

⁷ Department of Environment and Science, correspondence, 18 December 2020, attachment, p 4.

2 Examination of the Bill

Given the comprehensive inquiry conducted by the NRAIDEC in the 56th Parliament, the committee considered only new matters raised during this inquiry.

This section discusses the issues raised during the committee's examination of the Bill.

2.1 Submissions

Each of the 13 submissions to this inquiry supported the principle of a ban on certain single-use plastic items. Of these, 6 of the submitters had previously provided submissions to the original inquiry during the 56th Parliament. The new submissions from these stakeholders re-affirmed and largely repeated their previous support of the Bill. The committee acknowledges these follow-up contributions from:

- Waste Management and Resource Recovery Association of Australia
- Wildlife Preservation Society of Queensland
- Boomerang Alliance
- Local Government Association of Queensland Ltd
- National Retail Association
- Sea Shepherd Australia.

Further support for the Bill was received from 7 new submitters. A list of submitters is provided at **Appendix A**. The key new points from across all of the 13 submissions are outlined below.

2.2 Items to be banned

The single-use plastic items included the proposed ban are:

- plates
- bowls
- items of cutlery
- straws
- stirrers, and
- any other item prescribed by regulation to be a banned single-use plastic item.⁸

2.2.1 Stakeholder views

As noted above, the submissions provided unanimous support for the Bill's planned introduction of bans for these items. For instance, the Local Government Association of Queensland (LGAQ) stated its 'support for a ban on single use plastic items from several perspectives - as a service provider, regulator and as a community representative.'⁹

The Capricorn Conservation Council (CCC) stated:

CCC is supportive of introducing this legislation to ban the supply of single-use plastics products starting with plastic straws (taking into account the disability needs of people), stirrers, plates/bowls and cutlery. This legislation is a positive step forward in reducing waste and litter, and will assist in protecting our marine environment.¹⁰

⁸ Explanatory notes, p 7.

⁹ Submission 10, p 1.

¹⁰ Submission 7, p 1.

Plastic Bag Free Livingstone supports enabling legislation to ban the supply of specific plastics products, starting with plastic straws (considering the disability needs of people), stirrers, plates/bowls and cutlery.¹¹

Environmental Health Australia (Queensland) Incorporated (EHA (QLD) INC) stated:

EHA (QLD) INC supports the abovementioned Amendment Bill 2020 to reduce plastic waste and the environmental and economic impacts of plastic pollution. EHA (QLD) INC supports the introduction of legislation to limit and reduce the supply of single-use plastic items, such as straws, stirrers, plates and cutlery.¹²

The Sunshine Coast Environment Council (SCEC) stated:

The hospitality sector and their associations have not raised any major objections to this ban and, indeed, largely back the proposals. The success of the Boomerang Alliance Plastic Free Places program shows that many cafes and food outlets want to change practices, to reduce litter and to meet the expectations of their customers. ... As an ally of the Boomerang Alliance, SCEC supports the introduction of this legislation and urges its implementation as soon as practical.¹³

Joe Kelly MP, stated:

In December 2020, in my capacity as the Member for Greenslopes, I published a survey in my electorate which was emailed to 4584 constituents in my electorate regarding the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020.

Of that, 1195 recipients opened the email and 77 completed the survey.

...

Over 89% of respondents support the ban of single use plastics.¹⁴

2.2.2 Departmental response

The department's written briefing on the Bill stated:

The Bill will ban the sale and supply of single-use plastic straws, stirrers, plates, and cutlery. These items have been selected to be banned because:

- their use can, in many circumstances, be avoided in the first instance;
- they have a high degree of consumption in Queensland;
- litter surveys consistently list them in the top 10 of littered items;
- they are not recyclable and can contaminate recyclable items collected via kerbside collection services;
- there are a range of suitable alternatives available as replacements;
- there is a high level of community and business support for action on these items as a starting point; and
- several food and retail businesses have already committed to a voluntary phase out of items such as straws, stirrers and cutlery.¹⁵

¹¹ Submission 5, p 1.

¹² Submission 9, p 1.

¹³ Submission 8, p 1.

¹⁴ Submission 2, p 1.

¹⁵ Department of Environment and Science, correspondence, 18 December 2020, attachment, p 2.

Committee comment

The committee notes the universal support from submissions for the aims of the Bill. There were no submissions received that opposed the banning of the specified items.

2.3 Date of introduction

The previous Bill that was introduced in the 56th Parliament, included a proposed commencement date of 1 July 2021. However, the Minister's introductory speech for the new Bill noted a delay to commencement as a result of the impacts of COVID-19. The Minister stated:

In recognition of the fact that this has been a difficult year for many small businesses in the hospitality sector, the ban's start date will be no earlier than 1 September 2021. We will confirm the start date once the bill passes in early 2021. This date recognises business recovery from COVID-19 impacts, providing sufficient time for impacted sectors and businesses to source alternative suppliers and use stock on hand. I note, however, that many businesses have already made the shift away from these single-use plastic items.¹⁶

2.3.1 Stakeholder views

A number of submissions stated that the original commencement date should remain.

The Wildlife Preservation Society of Queensland stated:

The start date for the first ban of products was scheduled for July 2021. Wildlife Queensland appreciates that consideration may be given to deferring that date due to Covid-19 implications however that should not occur as relevant sectors have been aware of government intentions to remove these products for a long time and some business have already changed operations.¹⁷

Boomerang Alliance stated:

The proposed bans were announced in November 2019 meaning that suppliers and their customers in Queensland will have had over 20 months (by July 2021) to prepare for the changes. In addition, the global manufacturing and supply chain for packaging has committed to making changes for a number of years. Many fast-food chains (e.g., McDonalds) have already switched from plastic straws and cutlery, whilst Coke announced they had stopped supplying plastic straws several years ago. Nobody can claim they did not foresee these bans. The retail, food services and hospitality sectors have been aware of government intentions to remove these products and many have already changed their procurement practices and use alternative options. Most of these businesses support this legislation and its purpose to avoid unnecessary plastic waste and litter.¹⁸

Sunshine Coast Environment Council supported:

The start date for the first tranche of products to be banned being July 2021, with no additional transition period. The retail, food services and hospitality sectors have been aware of government intentions to remove these products for some years and many have already changed their procurement practices and use alternative options. Most of these businesses support this legislation and its purpose to avoid further waste and litter as soon as possible...¹⁹

Waste Management and Resource Recovery Association of Australia (WMRR) stated:

WMRR continues to support the 1 July 2021 commencement date but again notes that flexibility must be given due to the continued COVID-19 pandemic and its medium- to long-term impacts on businesses. As such, it is imperative that a minimum six-month transition period is provided, including programs and

¹⁶ Hon Meaghan Scanlon MP, Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs, Queensland Parliament, Record of Proceedings, 3 December 2020, p 323.

¹⁷ Submission 4, pp 1-2.

¹⁸ Submission 6, p 4.

¹⁹ Submission 8, p 2.

initiatives such as community education, communication, and facilitation of the sourcing and use of alternatives.²⁰

Some submissions supported the new commencement date. For instance, the National Retail Association (NRA) stated:

In principle, the NRA supports an implementation date of 1 September 2021, however we note that COVID-19 restrictions and associated supply chain complications warrant ongoing consideration.

The government may need to consider allowing retailers to exhaust stock purchased prior to the legislation being passed to avoid large quantities ending up in landfill. For example, one option may be to allow a finite grace period in which retailers cease to replenish banned stock but are able to exhaust shelved stock.

...

Importantly, we maintain that a critical requirement of meeting a 1 September 2021 implementation date will be extensive consumer education as soon as possible to ensure consumers are prepared for the change and backlash on businesses is avoided. Though consumer support is high for the ban, previous experience with the bag ban and the fact that the majority of QLD consumers do not currently bring their own straws, cutlery or containers, demonstrates that consumer preparedness and behaviour change is critical.²¹

The EHA (QLD) INC stated:

EHA (QLD) INC supports the abovementioned Amendment Bill 2020 to reduce plastic waste and the environmental and economic impacts of plastic pollution. EHA (QLD) INC supports the introduction of legislation to limit and reduce the supply of single-use plastic items, such as straws, stirrers, plates and cutlery.²²

The CCC stated:

CCC believe that the commencement date for the ban on these first tranche products should be during the third quarter of 2021. This will provide a sufficient transition period for the retail, food services and hospitality sectors, many of which have already moved to alternative options.²³

Sea Shepherd Australia stated:

Commencement date of 1 September 2021 – this provides sufficient time for individuals and businesses to prepare for the proposed ban.²⁴

Committee comment

The committee considers given the impact of COVID-19 on the business sector it is reasonable and appropriate that the previous commencement date of 1 July 2021 be slightly delayed for the reasons noted by the Minister in her introductory speech. This minor delay is also supported by a number of submissions.

2.4 Definitions of banned items

The Bill includes a number of definitions of the items that are proposed to be banned and the relevant Australian Standards (AS).

²⁰ Submission 3, p 2.

²¹ Submission 11, p 2.

²² Submission 9, p 1.

²³ Submission 7, p 1.

²⁴ Submission 13, p 1.

2.4.1 Stakeholder views

In relation to these definitions, the NRA stated:

We re-emphasize our submission in that retailers require clarity on the definition of items and what products are and are not banned under these terms to be able to take timely action.

We believe the current legislation provides adequate explanations of most of the items to be prohibited however the legislation still lacks clear definitions for “bowls” and “plates”.

For example, many retailers use lidded bowls as takeaway containers and need certainty that these items would be considered containers and not captured as bowls under the legislation. Additionally, retailers who supply catering products need clarification about the size and diameter distinction separating a plate from a platter. Providing more clarity on the differences between bowls, containers and tubs as well as the differences between plates, trays and catering platters will help to address retailer concern and uncertainty on these issues.

We also re-emphasize that any uncertainty in which products are prohibited and which are allowed needs to be rectified before retailers can be expected to act. Many retailers order 12 to 18 months in advance and in bulk quantities, and these businesses will need clarity and adequate time to ensure solutions are not only compliant, but functional and safe.²⁵

2.5 Proposed 2 year review

Division 4 of the Bill provides for a review of ‘part 3AA Plastic items’, ‘starts not more than 2 years after the commencement’.²⁶

2.5.1 Stakeholder views

Noting recommendation 5 of the NRAIDEC report, the WMRR stated:

The report notes several issues and recommendations that could be considered during the statutory two-year review, such as the penalty rate, highlighting the significance of this review in light of numerous proposals not being encompassed in this initial Bill, particularly the inclusion of EPS and oxo-biodegradable materials in the initial tranche of banned items. While WMRR supports the inclusion of these materials in the first tranche, particularly EPS given there are, in existence, alternatives to this product, we note that these items have not been included in the Bill, which the committee has proposed is passed. Thus, WMRR strongly suggests that a timeframe for second stage ban be written into the Bill; this could be aligned to the two-year review, i.e., that the second tranche will be rolled out as part of the review. This two-year timeframe provides businesses with adequate time to source alternatives and transition while adding much-needed pressure that would drive innovation and investment in product design.²⁷

2.5.2 Departmental response

The department’s written briefing on the Bill stated:

The Bill provides for a review of the efficacy of the ban within two years of its commencement. The review must address several matters including:

- the impacts on various sectors including persons with disability or healthcare needs;
- levels of public awareness and knowledge, and compliance;
- effectiveness of the ban in reducing single-use plastic items; and
- impact of the ban on alternatives to single-use plastics.²⁸

²⁵ Submission 11, pp 2-3.

²⁶ Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020, p 12.

²⁷ Submission 3, p 2.

²⁸ Department of Environment and Science, correspondence, 18 December 2020, attachment, p 4.

Committee comment

The committee supports the legislated requirement for a review to start within two years of the Bill's commencement and notes that the terms of this review have been outlined by the department. The committee suggests that any additional issues that may arise as part of the introduction of this Bill will also be included in the review.

2.6 Exemptions

Division 2 of the Bill provides exemptions from the proposed ban for certain businesses and undertakings. A number of submissions commented on this aspect of the Bill.

2.6.1 Stakeholder views

The NRA commended the Queensland Government for 'for the pragmatic decision to allow exemptions for certified compostable items, in particular for bowls and plates.' Further, the NRA stated:

We maintain our original position that at this point in time, certified compostable options such as those lined with polylactic acid (PLA) are the only viable and safe alternatives for many businesses. For example, the only disposable bowl alternative available to hold heat and liquid is fibre (cardboard or bagasse) lined with a bioplastic film such as PLA. Even now, this option continues to present issues such as lids dislodging under the pressure of heat and steam from hot foods, risking spills and burns. Government and business will need to continue working together to ensure viable and safe alternatives are developed and available.²⁹

A number of submissions were opposed to the inclusion of the exemptions. For example, the WMRR stated:

While schools have been exempted from the ban, WMRR acknowledges NRAIDEC's fourth recommendation that this exemption is reviewed as part of the two-year review. WMRR continues to strongly advocate against this exemption. Schools should not be allowed to distribute, sell, or use banned plastic items unless it is to persons who require these products due to a disability or medical requirement. There is an opportunity to drive generational change through this ban, with school aged children being champions of this initiative given many are currently participating in initiatives such as *nude food* (eliminating single-use packaging in lunch boxes), which should continue to be encouraged.

WMRR does not support the exemption of single-use plastic items that are part of a shelf-ready product from the ban. As noted in WMRR's previous submission on the Single-use Plastic Items Consultation Regulatory Impact Statement, providing an exemption to manufacturers of shelf-ready packaged products could in effect provide an opportunity to avoid firstly, being responsible producers and secondly, thinking about redesign which is key in building a circular economy. However, WMRR acknowledges the concerns that have led to this exemption, as highlighted in NRAIDEC's report, and recommends that this exemption is reviewed during the two-year review and that manufacturers are informed of this timeframe in order to drive investment and innovation in product design now.³⁰

Boomerang Alliance, Plastic Bag Free Livingstone and the SCEC also commented on the exemption of shelf-ready products, stating:

We question the exemption for plastic straws, stirrers or cutlery in shelf-ready products (e.g., a straw with a mixed drink or fork with a pre-packaged salad). This is inconsistent with the legislation and will add to public confusion. Under this exemption, these plastic items will still end up as waste or litter. There are viable non-plastic alternatives available that should and could be used now.³¹

²⁹ Submission 11, p 3.

³⁰ Submission 3, p 2.

³¹ Submission 6, p 2; Submission 5, p 2; Submission 8, p 2.

Boomerang Alliance went on to state:

To strengthen the bill, we recommend that plastic items in ready-made products are not exempted.³²

2.6.2 Departmental response

The department's written briefing on the Bill stated:

The ban proposed by the Bill does not include compostable plastic items that meet the Australian Standards for home or industrial compostability, or items that would otherwise be banned but are part of a pre-packaged product, including:

- a straw attached to a juice box;
- a fork included in a pre-packed salad;
- a spoon attached to a yoghurt container; and
- a plate included in a frozen meal.

The Bill defines compostable plastic as plastic that is compostable under Australian Standards AS 4736, which applies to industrial composting; or AS 5810, which applies to home composting. This exemption recognises:

- the availability and suitability of these items as alternatives;
- the success of the Plastic Free Places initiative, which suggests compostable alternatives to replace single-use plastic items; and
- public support for alternatives to single-use plastic items, including compostable plastic, expressed in submissions on the Single-use Plastic Items Consultation Regulatory Impact Statement.

The Bill requires that a person involved in manufacturing, selling, distributing, or importing compostable plastic items must ensure information about the item's composting conditions is clearly labelled on the item, or provided in a document supplied with the item. This includes whether the plastic item is suitable for industrial or home composting and whether it is compostable under AS 4736 or AS 5810. This will help to ensure that the items are disposed of and managed correctly when they become waste.

The Bill also empowers the chief executive to require a person to provide a certification about whether or not the sold plastic item is compostable. This will enable the administering authority to check that genuinely compostable items are being supplied and that correct information is being provided.

The Bill also provides for certain businesses and undertakings to be exempted from the ban ('exempt business or undertaking'). An exempt business or undertaking includes a school, or a healthcare business (e.g. hospital, aged care centre, pharmacy, medical and dental clinic). The Bill also makes provisions for other businesses or undertakings to be exempt in regulation.

These exemptions allow for the relevant businesses to purchase and supply otherwise banned single-use plastic items to patients, residents, students and other individuals with disability or healthcare needs. This will ensure that people with disability or healthcare needs have access to single-use plastic items to meet their needs.

The Bill also allows a person (e.g. a distributor) to sell otherwise banned items to these businesses for the purpose of providing to another person for a healthcare or disability requirement.

These exemptions are automatic and a person operating one of these businesses or undertaking does not need to apply for an exemption.³³

Committee comment

The committee notes that the Bill contains a number of exemptions to allow for the continued sale and use of the prescribed single-use plastic items to certain businesses and persons. The committee

³² Submission 6, p 2.

³³ Department of Environment and Science, correspondence, 18 December 2020, attachment, p 3.

in particular supports the exemptions provided to allow usage by persons with a disability or healthcare needs and the associated supply of these products by businesses to persons with a disability or healthcare needs.

The committee supports recommendation 4 of the NRAIDEC report in relation to reviewing the exemption provided for schools.

The committee expects that any concerns regarding the issue of exemptions will be included in the mandated review.

2.7 Recommendations for additional items to be included in the ban

A number of the submissions argued that the Bill did not go far enough and that additional plastic products should also have been included in the list of proposed prescribed single-use plastic items to be banned.

The Minister's introductory speech noted that this message had also been recognised by the Government. The Minister stated:

We are also looking ahead, because during the consultation period there were many submissions for other items to be banned, including expanded polystyrene takeaway containers and cups.³⁴

2.7.1 Stakeholder views

A number of submitters supported including expanded polystyrene cups and containers as a banned item.³⁵

Wildlife Preservation Society of Queensland stated:

The inclusion of expanded polystyrene cups and containers should occur in the first tranche with exemptions only for products that meet the Australian Compost Standards (AS 5810/AS 4736).³⁶

Wendy Wallin's submission was focussed on her campaign to have plastic dome lids included as a banned item. Her efforts commenced after seeing a Corella with a dome lid stuck around its neck. She stated:

Dome Lids are rife in the Fastfood, Takeaway and Cafe Industries. I find them discarded everywhere...

The Government must act now to ban these unnecessary and lethal Dome Lids. I recognise that Plastic Ring Seals (also deadly) will take a much longer timeframe to BAN as they are found under an incredible array of products, but I see no reason to delay BANNING Dome Lids.

...

Your Queensland Government is now calling for submissions to ban Polystyrene and while I welcome and support any ban on plastics and polystyrene, in my opinion, Dome Lids and Ring Seals are far more fatally detrimental to wildlife than plates and polystyrene.

Please BAN Dome Lids alongside Straws, Stirrers, Cutlery and Plates now. I believe Dome Lids should be banned before Polystyrene. Any further delay means certain suffering and cruel deaths to more innocent wildlife.

...

³⁴ Hon Meaghan Scanlon MP, Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs, Queensland Parliament, Record of Proceedings, 3 December 2020, p 323.

³⁵ Submission 7, p 1; Submission 5, p 1.

³⁶ Submission 4, p 1.

If a bird or small animal is caught, it's guaranteed a slow and painful death sentence either through strangulation or starvation).³⁷

The banning of plastic coffee lids was specifically supported by some submissions. Blake Young stated:

I submit that plastic coffee cup lids are added to the list of banned single-use plastic items in 99GC considering one of the objects of the bill is to reduce plastic pollution and coffee cups lids are the second-largest contributor to litter waste.³⁸

CCC stated:

CCC also supports the inclusion of coffee cups, other plastics cups and heavyweight plastic shopping bags. We understand that the ban on these additional products will be introduced in a second tranche and would encourage this to occur within 12 months of the enabling legislation being passed. We also recommend that a specific list of products be identified for this second phase-out which includes coffee cups lids, other problematic packaging used in takeaway or away from home (e.g., plastic wrappers), plastic bags provided in the fruit and vegetable section of supermarkets, plastic balloon sticks and helium balloon releases.³⁹

A number of submissions noted that cigarette butts contain microplastics and that they should also be included as a banned item in the future.

The SCEC stated:

The largest single item of plastic litter in Queensland is the cigarette butt and we urge the Committee to make recommendations to the Government on measures to reduce this. In Queensland the latest Clean Up Australia Report calculated that on an individual count basis that cigarette butt numbers represented nearly 20% of all litter. Butts contain toxins and other chemicals that are harmful in the environment including thousands of cellulose acetate fibres and take years to disappear from the environment. Cellulose acetate fibres, like other microplastics, are also a common contaminant found throughout the world's ecosystems that have been found to accumulate at the bottom of the ocean.

To address the problem of cigarette butts, we recommend that the State, working with other jurisdictions, identify policies that will reduce this litter and add these to the legislation in the future. These could include the removal of butts from cigarettes (these can be replaced by reusable filters), financial contributions for butt clean-ups or stricter and effective policing of cigarette butt littering.⁴⁰

Wildlife Preservation Society of Queensland submitted:

More has yet to be achieved with plastics but that should not prevent focussing on other waste challenges – cigarette butts. Granted this is a massive and challenging task but creative solutions must be found.⁴¹

Sea Shepherd Australia called for 'Increase signage at beaches relating to cigarette butts - the number one item removed at Sea Shepherd marine debris campaign clean-ups and also the top item littered in Queensland/Australia'.⁴²

Plastic Bag Free Livingstone listed other items that they support being banned. They stated:

As enabling legislation, the bill can include other items in the future. We ask that the Committee make recommendations that the following problematic items also be included in a ban:

- Bait bags

³⁷ Submission 1, pp 1-2.

³⁸ Submission 12, p 1.

³⁹ Submission 7, p 1.

⁴⁰ Submission 8, p 2.

⁴¹ Submission 4, p 2.

⁴² Submission 13, p 2.

- Little fish bottles (condiment sachets and plastic wrapping)
- plastic balloon sticks
- plastic barrier bags
- cotton buds with plastic sticks
- paper wipes (these also contain plastic materials)

We would like to see alternatives to plastic fishing line be sourced and promoted. Sealife at all levels are affected by discarded fishing line which causes injury and even death to many marine animals. Additionally, if small enough it can be mistaken for food which works its way into the food chain.⁴³

Similarly, SCEC stated:

We ask that the Committee make recommendations that the following problematic items also be included:

- condiment sachets and plastic wrapping;
- helium balloon releases of any number;
- the use of helium to inflate balloons;
- mylar balloons;
- plastic balloon sticks;
- plastic barrier bags;
- glow sticks;
- cotton buds with plastic sticks; and
- paper wipes (these also contain plastic materials).⁴⁴

Wildlife Preservation Society of Queensland stated:

We ask the Committee to make recommendations that other problematic items be included in a ban:

- condiment sachets and plastic wrapping
- helium balloon releases of any number.⁴⁵

Joe Kelly MP advised that his electorate survey found that:

- The top 5 suggestions of other plastics respondents would like to see banned are:
 1. Excessive supermarket and food packaging - particularly fruit packaging
 2. Takeaway food containers
 3. Polystyrene and other non-recyclable plastics
 4. All plastic drink containers - water bottles, milk bottles, soft drink bottles
 5. Heavy plastic bags - particularly those for sale in supermarkets.
- There were a few interesting suggestions such as self-sealing water balloons, plastic coated signage, cotton buds with plastic and "supermarket bonus toys" (minis, ooshies, etc).⁴⁶

⁴³ Submission 5, p 2.

⁴⁴ Submission 8, p 2.

⁴⁵ Submission 4, p 2.

⁴⁶ Submission 2, p 1.

2.7.2 Departmental response

The department's written briefing on the Bill stated:

The Bill makes provision for additional items to be banned through regulation. To ensure the process is logical, fair, and robust, the Bill sets out the requirements that must be met prior to making a regulation to ban additional single-use plastic items...

Several matters must also be considered to determine whether a ban is the most appropriate course of action, including:

- the results of the public consultation;
- whether the objects of the legislation are likely to be achieved by the proposed ban;
- the effectiveness of voluntary or other measures;
- the availability of alternative products to the item(s) proposed to be banned; and
- whether the costs of monitoring, enforcement and market development are proportional to the proposed ban.

Other items that have been identified in the Plastics Plan for investigation are coffee cups, other plastic cups, and heavyweight plastic shopping bags.⁴⁷

Committee comment

The committee acknowledges the various submissions that have called for additional single-use plastic items to also be included as banned items. The committee notes that there is an ongoing process whereby the department will consider the merits of banning additional items and that these bans can then occur through regulation.

The committee encourages interested persons to continue addressing their concerns about the ongoing use of specific single-use plastic items to the department and to engage in public dialogue.

The committee expects that public opinion in support of banning certain single-use plastic items will continue to be strong. The committee also expects that a successful introduction and implementation of the banning of the items contained in the Bill will support the future expansion of banned items.

2.8 Education campaign

A number of the submissions noted that greater awareness of the items that are proposed to be banned should be promoted through an education campaign.

2.8.1 Stakeholder views

EHA (QLD) INC stated:

It is suggested that an education campaign accompany this Amendment Bill to inform the community of nonrecyclable and recyclable items to reduce the contamination of recycling streams and thereby potentially reducing the creation of more waste that requires disposal.⁴⁸

The National Retail Association called for 'education and engagement campaigns in conjunction with the ban'.⁴⁹

Sea Shepherd Australia supported expanding education programs to support Queensland's Plastic Pollution Reduction Plan to 'provide educational signage in multiple languages at known recreational

⁴⁷ Department of Environment and Science, correspondence, 18 December 2020, attachment, pp 2-3.

⁴⁸ Submission 9, p 1.

⁴⁹ Submission 11, p 2.

fishing hotspots on the environmental impacts of plastic, particularly related to problem plastic fishing items.⁵⁰

Plastic Bag Free Livingstone stated 'with education, sharing of knowledge and working together; Government working with Community, change can be implemented.'⁵¹

2.8.2 Departmental response

The department's written briefing on the Bill stated:

The Queensland Government will continue to work with the peak bodies (such as the National Retailers Association, Master Grocers Association, Queensland Hotels Association and the Australian Food and Grocery Council) to raise awareness of the ban as a proactive means to reduce enforcement activities.⁵²

Committee comment

The committee encourages the department to continue working with industry stakeholders to raise awareness of the ban. However, the committee also believes that both the department and industry stakeholders need to co-operatively raise awareness among consumers about the impending changes via public education strategies.

The committee notes that immediately following the 2018 ban on single-use lightweight plastic shopping bags under 35 microns, there was a period of confusion and concern by some consumers and retailers over the ban and its implementation. The committee encourages the department and retailers to consider the aspects of that ban and to ensure that consumers are better informed about the items covered in this Bill.

The committee notes that consumer behaviour quickly adapted to the ban on single-use lightweight plastic shopping bags under 35 microns.

⁵⁰ Submission 13, p 2.

⁵¹ Submission 5, p 2.

⁵² Department of Environment and Science, correspondence, 18 December 2020, attachment, p 4.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. Given that this Bill is the same as the Bill examined by the NRAIDEC, discussion about any FLP issues are included in the NRAIDEC report.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.⁵³

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.⁵⁴

The HRA protects fundamental human rights drawn from international human rights law.⁵⁵ Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. Discussion in relation to the compatibility of the Bill with human rights are included in the NRAIDEC report.

⁵³ HRA, s 39.

⁵⁴ HRA, s 8.

⁵⁵ The human rights protected by the HRA are set out in sections 15 to 37 of the HRA. A right or freedom not included in the HRA that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this HRA or is only partly included; HRA, s 12.

Appendix A – Submitters

Sub #	Submitter
001	Wendy Wallin
002	Joe Kelly MP, Member for Greenslopes
003	Waste Management and Resource Recovery Association of Australia
004	Wildlife Preservation Society of Queensland
005	Plastic Bag Free Livingstone
006	Boomerang Alliance
007	Capricorn Conservation Council
008	Sunshine Coast Environment Council
009	Environmental Health Australia (Queensland) Incorporated
010	Local Government Association of Queensland Ltd
011	National Retail Association
012	Blake Young
013	Sea Shepherd Australia

**Appendix B – Natural Resources, Agricultural Industry Development and
Environment Committee Report No. 8, 56th Parliament - Waste
Reduction and Recycling (Plastic Items) Amendment Bill 2020**



Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020

**Report No. 8, 56th Parliament
Natural Resources, Agricultural Industry
Development and Environment Committee
August 2020**

Natural Resources, Agricultural Industry Development and Environment Committee

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Pat Weir MP, Member for Condamine
Members	Mr David Batt MP, Member for Bundaberg
	Mr James (Jim) Madden MP, Member for Ipswich West
	Mr Brent Mickelberg MP, Member for Buderim
	Ms Jessica (Jess) Pugh MP, Member for Mount Ommaney

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Abbreviations

AMCS	Australian Marine Conservation Society
APCO	Australian Packaging Covenant Organisation Ltd
AS	Australian Standards
COEX	Container Exchange (QLD) Limited
DES / department	Department of Environment and Science
EDO	Environmental Defenders Office
EPS	Expanded polystyrene
FBA	Fitzroy Basin Association
HRA	<i>Human Rights Act 2019</i>
LGAQ	Local Government Association of Queensland
LSA	<i>Legislative Standards Act 1992</i>
MRF	Material Recovery Facility
NRA	National Retail Association
NRAIDEC / the committee	Natural Resources, Agricultural Industry Development and Environment Committee
OQPC	Office of the Queensland Parliamentary Counsel
RIS	Single-use Plastics Consultation Regulatory Impact Statement
the Bill	Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020
the Plan	<i>Tackling Plastic Waste – Queensland’s Plastic Pollution Reduction Plan</i>
Waste Strategy	<i>Queensland Waste Management and Resource Recovery Strategy</i>
WMRR	Waste Management and Resource Recovery Association Australia

Chair's foreword

This report presents a summary of the Natural Resources, Agricultural Industry Development and Environment Committee's examination of the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

This Bill is part of a larger government strategy to address issues in relation to plastic over-consumption, waste and pollution, and the resulting environmental impacts.

To see the impact of plastic pollution on the environment and the actions of communities in tackling these issues, the committee held site visits and hearings in Cairns and Yeppoon. The committee was genuinely impressed with the vision, effort and commitment of stakeholders, such as Jennie Gilbert founder of the Cairns Turtle Rehabilitation Centre on Fitzroy Island, Molly Steer from Cairns, the young founder of 'StrawNoMore', and Sabrina Burke from multiple organisations, including Minimal Waste Central Queensland, Capricorn Coast Landcare Group and Envirolink Centre in Yeppoon, and all those individuals who work in their local communities to address the damage caused by discarded plastics.

On behalf of the committee, I thank those individuals and organisations who participated in the process to examine the Bill. I also thank committee members for their work during this inquiry. I wish to thank the Member for Cairns, Mr Michael Healy MP and the Member for Keppel, Ms Brittany Lauga MP, who participated in the committee's regional hearings. Thank you to the Department of Environment and Science and our Parliamentary Service staff.

I commend this report to the House.



Chris Whiting MP

Chair

Recommendations

Recommendation 1 **6**

The committee recommends that the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 be passed.

Recommendation 2 **16**

The committee recommends that the Bill be amended to include expanded polystyrene takeaway food containers in the first tranche of banned single-use plastic items.

Recommendation 3 **16**

The committee recommends that the Queensland Government work with other stakeholders within the Australian Packaging Covenant Organisation to accelerate support for businesses to transition away from single-use plastic items, including expanded polystyrene products.

Recommendation 4 **21**

The committee recommends that the Department of Environment and Science review the exemption of schools from the ban on the supply of single-use plastic items as part of the two year review.

Recommendation 5 **30**

The committee recommends that the Department of Environment and Science review the penalties for providing false or misleading information about single-use plastic items as part of the two year review.

1 Introduction

1.1 Role of the committee

The Natural Resources, Agricultural Industry Development and Environment Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 21 May 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's areas of portfolio responsibility are:

- Natural Resources, Mines and Energy
- Agricultural Industry Development and Fisheries
- Environment, Great Barrier Reef, Science and the Arts.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.²

The Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly and referred to the committee on 15 July 2020. The committee was required to report to the Legislative Assembly by 28 August 2020.

1.2 Inquiry process

On 17 July 2020, the committee invited stakeholders and subscribers to make written submissions on the Bill. Eighteen submissions were received; see Appendix A for a list of submissions.

The committee received a public briefing about the Bill from the Department of Environment and Science (DES) on 23 July 2020; see Appendix B for a list of officials.

The committee also received written advice from the department in response to matters raised in submissions.

The committee held site visits in regional Queensland to see both the impact of plastic pollution and community, business and local government initiatives to address aspects of the problem.

In Cairns the committee visited the Cairns Regional Council's Material Recovery Facility (MRF) to view waste management and recycling processes and discuss issues of waste contamination, cost and markets for recycled product.

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² *Parliament of Queensland Act 2001*, s 93 and *Human Rights Act 2019*, ss 39, 40, 41 and 57.



Figure 1: Committee site visit to Cairns Regional Council's Material Recovery Facility, 4 August 2020.

The committee was privileged to visit the Cairns Turtle Rehabilitation Centre on Fitzroy Island with founder Ms Jennie Gilbert. The committee saw first-hand the damage that plastic pollution in the marine environment, such as discarded bait bags, cause to marine turtles. Ms Gilbert and a dedicated team of volunteers rehabilitate injured turtles for release back into the wild, a process which can take up to three years.



Figure 2: Committee site visit to Cairns Turtle Rehabilitation Centre, Fitzroy Island, 5 August 2020.



Figure 3: Committee site visit to Cairns Turtle Rehabilitation Centre, Fitzroy Island, 5 August 2020.

The committee also visited Blackbird Espresso to meet business owner Mr Troy Furner and Ms Helen Reilly from Plastic Free Cairns to see the range of currently available non-plastic, recyclable and re-useable food and drink containers. The committee was impressed with the level of community action in developing and promoting solutions for hospitality businesses to move away from single-use plastics, to reduce plastic waste and to address the environmental and economic impacts of plastic pollution.



Figure 4: Committee site visit to Blackbird Espresso, Cairns, 5 August 2020.

In Rockhampton, the committee met with Ms Bethlea Bell from the Fitzroy Basin Association (FBA) to see the Drain Buddies project and discuss mechanisms to reduce plastic pollution in urban waterways.

The committee held public hearings in Cairns on 4 August, in Yeppoon on 6 August and in Brisbane on 10 August 2020; see Appendix C for a list of witnesses.

Submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.³

1.3 Policy objectives of the Bill

According to the explanatory notes the principal policy objective of the Bill is to amend the *Waste Reduction and Recycling Act 2011* to ban the supply of single-use plastic items, starting with straws, stirrers, plates and cutlery. The Bill seeks to achieve a reduction in plastic pollution resulting from single-use plastic by 20 per cent by 2023.⁴

Section 99GA specifies that the Bill aims to:

- promote and support the waste and resource management hierarchy
- reduce plastic pollution by reducing the number of single-use plastic items:
 - used or sold, and
 - that become waste and are littered or disposed of to landfill
- encourage retailers and consumers to
 - reduce the overall use and sale of single-use plastic items
- encourage manufacturers to identify innovative product designs for sustainable alternatives to single-use plastic items
- recognise the needs of persons with a disability and the healthcare needs of persons in relation to the use of banned single-use plastic items
- ensure manufacturers and consumers are aware of and understand, information about plastic items that are compostable.⁵

1.4 Government consultation on the Bill

The explanatory notes state that consultation on the Bill was conducted during March and April 2020. The department developed their Single-use Plastics Consultation Regulatory Impact Statement (RIS) which was then available for public consultation.⁶ A total of 19,622 submissions were received. Submissions clearly identified stakeholder groups, including:

- environmental NGOs or charities (18)
- commercial businesses (9)
- peak bodies (8)
- community organisations (5)
- government (4)
- academia(1)
- individual community members (635).⁷

³ <https://www.parliament.qld.gov.au/work-of-committees/committees/NRAIDEC/inquiries/past-inquiries/plasticitems>

⁴ Explanatory notes, p 1.

⁵ Explanatory notes, p 6.

⁶ Pravin Menon, Department of Environment and Science, public briefing transcript, Brisbane, 23 July 2020, p 5.

⁷ Explanatory notes, p 4.

The explanatory notes detail that overall there is 94% support for the introduction of a ban on the proposed single-use plastic items, with 90% of submissions supporting a start date of 1 July 2021.⁸

Twenty one per cent of the submissions supported the inclusion of takeaway food containers and plastic takeaway cups and 17% supported the inclusion of polystyrene cups and containers and oxo-degradable plastics in the ban.⁹

More than 50 per cent of the submissions supported the option of allowing healthcare businesses such as pharmacies and hospitals to provide plastic straws in recognition of the need to provide accessibility for people with disability and healthcare needs.¹⁰

1.4.1 Stakeholder comment

Several submitters to the committee's inquiry noted that they had made a submission to the department's consultation on the RIS.¹¹

The Wildlife Preservation Society of Queensland noted that many of their concerns with the plastic waste situation in Queensland have been considered and most of the issues raised in a submission to the department in April 2020 have been addressed.¹²

However, submitters also noted that not all of their feedback had been incorporated into the Bill. For example, Boomerang Alliance suggested that there were several things that could have been included in the Bill to strengthen the legislation and make it more effective.¹³ This view was shared by the Local Government Association of Queensland (LGAQ).¹⁴

The Waste Management and Resource Recovery Association Australia (WMRR) noted that it did not support the exemption from the ban of single-use plastic items as part of a shelf-ready product, as detailed in its previous submission to the RIS.¹⁵

Woolworths Group commented on the clarity of the Bill and the consultation process:

*Woolworths commends this clarity as it enables the retail sector to understand the requirements and standards of the proposed law and prepare our business to comply. This level of clarity increases the likelihood of success of the objectives of the Bill, thereby improving the environmental outcome for Queensland. We encourage for this clarity to be maintained in any subsequent consultations.*¹⁶

1.4.2 Departmental comment

Committee members sought additional information from the department about the consultation process, noting that out of the 19,622 submissions received by the department, only nine were received from commercial businesses and five from community organisations.

⁸ Explanatory notes, p 4.

⁹ Explanatory notes, p 4; Oxo-degradable plastics are a conventional plastic mixed with an additive that causes the plastic to fragment into smaller pieces, or 'microplastics'. Once in the environment, microplastics persist indefinitely, causing direct physical impacts. Department of Environment and Science, correspondence, 13 August 2020, p 1.

¹⁰ Explanatory notes, p 4.

¹¹ Submissions 3, 6, 7, 8, 11, 15.

¹² Submission 15, p 1.

¹³ Submission 6, p 1, suggesting provisions to include additional items in the ban and amending the commencement date of the ban.

¹⁴ Submission 9, p 3.

¹⁵ Submission 7, p 2.

¹⁶ Submission 17, p 3.

The department clarified:

We did consult strongly through the stakeholder advisory group members, which was comprised of peak bodies representing the retail, hospitality, tourism and food services industries, to name a few...The consultation process also had a fairly extensive campaign in terms of the Have Your Say campaign, which was disseminated quite widely. In terms of the actual responses received, the total of 19,000 – plus responses included online responses where it was not possible to distinguish down to that level of detail what type of businesses were responding to the online survey.¹⁷

...

The decision to seek information from the stakeholder groups or the peak bodies of these industries rather than go to specific businesses was quite deliberate. This broadens the process and ensures that a sector as a whole can be represented rather than the specific interests of one individual organisation... Those industry peaks represent their members and would be expected to provide feedback that represents their members' interests.¹⁸

1.4.3 Committee comment

Stakeholders were generally satisfied with the level of consultation undertaken by the department in relation to the Bill. Although some stakeholders noted that not all of their suggestions were included in the Bill, the committee notes there is opportunity for further stakeholder consultation and for additional single-use plastic items to be banned in the second or third tranche to be established by regulation.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives it is intended to achieve, and consideration of the information provided by DES, submitters and witnesses, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends that the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 be passed.

¹⁷ Pravin Menon, Department of Environment and Science, public briefing transcript, Brisbane, 23 July 2020, p 3.

¹⁸ Pravin Menon, Department of Environment and Science, public briefing transcript, Brisbane, 23 July 2020 p 7.

2 Examination of the Bill

2.1 Background

Plastic is used in an extensive range of applications. Its low cost has made it an attractive material for single-use convenience items used at home and away-from-home at point of sale in cafes, restaurants and events, and in places where hygienic applications are required (such as hospitals and aged care facilities). Plastic consumption, and therefore production, has increased exponentially over several decades.¹⁹

The global production and use of plastic has historically not been matched with effective mechanisms to address plastic over-consumption, waste and pollution, and the resulting environmental impacts.

By the 1990s, the generation of plastic waste had tripled from the period 1950-1970, and in the early 2000s the world's plastic waste output increased more in a single decade than in the previous 40 years.²⁰ The current global impact of plastic waste and pollution is significant.



Source: Queensland Government, *Tackling Plastic Waste: Plastic Pollution Reduction Plan*, 2019, p 5.

¹⁹ Queensland Government, Department of Environment and Science, *Single-use Plastic Items Consultation Regulatory Impact Statement*, 2020, p 11.

²⁰ Queensland Government, Department of Environment and Science, *Single-use Plastic Items Consultation Regulatory Impact Statement*, 2020, p 11.

The *Breaking the Plastic Wave: A Comprehensive Assessment of Pathways Towards Stopping Ocean Plastic Pollution* report, found that:

Without action, the annual flow of plastic into the ocean will nearly triple by 2040, to 29 million metric tons per year (range: 23 million-37 million metric tons per year), equivalent to 50 kg of plastic per metre of coastline worldwide.²¹

Plastic designed for single-use creates significant waste management, resource recovery and environmental challenges.²² The explanatory notes highlight that:

These items are predominantly unable to be recovered for recycling through mainstream and widespread collection systems, and can end up contaminating recycling streams thereby potentially creating more waste that requires disposal.²³

The issue is compounded by the extensive use of oxo-degradable plastics, which break down into microplastics.²⁴ Mr Pravin Menon from DES outlined the range of damage caused by microplastics:

Microplastics have been shown to damage aquatic creatures through ingestion in their digestive tracts which negatively impacts on growth and reproduction of organisms within our marine environments or any environment that they come into contact with, because these materials are pretty much ubiquitous in the environment in many cases.

In addition, when they lodge in the organs of marine creatures, they end up in a food chain that ultimately can be ingested by humans as well. The compounds are bio-accumulative in nature, and the subsequent breakdown of those products is likely to release toxins into whatever creature they end up in over a long period of time. That is why we have significant concerns about microplastics.²⁵

In November 2019, the Queensland Government released *Tackling Plastic Waste: Queensland's Plastic Pollution Reduction Plan* (the Plan). The Plan identifies and prioritises actions to reduce plastic waste and reduce the environmental and economic impacts of plastic pollution.

A key action of the Plan, was the introduction of legislation in 2020 to meet the objective of reducing plastic waste and plastic pollution by establishing a ban on the supply of specific single-use plastic items, starting with straws, hot and cold drink stirrers, plates and cutlery. Further analysis on additional single-use plastic items including coffee cups, other plastic cups, takeaway food containers, plastic balloon sticks and heavyweight plastic bags may be prescribed in regulation following a consultation process.²⁶

The explanatory notes state that:

Local, state and national governments in Australia and around the world have identified that there are significant environmental, community and economic impacts associated with plastic in the environment with over 60 countries now having some form of ban or intervention for single-use plastic items.

²¹ The Pew Charitable Trusts, *Breaking the Plastic Wave: A Comprehensive Assessment of Pathways Towards Stopping Ocean Plastic Pollution*, 2020, p 9.

²² Queensland Government, Department of Environment and Science, *Tackling Plastic Waste: Plastic Pollution Reduction Plan*, 2019, p 7.

²³ Explanatory notes, p 1.

²⁴ Department of Environment and Science, correspondence, 13 August 2020, p 1.

²⁵ Public briefing transcript, Brisbane, 23 July 2020, p 2.

²⁶ Queensland Government, Department of Environment and Science, *Tackling Plastic Waste: Plastic Pollution Reduction Plan*, p 15.

Litter surveys indicate that a major source of plastic entering the environment is generated from single-use plastic items, including plastic straws and cutlery.²⁷

The Bill represents a critical step towards reducing the generation of plastic waste in Queensland. WMRR stated:

WMRR supports the use of regulation in reducing single-use items, including plastics and agrees that the focus should be on preventing the generation of these items in the first place...²⁸

2.2 Ban of single-use plastic items

The principle policy objective of the Bill is to enable a ban on the supply of the following single-use plastic items:

- plates
- bowls
- items of cutlery
- straws
- stirrers, and
- any other item prescribed by regulation to be a banned single-use plastic item.²⁹

The Bill defines a single-use plastic item as a plastic item that is made entirely or in part from plastic, other than a compostable plastic.³⁰

2.2.1 Stakeholder comment

All of the submissions to this inquiry supported the principle of a ban of single-use plastic items.³¹

The LGAQ stated:

Local government is encouraged by the State Government commitment to progress this important agenda and supports the introduction of a legislative ban on single-use plastic items to meet the challenge in tackling plastic pollution.³²

Sea Shepherd Australia noted:

As the second state, after South Australia, to introduce legislation which seeks to address the increasing problem of marine plastic pollution to the environment, Sea Shepherd commends the Queensland Government for developing legislation that bans a number of single-use plastic items.

With production and use of single-use plastics and ensuing leakage into the environment increasing to the detriment of ecosystems, biodiversity and potentially human health, we recognise the Queensland Government's commitment to reduce plastic pollution.³³

²⁷ Explanatory notes, p 1.

²⁸ Submission 7, p 1.

²⁹ Explanatory notes, p 7.

³⁰ Pravin Menon, Department of Environment and Science, public briefing transcript, Brisbane, 23 July 2020, p 2.

³¹ Submissions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 18.

³² Submission 9, p 3.

³³ Submission 12, p 1.

The Capricorn Coast Landcare Group supported banning single-use plastic items as these are regularly found in the weekly Landcare clean-ups, annual mangrove and beach clean-ups and the Drain Buddies project.³⁴

Further support for the Bill was also expressed by witnesses attending the public hearings. Ms Jo Stoyel, Plastic Free Livingstone, stated:

*We would like to take this opportunity to thank the Queensland government for implementing the single-use ban. This bill actually complements the measures previously achieved within this space... It has been shown that the community and business are ready to make these changes and we have seen a large community drive for this change... We welcome the single-use ban and thank the government for their work in this space to date.*³⁵

At the public hearing in Cairns, Mr Troy Furner, owner of Blackbird Espresso Coffee, also supported the ban on single-use plastic items, stating:

*On a trip to the Reef HQ Aquarium Turtle Hospital in Townsville we witnessed firsthand a beautiful green turtle with a plastic straw lodged in its nostril, affecting its breathing and food consumption. At this moment my wife and I knew that we could do our part by no longer using plastic straws and reducing our other single-use plastics.*³⁶

Container Exchange (QLD) Limited (COEX) also supported the Bill, noting that single-use plastic straws can impact the recycling process. Ms Glenda Viner, COEX, stated:

*From a practical point of view, Container Exchange is interested in reducing the contamination of the containers that we recycle and refund. The contamination can occur through straws being left in the containers. It makes it very difficult for us to have a clean stream of materials to recycle, reprocess and then sell on our auction portal, so we are interested in seeing those straws come out of the material stream.*³⁷

2.2.2 Departmental comment

The department noted that the items recognised in the Bill as banned single-use plastic items were identified in the Plan for the first stage of a proposed ban. The department noted that straws, stirrers, plates and cutlery were selected for the initial ban as:

- *the use of these single-use plastic items can, in many circumstance, be avoided in the first instance*
- *they have a high degree of consumption in Queensland*
- *litter surveys consistently list them in the top 10 of littered items*
- *they are not recyclable and can contaminate recyclable items collected through kerbside collection services*
- *there are a range of suitable alternatives available as replacements*
- *there is a high level of community and business support for action on these items as a starting point, and*
- *a number of food and retail businesses have already committed to a voluntary phase out of items such as straws, stirrers and cutlery.*³⁸

³⁴ Submission 1, p 1.

³⁵ Public hearing transcript, Yeppoon, 6 August 2020, p 1.

³⁶ Public hearing transcript, Cairns, 4 August 2020, p 1.

³⁷ Public hearing transcript, Brisbane, 10 August 2020, p 20.

³⁸ Department of Environment and Science, correspondence, dated 7 August 2020, pp 3-4.

2.3 Restriction on the sale of banned single-use plastic items

The Bill provides that the sale or supply of the banned single-use plastic items attract a maximum penalty of 50 penalty units.³⁹

2.3.1 Stakeholder comment

Some submissions sought greater clarity from the department on the offence of selling or supplying banned items, noting that some companies may transit banned items through Queensland to other destinations. For example, Woolworths Group stated:

*Due to the size of Australia, Woolworths supplies many stores from their “local” DC [Distribution Centre], which can be in another state or territory – this includes 50 stores in northern NSW from our Brisbane DC. We therefore require that an explicit exemption be included for the storage and distribution of product that is captured by the proposed legislation, but is permitted for sale in other jurisdictions in a similar vein to South Australia’s single-use plastic legislation.*⁴⁰

WMRR also sought greater clarity on the offences detailed in this section of the Bill. WMRR suggested exemptions based on ‘reasonable belief’ of a step in the supply chain is difficult to enforce and disprove. WMRR noted the emphasis should be on the seller to ensure and demonstrate that they have considered destination and illegality.⁴¹

2.3.2 Departmental comment

At the public briefing in Brisbane, the department clarified that the ban imposed by the Bill relates to the sale and supply of the banned items only. The department stated that the ban does not impact on existing stock and inventory for businesses or individuals, and does not preclude them from using what they currently have.⁴²

At the public hearing in Brisbane, committee members queried how the ban would apply to the supply of commercial flights that originate elsewhere in Australia and travel to Queensland. In answer to this, Ms Kylie Hughes, DES, advised the department would work with the airlines to ensure suitable alternatives to single-use plastic items were available:

*There needs to be a recognition that when something that is on loaded here but off loaded in Melbourne, where there is not a ban—how do we address that under our legislation? If it is not part of an integrated or pre-packaged product it will be a banned item. We need to work with the airlines to make sure they have suitable alternatives as well, because they are not going to go back to metal knives and forks and china crockery.*⁴³

2.4 Additional items

Several submissions included discussion and suggestions for additional single-use plastic items to be considered in the first tranche of the legislation.⁴⁴

³⁹ Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020. See also explanatory notes, p 8. The current value of a penalty unit is \$133.45, Penalties and Sentences Regulation 2015, s 3.

⁴⁰ Submission 17, p 4.

⁴¹ Submission 7, p 2.

⁴² Pravin Menon, Department of Environment and Science, public briefing transcript, Brisbane, 23 July 2020, p 5.

⁴³ Public hearing transcript, Brisbane, 10 August 2020, p 29.

⁴⁴ Submissions 1, 5, 6, 8, 9, 11, 15.

2.4.1 Stakeholder comment

The Environmental Defenders Office (EDO) argued:

... we support the proposed ban but are somewhat disappointed that it doesn't go further to ban other unnecessary single-use plastics (such as balloon sticks, promotional toys and unnecessary plastic wrapping of fresh fruits and vegetables). We note that proposed section 99GC in clause 5 of the Bill will allow regulations to be made to add further single-use plastic products to the ban (as contemplated in the RIS). Given the severity of the plastic pollution of our oceans, we would question the wisdom of delaying further bans.⁴⁵

The Australian Marine Conservation Society (AMCS) proposed that several additional plastic items be included in the Bill given the scale of marine pollution in Australia's oceans:

We support the prohibition of single-use plastic straws, stirrers, cutlery, plates and bowls as proposed by the legislation. However, the scale of the plastics crisis in Australia's oceans is fast escalating, and banning these products alone will not be sufficient to arrest the flow of dangerous plastics into marine habitats.

We urge the committee to consider amendments to include the following plastic products in the legislation, as opposed to waiting and including them via regulation:

- *single-use plastic cups*
- *polystyrene products such as cups, bowls, plates and clamshell containers*
- *plastic fruit & vegetable barrier bags*
- *plastic lined coffee cups and plastic coffee cup lids*
- *heavyweight shopping bags*
- *single-use plastic takeaway containers*
- *balloons and balloon sticks*
- *plastic bottles and bottle caps.*

The complete list of plastic products we propose for prohibition are those most lethal to marine life and most commonly found in litter or in our oceans.⁴⁶

Boomerang Alliance also supported the addition of these items and proposed that they be phased out by 2022:

To strengthen the bill we recommend that the legislation also includes ... a requirement to introduce the second list of products, for phase-out by 2022.

We also recommend that a specific list of products be identified for this second phase-out that includes:

- *coffee cups AND lids*
- *other single-use plastic cups AND other problematic packaging used in takeaway (eg plastic wrappers, sushi packaging)*
- *heavyweight plastic shopping bags (up to 70 microns thickness) and that consideration be given to the inclusion of:*
- *condiment sachets and single -use plastic sauce containers*

⁴⁵ Submission 3, pp 1-2.

⁴⁶ Submission 5, p 2.

- *balloon releases of any number*
- *the use of helium to inflate balloons*
- *mylar balloons*
- *balloon sticks*
- *barrier bags*
- *cotton buds*
- *paper wipes (these also contain plastic elements).*⁴⁷

At the public hearing in Cairns, Mr Furner, Blackbird Espresso Coffee, stated:

*I was surprised...to see that coffee cup lids were not included.*⁴⁸

Several submitters recommended the inclusion of polystyrene cups and containers in the first tranche of the legislation, noting that expanded polystyrene (EPS) products have ready alternatives and many food service providers have long since abandoned them.⁴⁹ Submitters also argued for the inclusion of all oxo-degradable products in the future.⁵⁰ The National Retail Association (NRA) also supported further bans on EPS cups, bowls, plates and clam-shells and on all products made from oxo-degradable plastics.⁵¹

The Australian Packaging Covenant Organisation (APCO) is a not-for-profit organisation established to administer the Australian Packaging Covenant (Covenant) on behalf of the Australian, State and Territory Governments and its industry Signatories.⁵² APCO has made recommendations on a range of single-use plastic items, including EPS:

In 2019, APCO undertook extensive analysis and consultation on single-use plastics, including through a national workshop in Adelaide in October, and through a consultation paper on priorities for phasing out problematic and unnecessary single-use plastic packaging. In December, APCO published a list of priority materials and single-use packaging items for phase-out in a report, with priority given to:

- *expanded polystyrene... food and beverage service containers*
- *EPS packaging fill*
- *non-certified compostable packaging (including oxo-degradable, landfill degradable or other claimed degradable plastics)*
- *light weight plastic bags.*⁵³

Boomerang Alliance argued:

*To strengthen the bill we recommend that the legislation also includes a ban on expanded polystyrene (EPS) cups and containers in the first tranche.*⁵⁴

⁴⁷ Submission 6, p 2.

⁴⁸ Public hearing transcript, Cairns, 4 August 2020, p 2.

⁴⁹ Submissions 1, 6, 11, 15.

⁵⁰ Submissions 5, 6, 11.

⁵¹ Submission 11, p 10.

⁵² Submission 8, p 1.

⁵³ Submission 8, p 2.

⁵⁴ Submission 6, p 2.

Mr Nick Brooke, Surfrider Foundation Australia, raised a particular issue with EPS products, stating:

*This form of plastic pollution should be addressed at the source instead of relying on more trash cans and end-of-the-line type solutions for capturing and removing litter.*⁵⁵

Mr Steven Cosatto, Cairns Regional Council, noted that polystyrene was not recyclable and went directly into landfill.⁵⁶

FBA suggested that cotton buds, lollipop sticks and plastic cigarette filters should be considered for future banned items.⁵⁷

Although not included in the Bill or the RIS, a number of submissions were concerned about littered cigarette butts.⁵⁸ Boomerang Alliance stated:

*The largest single item of plastic litter is the cigarette butt. It has been estimated that billions of cigarette butts are littered each year. In Queensland the latest Clean Up Australia Report calculated that on an individual count basis that cigarette butt numbers represented nearly 20% of all litter.*⁵⁹

Ms Alison Foley from Ten Little Pieces supported this view, stating:

*Littered cigarette butts for me are symbolic of our attitude to individual responsibility and collective consequence, especially in relation to our natural world.*⁶⁰

*...Litterers ... of cigarette butts are unaware generally that cigarette butts are made of cellulose acetate, which is a form of highly fibrous plastic. They are also unaware that they contain over 4,000 toxic leachable chemicals. They are unaware that it is illegal to smoke particularly on our beaches here. It is deemed to be very personal and people are not often challenged for their littering behaviour. Historically it has been considered cool, as it were, to flick.*⁶¹

Ms Bell, FBA, discussed the Drain Buddies Project which captures waste in urban storm water drains stating that:

*In the 27 Drain Buddies, over 12 months we counted over 13,000 cigarette butts. It was actually 13,828... A lot of people who smoke or people in the community still do not realise that there is plastic in cigarette butts. When they are flicking their butts I am not sure if they actually realise they are contributing to environmental impacts. That education is something that needs to be worked on as well.*⁶²

Boomerang Alliance also advocated that cigarette butts be added to the list of banned single-use plastic items.⁶³

At the public hearing in Yeppoon, Ms Stoyel, Plastic Free Livingstone, highlighted concerns about plastic bait bags and the need to consider banning hard plastic items:

Bait bags that are used for fishing are high in the litter stream. Packaged lids are high in the litter stream—milk bottle lids, juice lids et cetera. ... there are still other hard single-use items

⁵⁵ Public hearing transcript, Brisbane, 10 August 2020, p 3.

⁵⁶ Public hearing transcript, Cairns, 4 August 202, p 16.

⁵⁷ Submission 14, p 2.

⁵⁸ Submissions 6, 12, 13, 14.

⁵⁹ Submission 6, p 2.

⁶⁰ Public hearing transcript, Brisbane, 10 August 2020, p 2.

⁶¹ Public hearing transcript, Brisbane, 10 August 2020, p 5.

⁶² Public hearing transcript, Yeppoon, 6 August 2020, p 13.

⁶³ Submission 6, p 2.

*such as toothbrushes and lighters. All these sorts of hard plastics break down and become brittle and that is what that ends up becoming microplastic. It is just a never-ending cycle. As much as we are doing well in this space and banning the items that we can immediately, there is so much more we need to be doing in this area.*⁶⁴

Some submitters argued the need to take a cautious approach to banning plastic items. NRA agreed that plastic poses serious threats to the environment when disposed improperly, but argued that each type of item needs to be carefully considered as there is no single solution.

*The NRA urges decision makers to ensure that any action taken is practical, consistent, well researched and carefully considered in order to create real, long-lasting change. In some cases, we must also allow time for innovation, understanding and practicality to catch up to our good intentions.*⁶⁵

Several witnesses highlighted that the ban on plastic items should not drive industry to replace single-use plastics with similarly hazardous and problematic alternatives. Mr Mark Wuth, Cairns Regional Council, warned:

*When we make changes, the industries will respond. It is about making sure that we are having that conversation up-front....I think that whenever we are looking at replacing a product we have to make sure we are replacing it with something better and not just the next problem.*⁶⁶

Mr Cosatto, Cairns Regional Council, provided an example of the unintended consequence of banning lightweight plastic bags and the problematic increase in the use and disposal of heavier plastic bags:

*...With the introduction of the lightweight bag ban, we thought we would see a drop-off in plastic and a lessening of our residual waste going to landfill, but the tonnes have remained the same. Even though the state achieved one objective in reducing those lightweight plastic bags, the reality is that the residual going to landfill is the same. The weight is the same, because these bags are heavier.*⁶⁷

2.4.2 Departmental comment

In response to submitter feedback proposing additional items to be banned in the first tranche of the legislation, the department argued the need for a careful approach to consider the requirements of all stakeholders:

In the consultation process and the feedback we have received to date, it is fairly evident that many members of the community would like to see these bans expanded. However, it is necessary for the department to actually take into consideration a broader view on the practicability of these bans or including additional items...

*In terms of including additional items, I note that there is considerable support in many sectors for bans to incorporate polystyrene takeaway food containers as well, but I would envisage the process would be very much mirroring the process that we have followed to date and an expansion of what we currently have so there is appropriate consultation and consideration by the community, by the stakeholders, by industry and by government prior to inclusion of any additional materials.*⁶⁸

⁶⁴ Public hearing transcript, Yeppoon, 6 August 2020, p 2.

⁶⁵ Submission 11, p 12.

⁶⁶ Public hearing transcript, Cairns, 4 August 2020, p 17.

⁶⁷ Public hearing transcript, Cairns, 4 August 2020, p 16.

⁶⁸ Pravin Menon, Department of Environment and Science, public briefing transcript, Brisbane, 23 July 2020, pp 6-7.

2.4.3 Committee comment

The committee notes that there is considerable community support to expand the range of banned plastic items and that industry is also supportive of additional inclusions if appropriate and cost effective alternatives are available and supply-chain logistics can be managed.

The Bill does allow for additional items to be banned by regulation, following community consultation. However, given the significant environmental damage caused by EPS takeaway food containers, that alternative food packaging is available and used by many food service providers, and that there is widespread community support to ban this product, the committee recommends that EPS products are included in the first tranche of legislation to ban single-use plastic items.

Recommendation 2

The committee recommends that the Bill be amended to include expanded polystyrene takeaway food containers in the first tranche of banned single-use plastic items.

The committee is encouraged by the commitment of businesses to expand the range of banned plastic items and notes there is opportunity at a national level to help these businesses transition away from single use plastic items. The committee notes that to support Queensland's efforts in this matter, the State Government should urge other stakeholders in APCO to accelerate efforts assisting businesses to move away from single use plastic items.

Recommendation 3

The committee recommends that the Queensland Government work with other stakeholders within the Australian Packaging Covenant Organisation to accelerate support for businesses to transition away from single-use plastic items, including expanded polystyrene products.

The committee notes that cigarette butts are outside the scope of the Bill. However, given the significant nature of the issue the committee recommends that consideration be given to addressing the issue of littered cigarette butts at all levels of government and through specific information and public education campaigns.

2.5 Amendments by regulation and review of the Bill

Section 99GC(3) of the Bill allows for the Minister to recommend to the Governor in Council that a regulation be made about whether or not a single-use plastic item is a banned single-use plastic item.

The proposed change may only be made after:

- *public consultation on the proposed change, and after considering the results of the consultation*
- *whether the proposed change is likely to achieve the objects of this part*
- *whether voluntary or other measures have been shown not to be effective*
- *the availability of alternative products, and*
- *whether the costs of monitoring, enforcement and market development are proportional to the benefits of the proposed change.*⁶⁹

⁶⁹ Explanatory notes, p 7.

The NRA supported this provision in principle, noting that industry, government and community collaboration will be key to ensure initiatives are well-reasoned, realistic, practical and successful.⁷⁰

The EDO requested that the Queensland Government publicly commit to a timeframe for the second stage ban.⁷¹

The Bill provides for a review of the ban of single-use plastic items within two years of its commencement.⁷² The department noted that:

*The review of the ban will consider how different sectors and community groups have been affected, including the availability of single-use plastics for the healthcare and disability sector, and the voluntary uptake of alternative items in schools.*⁷³

*...This review will also take into consideration activities in other states and territories and the need to harmonise, if necessary and appropriate, with this work.*⁷⁴

At the public briefing, the department further explained that the review will look at the effect of the ban on the community, particularly on people with a disability or with healthcare needs, as well as an assessment of public knowledge and the level of compliance with the ban.⁷⁵

2.5.1 Committee comment

The committee supports the approach to ban additional single-use plastic items by regulation and the two-year review of the ban of single-use plastic items. The committee acknowledges these mechanisms will take into consideration the outcomes of community consultation and the effects of the ban on different sectors and communities. The committee notes the comments made by the department and encourages the department to examine activities in other states and territories to achieve legislative consistency during this process.

2.6 Date for the introduction of a ban

The explanatory notes state that a ban on single-use plastic items with a commencement date of 1 July 2021 was supported by stakeholders. However, this was considered before the full impacts of the COVID-19 pandemic were known. The Bill provides for the amendments to commence by proclamation, to allow flexibility in the start date and to minimise impacts on businesses.⁷⁶

2.6.1 Stakeholder comment

Some submitters argued that consideration be given to implementing the legislation without delay.⁷⁷

The AMCS stated the need to strike an appropriate balance between time needed for transition and the urgency required:

The Australian Marine Conservation Society urges the government to act with urgency to address the plastics crisis in our oceans. Retailers and suppliers have been made aware of the government's intentions and available replacement products currently exist on the market. As such, we believe 6 months is sufficient time to allow for transition.

⁷⁰ Submission 11, p 2.

⁷¹ Submission 11, p 2.

⁷² Explanatory notes, p 10.

⁷³ Department of Environment and Science, correspondence, dated 7 August 2020, p 7.

⁷⁴ Department of Environment and Science, correspondence, dated 7 August 2020, p 14.

⁷⁵ Pravin Menon, Department of Environment and Science, public briefing transcript, Brisbane, 23 July 2020, p 2.

⁷⁶ Explanatory notes, p 4.

⁷⁷ Submissions 1, 3.

*However, given recent disruptions caused by the COVID-19 coronavirus we believe 1 July 2021 strikes an appropriate balance between time needed for transition and the urgency required.*⁷⁸

Boomerang Alliance noted its support for the introduction of a ban in July 2021, stating that this provides sufficient time for packaging and service providers to have switched supply options.⁷⁹

The NRA noted that if COVID-19 restrictions are lifted by mid-2020, its members were confident they would be able to purchase and deploy alternatives to single-use plastics by 1 July 2021. However, the NRA warned that consideration may need to be given to retailers to exhaust existing stockpiles for a further six to 12 months, particularly given the impact of COVID-19 restrictions.⁸⁰

Some submissions and witnesses raised concerns that the proposed commencement date of the ban was insufficient given that retail supply chains have timeframes of several years.⁸¹ Mr David Stout, from the NRA stated:

*The supply chains in Australia are quite complex and they're relatively border blind, you've got stock moving around the country... With non-perishable goods, you've got very long supply chains, which are international. It is a problem, you have supplies and contracts with certain businesses globally, so you may only have 3 months of supply but you have an 18-month contract with someone, somewhere to provide this product.*⁸²

Given the highly competitive nature of business, the NRA argued that there was a need to ensure certainty on substitutions or alternative products and to formulate a suitable timeframe for transition which could be between three months to three years.⁸³

The Australian Food and Grocery Council supported the proposed commencement date, noting that adequate notice is required to enable existing stock of banned single-use plastic items to be depleted and removed from the supply chain to reduce any economic loss incurred by local businesses.⁸⁴

2.6.2 Departmental comment

In relation to stakeholder concerns on the commencement of the ban on single-use plastic items, the department stated:

*...the government is mindful of the impacts of COVID-19 closures and restrictions are having on businesses and the need to minimise additional burdens placed upon them. For this reason there is flexibility in the start date, with the Bill to commence by proclamation no earlier than 1 July 2021. This will allow for business recovery and any further COVID impacts to be monitored to ensure that the start of the ban does not cause additional hardship.*⁸⁵

In response to the comments made in submissions, the department noted:

*The commencement date also needs to recognise potential supply chain issues as there may be delays in sourcing alternative items.*⁸⁶

⁷⁸ Submission 5, p 3.

⁷⁹ Submission 6, p 4.

⁸⁰ Submission 11, p 7.

⁸¹ Submissions 11, 17.

⁸² Public hearing transcript, Brisbane, 10 August 2020, p 10.

⁸³ David Stout, National Retail Association, public hearing transcript, Brisbane, 10 August 2020, p 10.

⁸⁴ Submission 10, p 1.

⁸⁵ Pravin Menon, Department of Environment and Science, public briefing transcript, Brisbane, 23 July 2020, p 2.

⁸⁶ Department of Environment and Science, correspondence, dated 7 August 2020, p 8.

2.6.3 Committee comment

Taking into account the impacts of the COVID-19 pandemic and the complexities of retail supply chains, the committee supports the commencement date of the Bill no earlier than 1 July 2021.

2.7 Recognition of the needs of persons with a disability and healthcare needs

The Bill details a number of businesses or undertakings that are exempt from the provisions in the Bill, such as healthcare businesses and schools. This is intended to recognise the need to provide accessibility for people with disabilities and healthcare needs.⁸⁷

Mr Menon, DES, stated:

*The bill makes it an offence to sell a single-use plastic item to another person unless that person conducts an exempt business activity or supplies an exempt business. The business exemptions apply largely to the healthcare sector such as hospitals, medical or dental clinics or pharmacies or schools or other businesses that may be prescribed in regulation.*⁸⁸

The exemptions in the Bill aim to:

*... recognise that some individuals may have disability and healthcare needs which require certain single-use plastic items—such as a straw. The exemptions within the Bill allow a person who might require these items to ask for them or obtain them in a safe and non-public environment, safeguarding both their privacy and their accessibility to the items that are needed.*⁸⁹

2.7.1 Stakeholder comments

The majority of submissions were in favour of the exemption of businesses in the healthcare sector.⁹⁰

APCO supported the exemptions provided to enable continued availability of products for people with a disability or healthcare needs:

*... as failure to make these provisions would cause exclusion and hardship. We suggest that the Queensland Government consider whether any further support may be needed for the continued provision of these items, as the ban will result in a substantial reduction in the size of the market for these items and the cost per item is therefore likely to increase significantly.*⁹¹

AMCS also supported this provision, stating:

*The Australian Marine Conservation Society supports plastic straws being made available via particular outlets such as pharmacies and schools. This limitation ensures they are only given to those who have a genuine need.*⁹²

The NRA commended the Queensland Government's approach to allowing exemptions only for particular types of businesses and organisations to provide straws to those needing tools for medical reasons, stating:

We believe this approach also lowers the risk of unintended breaches of people's privacy (compared to retailers having to assess a person's need upon a request of a straw), while also

⁸⁷ Explanatory notes, p 9.

⁸⁸ Public briefing transcript, Brisbane, 23 July 2020, p 2.

⁸⁹ Pravin Menon, Department of Environment and Science, public briefing transcript, Brisbane, 23 July 2020, p 2.

⁹⁰ Submissions 5, 6, 7, 8, 9, 10, 11, 15.

⁹¹ Submission 8, p 3.

⁹² Submission 5, p 3.

*providing a high level of access as the network of healthcare providers across Queensland is extensive in metropolitan, regional and remote areas.*⁹³

*... It is inappropriate for retail staff to enquire about a person's disability or healthcare needs, therefore businesses which provide a straw upon a customer's request will need to be absolved of wrongdoing. We note that this could be abused by some customers, which could be problematic for consumer behaviour change and enforcement of the ban (ie. free-rider scenario).*⁹⁴

The LGAQ also supported this provision, stating:

... permitting businesses such as pharmacies, doctors' surgeries and dental clinics to provide straws to people with healthcare or disability needs is supported by local government.

*This approach has been adopted by many other jurisdictions and is consistent for example with the Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 in relation to use of plastic straws for medical purposes by or under the direction of a health professional.*⁹⁵

Some submitters did not agree that schools should be exempt from the ban of single-use plastic items.⁹⁶ WMRR did not agree that schools should be included in the exemption, stating:

*...schools should not be allowed to distribute, sell, or use banned plastic items unless it is to persons who require these products due to a disability or medical requirements.*⁹⁷

Similarly, the FBA noted that the option to use single-use plastics in schools whilst simultaneously implementing an educational program about waste and recycling creates a mixed message:

The inclusion of schools as an exempted business, weakens proposed Government action under Strategic priority 1 of Queensland's Waste Management and Resource Recovery Strategy (2019). The option to use single-use plastics in schools whilst simultaneously implementing an educational program about waste and recycling creates a mixed message to students, parents, and staff.

*If "developing an education strategy to integrate waste and recycling behaviours into the education system" is to have the maximum effect, encouraging and supporting schools to adopt sustainable alternatives (bamboo cutlery, biodegradable bowls, paper straws, etc.) is needed. This will further strengthen education programs and reduce plastic pollution, resulting in a future generation less dependant on single-use plastic items.*⁹⁸

At the public hearing in Brisbane, Mr Brooke, Surfrider Foundation Australia, stated:

*What message are we sending to our future generations and leaders of tomorrow if schools are exempt from the protection of our environment? With school students accounting for just over 10 per cent of Queensland's population, it cannot be ignored and needs to be addressed. Programs, initiatives and incentives are needed to transition our schools and our education system into more economically sustainable practices.*⁹⁹

⁹³ Submission 11, p 2.

⁹⁴ Submission 11, p 6.

⁹⁵ Submission 9, pp 8-9.

⁹⁶ Submissions 7, 14.

⁹⁷ Submission 7, p 2.

⁹⁸ Submission 14, p 1.

⁹⁹ Nick Brooke, Surfrider Foundation Australia, public hearing transcript, Brisbane, 10 August 2020, p 3.

At the public hearing in Yeppoon, Ms Leanne Randall stated:

*I feel that this is a great opportunity to effect generational change especially in primary schools. This is our chance to get to those children before they get to high school and before they become young adults in our community. Hopefully that will be looked at. This is a big opportunity for us. I think having schools exempt is probably a step in the wrong direction at this time.*¹⁰⁰

2.7.2 Departmental comment

In its response to the concerns raised in submissions, the department stated:

Schools are identified as exempt businesses recognising that some students, teachers and other staff may have healthcare and disability needs that require the continued provision of single-use plastic items such as straws and cutlery.

*The department understands that school children are often the strongest advocates for change and messaging for schools during the implementation phase can be targeted at avoiding where possible. Assistance can also be provided to assist with sourcing suitable alternatives.*¹⁰¹

At the public hearing in Brisbane, the department also acknowledged difficulties in finding suitable alternatives to single-use plastic items for the healthcare sector:

*The advice we received during consultation was that a number of the alternatives are not fit for purpose. If you are replacing a plastic straw with a paper straw, the paper in itself can become a choke hazard. There is a bit more work needed to ensure we are not creating another problem by replacing something that is readily available and is fit for purpose in that sense. We are going to be working very closely with the disability and healthcare sectors to ensure there is a range of options available for them.*¹⁰²

2.7.3 Committee comment

Noting the comments made in the submissions and by the department, the committee supports the exemption of healthcare businesses and schools from the ban of single-use plastic items to recognise the needs of some individuals with a disability or a healthcare need. However, the committee acknowledges the strong stakeholder views that schools should not be exempt from the ban. The committee notes that the Bill will be reviewed within two years of its commencement and strongly encourages the department to review the exemption of schools from the ban as part of this review.

Recommendation 4

The committee recommends that the Department of Environment and Science review the exemption of schools from the ban on the supply of single-use plastic items as part of the two year review.

2.8 Shelf-ready packaged products

Section 99GB(2) of the Bill states that a single-use plastic item that is an integral part of a shelf-ready product is not a banned single-use plastic item. This means that for example, juice boxes with straws and ready to eat meals with an included fork, will not be banned by the Bill.¹⁰³

¹⁰⁰ Public hearing transcript, Yeppoon, 6 August 2020, p 21.

¹⁰¹ Department of Environment and Science, correspondence, dated 7 August 2020, p 7.

¹⁰² Kylie Hughes, Department of Environment and Science, public hearing transcript, Brisbane, 10 August 2020, p 27.

¹⁰³ Explanatory notes, p 8.

2.8.1 Stakeholder comment

Support for the exemption of shelf-ready products from the ban was mixed.

Several submissions did not support an exemption for shelf-ready packaged products.¹⁰⁴

At the public hearing in Cairns, Ms Nicole Nash, The Last Straw on the Great Barrier Reef, stated that shelf-ready products such as juice boxes should be included in the ban of single-use plastic items:

*I think they definitely should be included in this Bill. Business is already going to alternatives, juices come in glass bottles and plastic bottles and some businesses have gone completely plastic straw free.*¹⁰⁵

EDO supported an exemption for shelf-ready products only in cases where the plastic item is an integral part of the way the product is opened and consumed:

Treating 'shelf-ready' products as a single, homogenous category is perhaps somewhat misleading.....While there may be some justification for a delay in implementing the ban for juice boxes, that reasoning does not apply to other 'shelf-ready' products'.

*We recommend that the proposed ban include shelf-ready products, with a delayed commencement only for those products where the single-use plastic item is a component needed to both open and consume the product, that cannot be substituted for a non-disposable alternative (such as metal cutlery).*¹⁰⁶

In its submission, the NRA noted that retailers and manufacturers are working on potential solutions and innovations to phase out single-use plastic items on shelf-ready products but that this will take a much longer phase-out period:

Yes, should any ban be implemented by 1 July 2021, it must exclude shelf-ready packaged products.

Retailers and manufacturers are working on potential solutions and innovations however this will take a much longer phase-out period due to a) lack of viable alternatives, b) complexity of changing product design with international suppliers, and c) lead times of design and supply chains.

*For example, research is currently being undertaken to find a solution to straws attached to juice boxes but currently have not found a solution which reduces plastic use without increasing it elsewhere, is hygienic, able to puncture the juice box effectively, able to withstand time of consumption, and is safe for children to use.*¹⁰⁷

This view was shared by APCO, who noted that it was looking forward to further discussion with the Queensland Government on the matter:

*APCO supports the exemptions at this time for single-use plastic items that are part of shelf-ready packaged products. Further work is needed to identify opportunities to phase out these applications and work with national and international supply chains to identify alternative products and packaging formats. We look forward to further discussion with the Queensland Government on this matter, including regarding timeframes for phasing out problematic and unnecessary items over time.*¹⁰⁸

¹⁰⁴ Submissions 3, 5, 6, 7, 18.

¹⁰⁵ Public hearing transcript, Cairns, 4 August 2020, p 9.

¹⁰⁶ Submission 3, p 2.

¹⁰⁷ Submission 11, p 5.

¹⁰⁸ Submission 8, p 4.

2.8.2 Departmental comment

In its response to submissions, the department noted that the decision to provide exemptions for otherwise banned items where they are part of a shelf-ready, pre-packaged product was made due to the need to better understand whether there are suitable and readily available alternatives for these items. The exemption ensures that manufacturers are not required to remove the product from circulation on commencement of the ban.¹⁰⁹

The department further noted that a review of the ban will commence two years after the initial ban starts, at which time the exemptions to banned single-use plastic items will be reconsidered.¹¹⁰

2.8.3 Committee comment

The committee notes that there is strong support for the inclusion of some shelf-ready products in the first tranche of banned items. Considering the lengthy and complex domestic and international supply chains, and that suitable alternatives may not be available at this stage, the committee supports the exemption of shelf-ready products from the ban at this time. However, the committee believes that consideration of banning these products must be a significant part of the two-year review of the legislation.

2.9 Compostable plastic items

Currently most single-use plastic items are not compostable and are unable to be recovered for recycling through mainstream and widespread collection systems.¹¹¹

According to the explanatory notes, the Bill seeks to encourage manufacturers to identify innovative product designs for sustainable alternatives to single-use plastic items; and to ensure that manufacturers and consumers are aware of, and understand, information about compostable plastic items.¹¹²

2.9.1 Compostable items

The Bill defines compostable plastic as plastic that is compostable under either Australian Standard (AS) AS4736 (industrially compostable) or AS5810 (home compostable).¹¹³ The differences between these standards are outlined below:

AS4736

The Australasian Bioplastics Association states:

If a plastic material claims to be biodegradable and compostable in Australia, it must comply with Australian Standard AS4736-2006. This standard provides assessment criteria for plastic materials that are to be biodegraded in municipal and industrial aerobic composting facilities....In order to comply with the AS 4736-2006, plastic materials need to meet the following requirements:

- *Minimum of 90% biodegradation of plastic materials within 180 days in compost*
- *Minimum of 90% of plastic materials should disintegrate into less than 2mm pieces in compost within 12 weeks*

¹⁰⁹ Department of Environment and Science, correspondence, dated 7 August 2020, p 6.

¹¹⁰ Department of Environment and Science, correspondence, dated 7 August 2020, p 6.

¹¹¹ Explanatory notes, p 1.

¹¹² Explanatory notes, p 6.

¹¹³ Explanatory notes, p 7; also see the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020, Division 3.

- *No toxic effect of the resulting compost on plants and earthworms*
- *Hazardous substances such as heavy metals should not be present above the maximum allowed levels*
- *Plastic materials should contain more than 50% organic materials.*¹¹⁴

AS5810-2010

The Australian Bioplastics Association states:

*If plastic is labelled home compostable, then it can go in a home compost bin.*¹¹⁵

2.9.2 Stakeholder comment

Some submissions noted high levels of confusion and misunderstanding in relation to the definitions of biodegradable and home compostable and commercially compostable.¹¹⁶

Ms Nash, The Last Straw on the Great Barrier Reef, raised issues with the introduction of the definitions of compostable in reference to the Australian Standards in the Bill:

The issue with this definition is:

1. *The Australian Standards don't appear to be free and accessible for the general public.*
2. *Businesses need clear information on what products or constituents of products meets the legislation*
3. *In Australia there are very few industrial composting facilities, meaning if there is nowhere to take these products to compost, they will end up in landfill and may not be exposed to the specific environmental conditions they required to kick-start the composting process.*
4. *Consideration around the impacts of PLA type materials on the marine environment should also be considered and paper straws be the only single-use alternative that can be used in the vicinity of a waterway (10km radius), as per how the [Last Straw on the Great Barrier Reef] has carried out this action.*¹¹⁷

Ms Sabrina Burke, Coordinator of Minimal Waste Queensland, Capricorn Coast Landcare Group and Envirolink Centre stated:

*We would love to see, maybe through this bill or maybe supporting this bill, some clearer explanations on compostable—whether it is commercially compostable or home compostable—standards. I know that there are already ASs for that. Hopefully, that will clear up some of the confusion in the community.*¹¹⁸

Concerns were also highlighted in relation to the practice of 'greenwashing' and that this practice added to the level of community confusion and misinformation regarding the compostability of plastic items.¹¹⁹

¹¹⁴ Australasian Bioplastics Association, *Frequently Asked Questions*, <https://bioplastics.org.au/resources/faq/#toggle-id-9>

¹¹⁵ Australasian Bioplastics Association, *Frequently Asked Questions*, <https://bioplastics.org.au/resources/faq/#toggle-id-9>

¹¹⁶ Submissions 1, 6, 14, 18.

¹¹⁷ Submission 18, pp 7-8.

¹¹⁸ Public hearing transcript, Yeppoon, 6 August 2020, p 17.

¹¹⁹ Submission 11, p 2.

Ms Brooke Donnelly, APCO, explained the concept of greenwashing:

*There is propensity in the space for compostable packaging of what is commonly referred to as greenwashing – that is, organisations making claims that their materials are compostable when it actually isn't. The only way we have to address that is to ensure that those materials are then manufactured to the Australian standard, and are certified under that standard. The recommendation that we make to all brands and organisations looking to work in the area of compostable packaging is to ensure that there is an industry standard, and certainty around the quality of material and that people who are purchasing compostable packaging are actually getting what they're paying for, not what is commonly referred to as greenwashing. The only way in which we can do that is to make sure that those products and that packaging has actually been manufactured and certified to those Australian standards.*¹²⁰

APCO was supportive of the Bill's reference to the Australian Standards for compostable plastic:

*We welcome the Bill's reference to Australian Standards AS 4736 and AS 5810 as the standards against which claims of compostable plastics must be measured. We note that the legislation does not in the first instance require that compostable plastic items be certified to these standards, but that the Chief Executive may require certification in relation to these standards. We encourage the Queensland Government to establish a timeframe in which it expects that certification to Australian Standards will be in place for all compostable plastic items, and to communicate that expectation to the market at its earliest convenience.*¹²¹

Ms Burke, Minimal Waste Central Queensland, Capricorn Coast Landcare Group and Envirolink, also noted her support for further regulation to make it easier for the public to understand the terms 'home compostable', 'industrially compostable' and 'oxo-degradable'.¹²²

The NRA also advocated for the adoption of composting standards:

*Composting is problematic, it's very technical. It is caught up in a bit of greenwashing, a lot of people will claim that these things are sustainable or friendly, which just confuses the retailer and businesses.*¹²³

The NRA emphasised the need for products to be properly tested and certified by reputable bodies, as well as oversight from government to ensure greenwashing does not occur.¹²⁴

However, the committee also heard that "[t]here is a lot of product coming in from China and other parts of the world that is not legislated"¹²⁵ which adds to the level of community confusion.

2.9.3 Departmental comment

In response to the issues surrounding standards for compostable plastic, the department stated:

There are obligations on a person supplying compostable plastic items as substitutes to ensure there is information about the compostability of those items including the conditions under which they are compostable. These are typically tied to relevant Australian standards. This will

¹²⁰ Public hearing transcript, Brisbane, 10 August 2020, p 16.

¹²¹ Submission 8, p 4.

¹²² Submission 1, p 1.

¹²³ David Stout, National Retail Association, public hearing transcript, Brisbane, 10 August 2020, pp 12-13.

¹²⁴ Submission 11, p 2.

¹²⁵ Sabrina Burke, Minimal Waste Central Queensland, Capricorn Coast Landcare Group Inc., and Envirolink Centre, public hearing transcript, Yeppoon, 6 August 2020, p 17.

*help ensure that people have the correct information about where and how the items that they purchase can be composted either in in-home compost or in an industrial situation.*¹²⁶

In later correspondence, the department stated:

*The reference to these specific standards provides manufacturers, distributors and consumers with clear information on the suitability of substitute products as an alternative to single-use plastics. Each standard sets out the maximum concentration of contaminants including heavy metals allowed in the product for it to be deemed compostable.*¹²⁷

2.9.4 Committee comment

The committee notes the high level of confusion surrounding definitions of compostable plastic and that the practice of greenwashing compounds the level of misinformation in this sector. The committee notes that the Bill will address this issue by defining standards for compostable plastics and by making it an offence to give false or misleading information about whether or not single-use plastic items are compostable.

2.10 Facilities to compost plastics

Any reduction in plastic waste will require a larger volume of plastics to be recycled, re-used and composted. In July 2019, the Queensland Government released the *Queensland Waste Management and Resource Recovery Strategy* (Waste Strategy) to increase recycling and recovery across the state. The Waste Strategy proposes moving away from the current ‘take-make-use-dispose’ approach, and creating a new, more circular system that keeps materials in use for longer, extracting the maximum value from them.¹²⁸ The Waste Strategy notes that there is a need to develop and improve waste recovery mechanisms and facilities in Queensland as:

*An absence of policy certainty and strategic direction has inhibited investment in the recycling and resource industry in Queensland. In particular, insufficient investment in recycling and resource recovery infrastructure has restricted Queensland’s ability to improve waste recovery performance... improved on-shore reprocessing capacity will be needed to contend with a growing stock of recyclable materials.*¹²⁹

The Waste Strategy states that the waste management and resource recovery sector is well established in Queensland, and well placed to expand operations to further reprocess and recycle material, including the establishment of a \$100 million three-year Resource Recovery Industry Development Program and the Queensland Resource Recovery Industries 10 Year Roadmap and Action Plan.¹³⁰

2.10.1 Stakeholder comment

Submitters highlighted a range of challenges in developing the recycling and resource industry in Queensland. The NRA stated:

*Moving towards a circular economy requires a change in perception, a shift from thinking of consumed items as ‘waste’ towards seeing them as valuable ‘resources’.*¹³¹

¹²⁶ Pravin Menon, Department of Environment and Science, public briefing transcript, Brisbane, 23 July 2020, p 2.

¹²⁷ Department of Environment and Science, correspondence, dated 7 August 2020, p 9.

¹²⁸ Queensland Government, *Waste Management and Resource Recovery Strategy*, July 2019, p 2.

¹²⁹ Queensland Government, *Waste Management and Resource Recovery Strategy*, July 2019, p 4.

¹³⁰ Queensland Government, *Waste Management and Resource Recovery Strategy*, July 2019, p 6.

¹³¹ Submission 11, p 19.

Mr Michael O’Keeffe highlighted the costs associated with waste recycling for regional local governments and the impacts of a changing global market, and that costs are ultimately borne by ratepayers:

*The facility in Rockhampton at Parkhurst manages about 11,000 tonnes per year of recyclables... Rockhampton Regional Council spends about \$1.2 million a year to recycle its portion of those recyclables, which is about 5,000 tonnes. That cost has more than doubled in the last 10 years largely due to the challenges in the recycling market and the loss of commodity value and some challenges also around export markets as well for recyclables. There is a lot of discussion at the state and federal level around that and trying to create local circular economies for recyclables, but that is a real challenge. Again we would spend about \$180,000 a year disposing of contamination and non-recyclable materials ending up in that recycling stream on an annual basis so it is a significant financial burden to the ratepayer.*¹³²

Councillor Brett Moller, Cairns Regional Council, argued that waste recovery must be a shared responsibility and not fall only on individuals and governments:

*In relation to reduced plastic waste generation, there must be a producer responsibility. This can be in the packaging, design and co-funding of litter collection or end-of-life recycling options. They should not be able to just produce the product, see it go out the door and then not care about it. There are things that these producers can look at. We encourage the state to encourage them to do that.*¹³³

Submitters noted the need for consideration of life-cycle impacts and optimal pathways to reduce landfill and for greater investment in waste/recycling and composting facilities.¹³⁴ Stakeholders stated that currently not all councils have industrial composting facilities, therefore compostable items regularly end up in landfill.¹³⁵ Ms Burke, Minimal Waste Central Queensland, Capricorn Coast Landcare Group and Envirolink, noted:

*I very often see those compostable ones inside our yellow recycling bins. In our area they are being taken up to Rockhampton MRF, Materials Recycling Facilities. We do not have a commercial composting situation here. A lot of our local regional councils do not even have recycling so that is going to landfill anyway... They often just fall through the conveyer belt at the MRF so they cannot be captured and they end up in landfill anyway.*¹³⁶

Similarly, the lack of appropriate composting facilities in Queensland was noted by Ms Stoyel from Plastic Free Livingstone:

*These items are very hard to recycle through the stream. This cup, for instance, which was purchased within our community, is seen as the community trying to do the right thing. Business owners are purchasing these products thinking they are doing the right thing. The company will even say themselves that they are doing as much as they can do. However, there is nowhere to recycle this at landfill anywhere. There are not many landfills within Australia that will accept this product and can actually break it down to a compostable level.*¹³⁷

¹³² Public hearing transcript, Yeppoon, 6 August 2020, p 20.

¹³³ Public hearing transcript, Cairns, 4 August 2020, p 13.

¹³⁴ Submission 11, p 12.

¹³⁵ Nicole Nash, The Last Straw on the Great Barrier Reef, public hearing transcript, Cairns, 4 August 2020, p 8.

¹³⁶ Public hearing transcript, Yeppoon, 6 August 2020, p 18.

¹³⁷ Public hearing transcript, Yeppoon, 6 August 2020, p 1.

At the public hearing in Yeppoon, Mr O’Keeffe stated:

*Even BioPak will say, if you read any of their statements, that their material is compostable, but it needs to be at 55 degrees and there are only around five landfills within the whole of Australia that will accept that. Therefore, it does end up in landfill... As much as industry are trying to meet standards and excel within the sustainable space for the community and business demand—because community are demanding it—this is still going to go to landfill after all that hard work because we cannot separate that plastic and cardboard.*¹³⁸

Mr Stout, NRA, also highlighted the lack of necessary facilities across Queensland:

*We’ve got 77 councils throughout Queensland and they all offer different services, so for the retailer to say “if you purchase it here you can take it to your local council and get it recycled”, isn’t always the case. We can’t give them one blanket, simple solution. Composting is problematic, it’s very technical.*¹³⁹

Councillor Moller, Cairns Regional Council, called for greater investment and support for local government in this area:

*We should also make the most of our plastic resources and assist with the establishment of recovery facilities. We need funding quarantined specifically for the plastic recovery, recycling and remanufacturing industries within Queensland, particularly in regional Queensland.*¹⁴⁰

2.10.2 Departmental comment

Given the importance of recycling and composting facilities in establishing the waste circular economy, the committee sought to establish the number and location of composting facilities in Queensland. The department stated:

*According to information collected during development of the Queensland Waste and Resource Recovery Infrastructure Report in 2019, around 35 composting facilities of varying scales were identified across the State. Some regions such as South East Queensland ... Darling Downs-Maranoa and Wide Bay are well serviced with different composting infrastructure systems, ranging from open windrow to advance in vessel processes. These facilities can receive and process a variety of materials including green waste, food processing waste, other commercial and industrial organic residues and liquid waste streams such as grease-trap waste.*¹⁴¹

Additionally, the department informed the committee:

*There are no approvals current for the composting of oxo-degradable plastic in Queensland. It should be noted that the processing of compostable plastics may require some operational changes to the way in which materials are managed on site. The decision on whether or not to include compostable plastics as part of their feedstock is a matter for individual composters to make. DES will undertake further consultation with the organics industry in relation to compostable plastics in the organic waste stream.*¹⁴²

2.10.3 Committee comment

The committee notes that while there are a number of composting facilities of varying scales across the state, their locations are ad hoc and many local government areas do not have the necessary infrastructure to support a circular waste economy. The committee notes that the Waste Strategy will

¹³⁸ Public hearing transcript, Yeppoon, 6 August 2020, p 20.

¹³⁹ Public hearing transcript, Brisbane, 10 August 2020, p 12.

¹⁴⁰ Public hearing transcript, Cairns, 4 August 2020, p 13.

¹⁴¹ Department of Environment and Science, correspondence, 13 August 2020, p 1.

¹⁴² Department of Environment and Science, correspondence, 18 August 2020, p 1.

seek to create new economic opportunities and jobs in regional Queensland, through investment in plastic reprocessing, remanufacturing, and new products and markets for alternatives to plastic and that the Queensland Government has established a \$100 million Resource Recovery Industry Development Program.¹⁴³ The committee considers that as a priority, the Queensland Government work with local governments, through the Resource Recovery Industry Development Program, to establish a network of material recovery and composting facilities in order to support the vision of its Waste Strategy.

2.11 Labelling

The Bill creates offences for giving false or misleading information about banned single-use plastic items and about whether or not a plastic item is compostable. The Bill also requires that the conditions under which a plastic item is compostable are clearly and legibly written on the packaging or in information accompanying the plastic item. The maximum penalty for a breach of any of these provisions is 50 penalty units.¹⁴⁴

2.11.1 Stakeholder comment

At the Cairns public hearing, Ms Nash, The Last Straw on the Great Barrier Reef, described the confusion around labelling:

*There is a lot of wording out there and unless you do your research you really do not know what product you are buying. There are some straws on the market that are very misleading. They sound great, like an eco-straw, but when you read the fine print there are actually plastic polymers still in those products.*¹⁴⁵

Some submitters, such as the FBA, noted that the labelling and information requirements were a particular strength of the Bill.¹⁴⁶

The NRA submitted that it is important for retailers to have certainty when ordering products, agreeing that strict penalties should apply for those that provide false or misleading information.¹⁴⁷

WMRR recommended that the Queensland Government articulate and develop several measures, including clear, standardised labelling that indicates how certain materials should be disposed of.¹⁴⁸ In its submission, WMRR also stated that the maximum penalty proposed by the Bill for providing false or misleading information about banned items or whether or not a product is compostable are too low and may not sufficiently deter illegal practices.¹⁴⁹ This view was echoed by Ms Nash from The Last Straw on the Great Barrier Reef.¹⁵⁰

2.11.2 Departmental comment

In relation to the confusion around labelling, the department noted:

The Bill also provides for the chief executive (of the department) to require certification from a manufacturer or supplier about the information provided in relation to compostability. In order

¹⁴³ Queensland Government, Department of Environment and Science, *Tackling Plastic Waste: Plastic Pollution Reduction Plan*, p 4.

¹⁴⁴ Explanatory notes, pp 8-10.

¹⁴⁵ Public hearing transcript, Cairns, 4 August 2020, p 8.

¹⁴⁶ Submission 14, p 2.

¹⁴⁷ Submission 11, p 2.

¹⁴⁸ Submission 7, p 2.

¹⁴⁹ Submission 7, p 2.

¹⁵⁰ Submission 18, p 13.

*to help avoid confusion, engagement will be undertaken with manufacturers and suppliers around the provision of consistent information.*¹⁵¹

2.11.3 Committee comment

The committee supports the need for clearer labelling and the penalties established in this Bill in relation to false or misleading information about banned single-use plastic items. Given that stakeholders sought higher penalties for false or misleading information, the committee recommends that the department review these penalties as part of the two-year review.

Recommendation 5

The committee recommends that the Department of Environment and Science review the penalties for providing false or misleading information about single-use plastic items as part of the two year review.

2.12 Public education and information

2.12.1 Stakeholder comment

Many submissions identified a need for the department to undertake education activities to ensure that the ban is properly implemented.¹⁵² Councillor Moller, Cairns Regional Council, stated there needs to be state investment in education and communication regarding the Bill, not just with the key stakeholders and businesses but also with the public.¹⁵³

In its submission, APCO noted:

*Public and business education will be critical in ensuring that the ban is not only successful in relation to the identified items, but also contributes to broader behavioural change that will lead to greater impact over time and in relation to a broader set of items.*¹⁵⁴

Some submitters spoke of the need for any education campaign to commence as soon as possible to provide enough time for consumers to prepare for the ban and for businesses to source alternatives, renegotiate contracts, arrange logistics, retrain staff and inform their customers.¹⁵⁵ The NRA emphasised that this education needs to commence as soon as the legislation is passed.¹⁵⁶

Other submissions suggested expanding education programs to provide educational signage in multiple languages to be displayed at beaches and fishing spots.¹⁵⁷

In addition, WMRR suggested that the education campaign should encourage users of single-use plastic items to carry and use reusable options such as metal straws and bamboo cutlery.¹⁵⁸

¹⁵¹ Department of Environment and Science, correspondence, 20 July 2020, p 10.

¹⁵² Submissions 1, 3, 7, 8, 11, 12, 14, 16, 17, 18.

¹⁵³ Public hearing transcript, Cairns, 4 August 2020, p 13.

¹⁵⁴ Submission 8, p 4.

¹⁵⁵ Submission 11, p 4.

¹⁵⁶ Submission 11, pp 2-4.

¹⁵⁷ Submission 12, p 2.

¹⁵⁸ Submission 7, p 2.

At the public hearing in Yeppoon, Ms Stoyel, Plastic Free Livingstone, spoke of the benefits of a slogan based education campaign:

I would like to elaborate on ads. I am a seventies kid. 'Do the Right Thing' was the best campaign that ever happened. I think we need it back, but rehashed—zhooshed up, brought into the 2000s. Honestly, the slogan sticks. It still works. It is like slip, slop, slap.¹⁵⁹

In the evidence presented to the committee, youth education was highlighted as a key tool for behavioural change. FBA suggested that education programs in schools are likely to result in a future generations being less dependable on single-use plastic items.¹⁶⁰

Ms Viner, COEX, also highlighted the importance of youth education in improving recycling rates:

The pester power of children is also powerful. Once you start a child recycling, they pester their parents and they get them to do it at home.¹⁶¹

The importance of youth education was also highlighted at the public hearing in Cairns, when the committee heard from 12 year old Ms Molly Steer, who founded the StrawNoMore campaign:

I kind of feel that people get surprised when they hear all of these facts coming out of a little kid and they are dumbfounded for a little bit. After that, they get a bit impressed and they say, 'Okay. I want to hear more.' The more kids there are, the more people will listen.¹⁶²

Similarly, in Yeppoon, Ms Shelly McArdle, Queensland Water and Land Carers and Capricornia Catchments, stated:

Young people are the answer. When I have run workshops, events or held space for kids to run community-led projects, I have seen that everybody gets behind kids. I think that it is really important to educate the kids and have them be leaders. That can really create change in households.¹⁶³

The committee also heard evidence that the education campaign should be targeted at retailers, as well as individuals. Ms Ebony Johnson, NRA, stated:

...I think there is a really strong argument for consumer education as well as retailer education and tying that together. Retailers are often the educator of consumers at the point of sale. We found that was absolutely critical during the [plastic] bag ban. This does need to be combined with some really clear education. With the bag ban, we were even defining down to the thickness of microns. No-one knew what microns were. Now we are experts and we carry around micrometers to measure the thickness of a bag. ..The larger retailers are probably very well resourced and educated, but we will need to help a lot of consumers and retailers through this. It is very possible, but you just need to be prepared to put that in well ahead of time. It took about 12 months just to educate consumers and retailers before the ban even came in.¹⁶⁴

Evidence from Ten Little Pieces suggested that education is one behaviour management tool that can be used as part of a wider project to modify littering behaviour.¹⁶⁵ Several submissions supported this, detailing the benefits of a wider anti-littering campaign alongside the introduction of the ban of single-use plastic items.¹⁶⁶

¹⁵⁹ Public hearing transcript, Yeppoon, 6 August 2020, p 24.

¹⁶⁰ Submission 14, p 1.

¹⁶¹ Public hearing transcript, Brisbane, 10 August 2020, p 22.

¹⁶² Public hearing transcript, Cairns, 4 August 2020, p 21.

¹⁶³ Public hearing transcript, Yeppoon, 6 August 2020, p 7.

¹⁶⁴ Public hearing transcript, Brisbane, 10 August 2020, pp 13-14.

¹⁶⁵ Alison Foley, Ten Little Pieces, public hearing transcript, Brisbane, 10 August 2020, p 2.

¹⁶⁶ Submissions 3, 8, 9, 11, 14, 16.

2.12.2 Departmental comment

In response to the issues of education, the department noted:

*The Queensland Government acknowledges the importance of education and awareness playing a critical role in effecting successful behavioural change as a key supportive mechanism to implementing legislation. It is also acknowledged that the education campaign around single-use plastics will need to incorporate information on appropriate disposal of single-use plastic items that are not compostable.*¹⁶⁷

2.12.3 Committee comment

The committee notes the view of submitters that a comprehensive education and communication strategy is needed with the introduction of the Bill. The committee also sees significant value in wider public waste reduction, recycling and anti-littering campaigns to address the impacts of single-use plastics in the environment.

¹⁶⁷ Department of Environment and Science, correspondence, dated 7 August 2020, pp 19-20.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 *General rights and liberties – ordinary activities should not be unduly restricted*

Summary of provisions

Clause 5 creates five new offence provisions, each incurring a maximum penalty of 50 penalty units for a failure to comply (this currently equates to \$6,673):

- Proposed s 99GD makes it an offence for a person who conducts a business or undertaking to sell to another person, in the course of conducting the business or undertaking, a banned single-use plastic item.
- Proposed s 99GE provides that a person must not give information that the person knows is false or misleading to another person about the composition of a banned single-use plastic item, or whether or not a plastic item is a banned single-use plastic item.
- Proposed s 99GF places requirements on a person who conducts a manufacturing, wholesale, distribution or import business or undertaking, and in the course of conducting the business or undertaking, sells a plastic item that is compostable to another person. The person must ensure the conditions under which the plastic item is compostable are clearly and legibly written either on the packaging for the plastic item, or in information or a document accompanying the plastic item.¹⁶⁸
- Proposed s 99GG empowers the chief executive to give a notice to a person the chief executive believes conducts a manufacturing, wholesale, distribution or import business or undertaking and sells to another person, in the course of conducting the business or undertaking, a plastic item (a ‘sold item’) that is compostable or the person tells the other person is compostable. A notice under the section may require the person to give the chief executive a certification about such a sold item. In this context, ‘certification’ means a certification about whether or not the sold item is compostable that includes the information decided by the chief executive, and is in the form decided by the chief executive. A person given such a notice must comply with the notice within 20 business days after receipt, unless the person has a reasonable excuse.
- Proposed s 99GH provides that a person must not give information, or a document containing information, that the person knows is false or misleading, to another person about whether or not a plastic item is compostable.

¹⁶⁸ Conditions under which a plastic item is compostable include whether it is suitable for industrial or home composting, and whether it is compostable under AS 4736 or AS 5810. See proposed s 99GF(3).

Issue of fundamental legislative principle

The creation of new offences and penalties affects the rights and liberties of individuals.

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. The concept of liberty requires that an activity (including a business activity) should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.

Whether legislation has sufficient regard to rights and liberties of individuals also depends on whether, for example, penalties and other consequences imposed by the legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

*... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*¹⁶⁹

By way of justification, the explanatory notes state, very briefly:

*The penalty units for the offence provisions are considered to be proportionate to the offence, and the offences and penalties are similar to the penalty units that apply in respect of the ban on the supply of single-use lightweight plastic shopping bags.*¹⁷⁰

No other information is provided in the explanatory notes.

Committee comment

Given the overall objective of the Bill, the committee is satisfied that any breach of fundamental legislative principle is justified.

3.1.1.2 Onus of proof – Section 4(3)(d) Legislative Standards Act 1992

Summary of provisions

Clause 5 inserts a new offence provision, in proposed s 99GD, proscribing the sale of a banned single-use plastic item, except in certain circumstances, including where the person *reasonably believes* that the sale is a step in a supply chain for the supply of that item to a person who conducts an exempt business or undertaking. There is a maximum penalty of 50 penalty units. In such cases it will be the person selling the banned item who carries the onus to prove that they held a reasonable belief.¹⁷¹

Clause 5 also inserts a new offence provision, in proposed s 99GG, requiring a person to comply with a notice issued by the chief executive under that section, within 20 business days after receiving the notice *unless the person has a reasonable excuse*. There is a maximum penalty of 50 penalty units.

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.¹⁷²

¹⁶⁹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

¹⁷⁰ Explanatory notes, p 3.

¹⁷¹ Explanatory notes, p 3.

¹⁷² *Legislative Standards Act 1992*, s 4(3)(d).

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence:

*For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.*¹⁷³

Generally, in criminal proceedings:

- *the legal onus of proof lies with the prosecution to prove the elements of the relevant offence beyond reasonable doubt, and*
- *the accused person must satisfy the evidential onus of proof for any defence or excuse he or she raises and, if the accused person does satisfy the evidential onus, the prosecution then bears the onus of negating the excuse or defence beyond reasonable doubt.*¹⁷⁴

The explanatory notes address the issue of the reversal of the onus of proof in the context of proposed s 99GC (requiring a reasonable belief), giving this justification:

*This reversal of the onus of proof is considered justified in view of the fact that the belief of the person selling the item is a matter peculiarly within their knowledge and would be very difficult for a prosecuting authority to establish. It is therefore appropriate that the seller be required to provide the necessary evidence of the reasonable belief. For example, they may ask the person to whom the sale is being made to confirm in writing that their business provides these items to a person who conducts an exempt business or undertaking.*¹⁷⁵

In the circumstances, this justification has merit. It can reasonably be anticipated that such matters would be peculiarly within the knowledge of a person charged with the offence, and would likely be difficult for a prosecuting authority to establish.

The 'reasonable excuse' provision in proposed s 99GG is not canvassed in the explanatory notes. Such 'reasonable excuse' provisions are discussed in some detail in the Office of the Queensland Parliamentary Counsel (OQPC), *Principles of good legislation: Reversal of onus of proof*. That discussion starts with the following:

If legislation prohibits a person from doing something 'without reasonable excuse' it would seem in many cases appropriate for the accused person to provide the necessary evidence of the reasonable excuse. While there is no Queensland case law directly on point, the Northern Territory Supreme Court has held that the onus of proving the existence of a reasonable excuse rested with the defendant on the basis that the reasonable excuse was a statutory exception that existed as a separate matter to the general prohibition... That approach is consistent with the principles used to determine whether a provision contains an exception to the offence or whether negating the existence of the reasonable excuse is a matter to be proved by the prosecution once the excuse has been properly raised ...

... [It] is understood that in Queensland, 'reasonable excuse provisions' are drafted on the assumption that the Justices Act 1886, section 76 will apply and place both the evidential and legal onus on the defendant to raise and prove the existence of a reasonable excuse. On the other hand, ... departments have often taken the view in their Explanatory Notes that a provision

¹⁷³ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

¹⁷⁴ See Office of the Queensland Parliamentary Counsel, *Principles of good legislation: Reversal of onus of proof*, p 3, at legislation.qld.gov.au/file/Leg_Info_publications_FLP_Reversal_of_Onus1.pdf

¹⁷⁵ Explanatory notes, p 3.

*containing an exemption where a reasonable excuse exists is an excuse for which only the evidential onus lies with the accused.*¹⁷⁶

The OQPC discussion concludes:

*It seems likely that in most cases a reasonable excuse will constitute a statutory exception to be proved by the defendant. However, in the absence of an express statement as to the allocation of the onus, the question will ultimately need to be determined by a court having regard to the established rules of statutory interpretation.*¹⁷⁷

Elsewhere, the OQPC has noted:

Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.

*For example, if legislation prohibits a person from doing something ‘without reasonable excuse’, it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.*¹⁷⁸

In the present case, the explanatory notes for the Bill are silent on this issue. In considering the issue regarding similar provisions in other Bills, explanatory notes justify the reversal of the onus of proof on the basis that establishing the defence would involve matters which would be within the defendant’s knowledge or on which evidence would be available to them.¹⁷⁹

The explanatory notes justify the reversal of the onus in the ‘reasonable belief’ provision in s 99GC on a similar basis.

It could reasonably be anticipated that this would be the position in the context of s 99GG. As with s 99GC, the matters involved in establishing a ‘reasonable excuse’ could reasonably be expected to be peculiarly within the knowledge of a person charged with the offence, and would likely be difficult for a prosecuting authority to establish.

Committee comment

These provisions may be seen to reverse the onus of proof, in providing that a person does not commit an offence if the person has a reasonable belief or a reasonable excuse. The person bears the onus of proof to show that they had a reasonable belief or a reasonable excuse.

Given that the provisions allow for sale of banned items in limited prescribed circumstances, the committee is satisfied that any breach of fundamental legislative principle is justified.

¹⁷⁶ See Office of the Queensland Parliamentary Counsel, *Principles of good legislation: Reversal of onus of proof*, p 25, at legislation.qld.gov.au/file/Leg_Info_publications_FLP_Reversal_of_Onus1.pdf

¹⁷⁷ Office of the Queensland Parliamentary Counsel, *Principles of good legislation: Reversal of onus of proof*, p 26.

¹⁷⁸ See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 36.

¹⁷⁹ For a recent example, see Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018, explanatory notes, p 17.

3.2 Institution of Parliament

3.2.1 Delegation of legislative power

Section 4(4)(a) of the LSA requires that legislation has sufficient regard to the institution of Parliament.

3.2.1.1 *Delegation of legislative power – proposed section 99GB*

Summary of provisions

Clause 5 inserts proposed s 99GB, which includes a definition of ‘compostable’ by reference to being ‘compostable’ under two Australian Standards, which are in turn defined in s 99GB as follows:

- (a) *AS 4736 means the Australian Standard for biodegradable plastics suitable for composting and other microbial treatment, as in force from time to time under that designation (regardless of the edition or year of publication of the standard).*
- (b) *AS 5810 means the Australian Standard for biodegradable plastics suitable for home composting, as in force from time to time under that designation (regardless of the edition or year of publication of the standard).*

Issue of fundamental legislative principle

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.¹⁸⁰

The provisions allow certain matters to be prescribed or defined by an external document created by an external body. This can be seen as having the tendency to undermine the institution of Parliament by effectively delegating the making of Queensland law to outside bodies.¹⁸¹

A provision of legislation that incorporates into the law external documents made by entities outside the framework of government, including the form those documents may take ‘from time to time’, adversely affects the institution of Parliament, as it delegates law-making power to outside bodies.¹⁸²

The former Scrutiny of Legislation Committee considered the incorporation of external documents by bills should be kept to the minimum reasonably achievable in the circumstances, and this was particularly so where a document is incorporated in whatever form it may take from time to time. However, that committee recognised that there may be cases where there are pressing practical arguments in favour of the use of this drafting technique.¹⁸³ Additionally, this might not be an issue if the document is a fixed document readily accessible to readers of legislation.¹⁸⁴

Where an Act incorporates a document, concerns might be diminished if any amendments to the document only take effect if they are approved by subordinate legislation (with provision for access to the amendments if they are not in the subordinate legislation).

The explanatory notes do not refer to this issue of fundamental legislative principle in this context.

¹⁸⁰ *Legislative Standards Act 1992*, s 4(4)(a).

¹⁸¹ See for example, the discussion at Scrutiny of Legislation Committee, *Alert Digest 5 of 2006*, p 3.

¹⁸² Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 148.

¹⁸³ See Scrutiny of Legislation Committee, *Alert Digest 5 of 2006*, p 3.

¹⁸⁴ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 148.

Committee comments

It should be noted that the definition of ‘compostable’ has some, though indirect, impact on the possible circumstances of commission of an offence (see proposed ss 99GF and 99GG).

Such ‘incorporation’ provisions are now relatively common.

Standards Australia, the organisation responsible for setting Australian Standards, is Australia’s leading standards organisation, specialising in the adoption of internationally aligned standards in Australia. Australian Standards are regularly incorporated into legislation at the State and Commonwealth level, which ensures that legislation remains up to date with international best practice standards.

Given the reputability and expertise of the external body, the committee is satisfied that there are significant arguments in favour of the incorporation of the external standards, and that any breach of fundamental legislative principle is justified.

3.2.1.2 Delegation of legislative power – proposed sections 99GC and 99GD

Summary of provisions

Clause 5 provides for certain matters to be prescribed by regulation, by inserting:

- proposed s 99GC(1), which defines a ‘banned single-use plastic item’ as including a ‘single-use plastic item’ that is prescribed by regulation to be a banned single-use plastic item.
- proposed s 99GC(2), which provides for what is *not* a banned single-use plastic item, including a single-use plastic item that is prescribed by regulation not to be a banned single-use plastic item.
- proposed s 99GD(3), which includes a definition of ‘exempt business or undertaking’ as meaning a healthcare business or undertaking, or a school, or:
 - *a business or undertaking, prescribed by regulation for this definition, that involves the sale or supply of banned single-use plastic items for use by persons with a disability or healthcare needs.*

Issue of fundamental legislative principle

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.¹⁸⁵

Here, the provisions allow certain matters to be prescribed by regulation, rather than being set out in primary legislation (thus being given effect without prior Parliamentary consideration).

It can be noted that, although the provisions do not expressly provide for any offence to be created by regulation, the extending (by regulation) of the scope of the items that could (or could not) be the subject of an offence, can be considered to have the same effect.

The principal means for creating offences should always be through Acts of Parliament, rather than in delegated legislation:

*In relation to a power to create offences and impose penalties under subordinate legislation, the more serious the consequences, the more likely it is that an offence or penalty should be imposed only by an Act of Parliament.*¹⁸⁶

¹⁸⁵ *Legislative Standards Act 1992*, s 4(4)(a).

¹⁸⁶ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 150.

It is pertinent to consider proposed s 99GC(3), which provides:

The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(b) or (2)(b) about whether or not a single-use plastic item is a banned single-use plastic item (a proposed change) only after—

(a) carrying out consultation with the public about the proposed change; and

(b) considering all of the following—

(i) the results of the public consultation about the proposed change;

(ii) whether making the proposed change is likely to achieve the objects of this part;

(iii) whether voluntary or other measures to achieve the objects of this part have been shown not to be effective;

(iv) if the proposed change is to prescribe a single-use plastic item to be a banned single-use plastic item—

(A) the availability of alternative products to the single-use plastic item; and

(B) whether the costs of monitoring, enforcement and market development are proportional to the benefits of the proposed change.

This section, in requiring a prior consultation process before a regulation is made might be seen as going some way towards addressing concerns here. The explanatory notes state consultation on items including coffee cups, polystyrene and other plastic cups, and oxo-degradable plastics will commence in late 2020.¹⁸⁷ Some other factors that can be relevant to a consideration of whether leaving matters to be prescribed by regulation is justified include whether:

- the matters to be prescribed are consistent with the policy objectives and purpose of the authorising law
- the matters to be prescribed are technical, complex, or clinical in nature
- it gives flexibility, allowing government to respond promptly if the need for change arises in the future.

It is not clear that the second and third elements exist here.

In addressing this issue of fundamental legislative principle, the explanatory notes refer only to the provision for other single-use plastic items to be prescribed in regulation, stating:

*It is considered that this is justified because it will enable progressive roll-out to more single-use plastics, thereby reducing immediate impacts on consumers and industry.*¹⁸⁸

This statement though does not address whether it is appropriate for this ‘progressive roll-out’ to be effected by regulation rather than by future amendment to the Act. The justification for doing so here is not addressed in the explanatory notes, nor is it otherwise apparent on the available material and on the face of the legislation.

¹⁸⁷ Explanatory notes, p 4.

¹⁸⁸ Explanatory notes, p 4.

The explanatory notes then refer to the proposed consultation process:

*Consideration of additional single-use plastic items for inclusion in the regulation would be undertaken as part of a consultative process against the criteria established in legislation prior to recommendations (or proposed changes) for regulations prescribing new items being made.*¹⁸⁹

Committee comments

The committee is satisfied that given the progressive nature of the ‘roll-out’, any breach of fundamental legislative principle is justified in this instance.

3.3 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

¹⁸⁹ Explanatory notes, p 3.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.¹⁹⁰

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA.¹⁹¹

The HRA protects fundamental human rights drawn from international human rights law.¹⁹² Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility.

4.1 Human rights compatibility

The committee considered the following relevant clauses.

4.1.1 Exemptions from restriction on sale of banned single-use plastic items

Clauses 99GD(2) states that the restriction on sale of banned single-use plastic items does not apply to exempt business or undertaking, which is defined in cl 99GD(3) to be:

- (a) *a healthcare business or undertaking; or*
- (b) *a school; or*
- (c) *a business or undertaking, prescribed by regulation for this definition, that involves the sale or supply of banned single-use plastic items for use by persons with a disability or healthcare needs.*¹⁹³

This gives rise to potential interferences with rights to equality under the law as set out in s 15 of the HRA, and to freedom from cruel, inhuman or degrading treatment as set out in s 17 of the HRA.

4.2 Human rights summary

The objective of the Bill is to enable a ban on the supply of single-use plastic items, a major source of plastic in the environment, which governments in Australia and around the world have identified as being associated with significant environmental, community and economic impacts. These amendments will therefore enhance human rights generally.

The committee focused its analysis on the implications of cls 99GD(2) and 99GD(3) of the Bill which are the provisions which have potential limitations on human rights, namely the protection from cruel, inhuman or degrading treatment, and the right to equality before the law.

¹⁹⁰ *Human Rights Act 2019*, s 39.

¹⁹¹ *Human Rights Act 2019*, s 8.

¹⁹² The human rights protected by the *Human Rights Act 2019* are set out in ss 15-37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; *Human Rights Act 2019*, s 12.

¹⁹³ Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020, pp 8-9.

4.2.1 Human rights issue – protection from cruel, inhuman or degrading treatment and equality before the law

The right to freedom from cruel, inhuman or degrading treatment under s 17 of the HRA, states that:

A person must not be –

- *treated or punished in a cruel, inhuman or degrading way.*¹⁹⁴

The right to equality under s 15 of the HRA, states that:

- *Every person has the right to enjoy the person's human rights without discrimination.*
- *Every person is equal before the law and is entitled to the equal protection of the law without discrimination.*
- *Every person has the right to equal and effective protection against discrimination.*
- *Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.*¹⁹⁵

4.2.1.1 Nature of the human right

Under the HRA s 17, all persons are guaranteed the right to freedom from cruel, inhuman or degrading treatment. As noted in the compatibility statement, this includes a protection from humiliating treatment. This right is an important manifestation of the underlying purpose of human rights law which is to respect the dignity of all people.¹⁹⁶

This right must be equally enjoyed by all people without discrimination pursuant to s 15, which guarantees equality before the law. This right encompasses both formal and substantive equality; it must ensure that people are practically able to enjoy their rights on an equal basis. This approach aligns with anti-discrimination laws, such as the *Anti-Discrimination Act 1991*, which prohibit both direct and indirect discrimination.

Equalisation of opportunities is an important means of ensuring substantive quality under the law. This is a key principle of the *Convention on the Rights of Persons with Disabilities*,¹⁹⁷ which is a relevant instrument of international law when interpreting the rights of persons with disability.¹⁹⁸ The Committee on the Rights of Persons with Disability has explained that 'recognition that all persons with disabilities are equal under the law means that there should be no laws that allow for specific denial, restriction or limitation of the rights of persons with disabilities.'¹⁹⁹

The Bill acknowledges that persons with a disability or health condition may have special needs which require use of single-use plastic items, most commonly straws. The inability to access a straw when one is needed may be a humiliating or degrading experience for an individual, and may limit their ability to engage with social, educational, professional or other activities on an equal basis with other members of the community. Such a situation would be contrary to respect for the rights found in ss 15 and 17 of the HRA.

¹⁹⁴ *Human Rights Act 2019*, s 17(b).

¹⁹⁵ *Human Rights Act 2019*, s 15.

¹⁹⁶ See Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)* (1992).

¹⁹⁷ Opened for signature 30 March 1977, 2515 UNTS 3 (entered into force 3 May 2008), arts 3 and 5.

¹⁹⁸ *Human Rights Act 2019*, s 48(3).

¹⁹⁹ See Committee on the Rights of Persons with Disability, *General Comment No. 6 on Equality and Non-Discrimination* (2018).

Committee comment

The committee is satisfied that the Bill provides sufficient consideration to the rights of persons with disabilities or health conditions, and that any limitations are reasonable and justifiable.

4.2.1.2 Nature of the purpose of the limitation

The purpose of the limitation is to reduce plastic waste, which is a legitimate and laudable objective to pursue.

The limitation on the rights noted above is indirect, and flows from the fact that a person requiring a plastic straw will be unable to obtain one at the point of purchasing food or beverages, but will be required instead to source these from a pharmacy, clinic or other exempted vendor. It is therefore not a complete limitation, as straws will still remain accessible, but nonetheless may operate as a limitation on human rights in certain circumstances.

Committee comment

The committee is satisfied that any possible limitations on human rights are reasonable and justifiable.

4.2.1.3 The relationship between the limitation and its purpose

There is a legitimate need to address plastic waste in the environment, as single-use plastic items present a growing problem. The proposed ban has potential to make a significant impact on this serious issue, and there is therefore a clear link between the potential limitation and a legitimate purpose.

Committee comment

The committee agrees with the comments made in the statement of compatibility regarding the need for some individuals to continue to have access to single-use plastic straws. Where an individual's rights are limited due to differential treatment under the law, the purpose of this limitation is consistent with a legitimate and reasonable purpose.

4.2.1.4 Whether there are less restrictive and reasonably available ways to achieve the purpose

The explanatory notes details the other potential measures which were considered as alternatives to a ban on single-use plastic items, and the committee is satisfied that the proposed ban is the most cost-effective and manageable approach to the problem.

The specific approach of banning the sale of plastic items but creating an exemption for healthcare businesses minimises the impact on persons who may require plastic straws because of a disability or health condition. However, this places the responsibility on the individual to ensure that they have adequate supplies of straws in advance by purchasing them from a pharmacy or other vendor. This also removes the responsibility from hospitality retailers to ensure reasonably appropriate accommodations are available for all customers, consistent with their obligations under the *Anti-Discrimination Act 1991*.

Creating an additional exemption for a hospitality business who supplies a plastic straw to a person requiring one due to a disability or health condition would be a reasonable way of further minimising the risk of humiliating or limiting experiences.

Committee comment

Submitters commented on the limitations of allowing hospitality businesses to be permitted to continue to supply straws on an individual basis:

*We encourage solutions such as encouraging those needing a straw to bring their own or providing items through pharmacies, as it will be difficult for some retailers to ... judge whether someone 'needs' a straw, or just 'wants' a straw.*²⁰⁰

The explanatory notes state:

*... coordinated action to ban these items ensures that all businesses have obligations not to provide or sell these items. This avoids consumer confusion. ... Provisions of the Bill allow facilities such as hospitals, schools and aged care homes to retain the use of the banned items until such time as suitable alternatives can be found...*²⁰¹

The committee is satisfied that there are no less restrictive and reasonably available ways to achieve the purpose in this instance until suitable alternatives are found.

4.2.1.5 The importance of the purpose of the limitation

The problem of single-use plastic waste is a significant challenge for Queensland's environment and the proposed ban is an important step in addressing this problem. The explanatory notes demonstrate that there is significant community support for introducing a ban on single-use plastic items, which was supported by community engagement through the committee's inquiry.

4.2.1.6 The importance of preserving the human right

Rights to freedom from degrading or humiliating treatment are of fundamental importance in ensuring that all individuals are treated with respect for their dignity.

The potential interferences with these rights are at the lower end of the scale, but they are important rights which ought to be respected to the greatest possible extent.

4.2.1.7 The balance between the importance of the purpose of the limitation and the importance of preserving the human right

The Bill is within the scope of acceptable limitations set out in s 13 of the HRA. There are potential human rights consequences arising from the ban for people with a disability or health condition, but these are likely to be of a limited gravity and duration, affecting a small number of people, and can be worked around with adequate planning.

These impacts could potentially be further minimised by allowing an exemption for vendors who supply straws to a person with a disability or health condition, to ensure straws are always available for persons with a genuine need.

Committee comment

The committee is satisfied that the Bill is generally compatible with human rights and that the human rights issues identified above are justified in the circumstances, having regard to s 13 of the HRA, and that the proposed actions for providing straws to individuals that require them are the most suitable option to achieve the policy objectives, until such time that a suitable alternative is found.

²⁰⁰ Submission 11, p 6.

²⁰¹ Explanatory notes, p 2.

4.3 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

There are potential limitations on persons with disabilities or health conditions as highlighted above, although these limitations are relatively minor and are justified by the legitimate purpose of the Bill.

A statement of compatibility was tabled with the introduction of the Bill, but provided only limited examination of these issues and concluded that no human rights are engaged or limited by the amendments because straws will remain available. The statement of compatibility did not contain sufficient information and did not identify substantial human rights issues.

Appendix A – Submitters

Sub #	Submitter
001	Capricorn Coast Landcare Group
002	Wide Bay Burnett Environment Council Inc.
003	Environmental Defender's Office
004	Unistraw
005	Australian Marine Conservation Society
006	Boomerang Alliance
007	Waste Management and Resource Recovery Association of Australia
008	Australian Packaging Covenant Organisation Ltd
009	Local Government Association of Queensland
010	Australian Food and Grocery Council
011	National Retail Association
012	Sea Shepherd Australia
013	Seabin Project
014	Fitzroy Basin Association
015	Wildlife Preservation Society of Queensland
016	Container Exchange (Qld) Limited
017	Woolworths Group
018	Nicole Nash

Appendix B – Officials at public departmental briefing

Department of Environment and Science

- Mr Pravin Menon, Executive Director, Office of Resource Recovery
- Ms Kylie Hughes, Director, Waste Policy and Legislation, Office of Resource Recovery
- Ms Cara McNicol, Manager, Policy and Legislation, Office of Resource Recovery

Appendix C – Witnesses at public hearings

Cairns – 4 August 2020

Blackbird Espresso Coffee

- Mr Troy Furner, Owner

The Last Straw on the Great Barrier Reef

- Ms Nicole Nash, Founder and Manager

Cairns Regional Council

- Cr Brett Moller, Council Representative to Local Authority Waste Management Advisory Committee
- Mr Steven Cosatto, Manager, Waste and Resource Recovery
- Mr Mark Wuth, General Manager, Waste and Resource Recovery

StrawNoMore

- Ms Molly Steer, Founder
- Ms Jules Steer, Supporter

Yeppoon – 6 August 2020

Plastic Free Livingstone

- Ms Jo Stoyel, Coordinator
- Dr Flavia Santamaria, Coordinator

Queensland Water and Land Carers and Capricornia Catchments

- Ms Shelly McArdle, Board Member (Queensland Water and Land Carers) and Senior Project Officer (Capricornia Catchments)

Fitzroy Basin Association

- Ms Bethlea Bell, Community Participation Officer
- Ms Rebecca French, Engagement Manager

Minimal Waste Central Queensland, Capricorn Coast Landcare Group Inc. and Envirolink Centre

- Ms Sabrina Burke, Coordinator

Open microphone

- Mr Michael O’Keeffe, private capacity
- Ms Andrea Friend, private capacity
- Ms Leanne Randall, private capacity
- Mr Chris Cole, private capacity
- Mr Malcolm Wells, private capacity
- Ms Jo Stoyel, private capacity

Brisbane – 10 August 2020

Ten Little Pieces

- Ms Alison Foley, Founder and Director

Surfrider Foundation Australia

- Mr Nick Brooke, Ocean Friendly National Coordinator

Boomerang Alliance

- Mr Toby Hutcheon, Campaign Manager

National Retail Association

- Mr David Stout, Director, Policy
- Ms Ebony Johnson, Policy Project Manager

Australian Packaging Covenant Organisation Ltd

- Ms Brooke Donnelly, Chief Executive Officer
- Mr Peter Brisbane, Government Partnership Manager

Container Exchange (QLD) Limited

- Mr Mark O'Brien AM, Chairman
- Ms Glenda Viner, General Manager, Corporate and Community Relations

Department of Environment and Science

- Mr Pravin Menon, Executive Director, Office of Resource Recovery
- Ms Kylie Hughes, Director, Waste Policy and Legislation, Office of Resource Recovery
- Ms Cara McNicol, Manager, Policy and Legislation, Office of Resource Recovery