

Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020.

Policy objectives and the reasons for them

The principal policy objective of the Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 (the Bill) is to enable a ban on the supply of single-use plastic items, starting with straws, stirrers, plates and cutlery.

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.

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

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.

The Bill supports delivery of the broader principles of the Queensland Government's Waste Management and Resource Recovery Strategy, released on 1 July 2019 and the aims of *Tackling Plastic Waste – Queensland's Plastic Pollution Reduction Plan* to reduce plastic waste and the environmental and economic impacts of plastic pollution.

Achievement of policy objectives

To achieve the policy objective of reducing plastic pollution resulting from single-use plastic by 20 per cent by 2023, the Bill amends the *Waste Reduction and Recycling Act 2011* to ban the supply of particular single-use plastic items, starting with straws, stirrers, plates and cutlery.

Alternative ways of achieving policy objectives

Alternative ways of achieving the policy objectives include voluntary phase-out action by the hospitality, food service sectors and retail sectors, as well as individual voluntary action to avoid the use of these items in the first place.

While a number of retailers and food service businesses have already made voluntary commitments to phase out the sale or use of single-use plastic items such as straws and cutlery, coordinated action to ban these items ensures that all businesses have obligations not to provide or sell these items. This avoids consumer confusion. As the majority of these items are currently imported an opportunity is also provided to develop local manufacturing for single-use plastic alternatives.

Another option includes the installation of additional litter infrastructure such as bins and stormwater interceptor devices. While additional infrastructure helps to reduce litter from entering the environment it does not prevent the generation of the items or the resulting waste. It also does not address a shift in behaviour change towards options that are further up the waste and resource management hierarchy to deliver avoidance actions.

The advantages and disadvantages of these options were considered in more detail as part of the public consultation on the Single Use Plastic Items Consultation Regulatory Impact Statement (CRIS).

Consultation on the CRIS confirmed strong community and business support for the introduction of a ban. Without a legislative ban any plastic pollution reduction gains are likely to be limited and action restricted to motivated individuals and businesses, which may make achieving the policy objective difficult.

Estimated cost for government implementation

Costs for government implementation of the ban are expected to be comparatively low.

An implementation plan will be developed in consultation with key stakeholder peak bodies to ensure that an appropriate engagement strategy is prepared in advance of the ban commencing. This will help ensure that impacted businesses and sectors are aware of the items that are banned and excluded from the ban, as well as obligations regarding the ban, well in advance of the ban commencing.

Enforcement activities can be minimised by ensuring that businesses are aware of the ban and their obligations under the ban well in advance of the taking compliance action. Greater awareness will help reduce the number of businesses that may need to be subject to compliance activities.

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, further reducing the costs of implementation for government.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

A Bill should have sufficient regard to the institution of Parliament—*Legislative Standards Act 1992*, section 4(4)

The Bill contains provision for other single-use plastic items to be prescribed in regulation. The amendments raise the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament because the Bill provides for banned plastic items to be prescribed by regulation without Parliamentary consideration.

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. 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.

Legislation should have sufficient regards to rights and liberties of individuals—*Legislative Standards Act 1992*, section 4(3)(a)

The amendments insert new offence provisions to support the ban on the supply of single-use plastic items. This raises the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals. 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.

Legislation should not reverse the onus of proof—*Legislative Standards Act 1992*, section 4(3)(d)

The amendments insert a new offence provision in relation to restrictions on the sale of a banned single-use plastic item, except in certain circumstances. One of the circumstances under which a person conducting a business may sell a banned single-use plastic items is where the person has a reasonable belief 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. In such cases it will be the person selling the banned item who would need to prove that their belief that they were lawfully selling a banned item was reasonable.

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.

Consultation

A Single Use Plastic Items Consultation Regulatory Impact Statement (RIS) was released on 13 March 2020. Submissions closed on 30 April, following a two week extension to the original closing date of 15 April 2020.

A total of 19,622 submissions were received; 18,942 through the online survey and 680 written submissions through email and post. Submissions received by email and post provided clear identification of stakeholder groups, predominately representing:

- environmental non-government organisations (NGO)/charities (18)
- commercial businesses (9)
- peak bodies (8)
- community organisations (5)
- government (4)
- academia (1)
- individual community members (635)

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

Twenty-one per cent of 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.

The Bill makes provision for additional items and products to be prescribed in regulation, following a consultation process prior to regulations being made. Consultation on items including coffee cups, polystyrene and other plastic cups and oxo-degradable plastics will commence in late 2020.

Sixteen per cent of submissions supported a ban on heavyweight (boutique) plastic shopping bags. These bags are not included in the ban as development of a national code of practice for sustainable shopping bags is currently being underway to address these bags.

While the consultation showed overwhelming support for a start date of 1 July 2021, this was before the full impacts of the COVID-19 pandemic were known. Consequently, the Bill provides for these amendments to commence by proclamation, to allow for flexibility of the start date and ensure there is not undue impost on businesses that may still be recovering from COVID-19 restrictions.

Consistency with legislation of other jurisdictions

While the Bill is specific to the State of Queensland, and is not uniform with legislation of the Commonwealth or another state, there are consistencies between the items banned in Queensland and the announcements made in the Australian Capital Territory and the legislation introduced on 20 April 2020 in South Australia.

This includes general consistencies with the type of banned items and application of the ban. This consistency is necessary to remove confusion and streamline legislative obligations for national operators.

Notes on provisions

Part 1 Preliminary

Clause 1 (Short Title) states that the short title of the Bill may be cited as the *Waste Reduction and Recycling (Plastic Items) Amendment Act 2020*.

Clause 2 (Commencement) provides that Part 2 commences on a day that is fixed by proclamation.

Part 2 Amendment to the Waste Reduction and Recycling Act 2011

Clause 3 (Act amended) provides that Part 2 of the Bill amends the *Waste Reduction and Recycling Act 2011*.

Clause 4 (Amendment of s 99B (Meaning of *banned plastic shopping bag* and *alternative shopping bag*)) provides that s99B(4), definition of AS 4736 is amended to include the words ‘suitable for composting and other microbial treatment’ after ‘plastic’ in the definition.

This maintains consistency of wording with definitions for Part 3AA (Plastic items)

Clause 5 (Insertion of new ch 4, pt 3AA) provides for the insertion of a new part for Chapter 4, following Part 3A (**Single use plastic bag ban**).

Part 3AA Plastic items

Division 1 Preliminary

99GA Objects of part

Section 99GA states that Part 3AA has the following objectives:

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

99GB Definitions for part

Section 99GB defines the terms to be used for this part, including the following key definitions –

compostable, for plastic, means plastic that is compostable under AS 4736 or AS 5810.

plastic item means an item made, in whole or part, of plastic (whether or not the plastic is compostable).

single-use plastic item means a plastic item, other than a plastic item that is compostable, that is designed to be used only once.

The definition for a **banned single-use plastic item** is contained in section 99GC.

99GC Meaning of *banned single-use plastic item*

Section 99GC states the items that are banned single-use plastic items and those that are not a banned single-use plastic item. To remove any doubt, this section also provides definitions for cutlery and shelf-ready product.

Subsection (1) states that a **banned single-use plastic item** is an item that –

- a) is –
 - a) a plate; or
 - b) a bowl; or
 - c) an item of cutlery; or
 - d) a straw; or
 - e) a stirrer; or
- b) is prescribed in regulation to be a banned single-use plastic item.

For the purposes of subsection (1), a stirrer is not limited to being used for stirring a beverage but may, for example, be used as a means of incorporating flavour into an instant meal.

Subsection (2) 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.

Subsection (3) states that the Minister may recommend to the Governor in Council that a regulation can be made under subsections (1)(b) or (2) about whether or not a single use plastic item is a banned single use plastic item. This is the **proposed change**.

The proposed change may only be made after public consultation on the proposed change and after considering the results of 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.

Subsection (4) provides definitions for:

cutlery means utensils for eating food, and includes chopsticks, splayds and sporks

shelf-ready product means food or a beverage that is pre-packed as a single serve and ready for immediate consumption or consumption after cooling or heating the food or beverage.

Division 2 Banned single-use plastic items

99GD Restriction of selling banned single-use plastic items

Section 99GD provides the circumstances where a banned single-use plastic item may not be, and may be, sold. This section should be read in conjunction with the definition in the Act for sell.

Sell includes supply free of charge for a commercial or promotional purpose. This means that the act of supplying ‘free of charge’ in the course of a commercial transaction, such as the sale of a beverage, is a ‘sale’ in relation to a single-use plastic item for the purposes of this part.

For this section, subsection (1) states that a person who conducts a business or undertaking must not, in the course of operating that business or undertaking, sell a banned single-use plastic item to another person.

The section is not intended to apply to a person who conducts a business or undertaking outside of Queensland. It is the person who conducts a business or undertaking in Queensland, who must not, in the course of operating that business or undertaking, sell a banned item to another person.

This section carries a maximum penalty of 50 penalty units.

Subsection (2) states that subsection (1) does not apply to the sale of a banned single-use plastic item by or to a person who conducts an exempt business or undertaking; or if the person selling the item reasonably believes the sale is a step in a supply chain for the supply of the item to a person who conducts an exempt business or undertaking.

This allows, for example, a distributor who is a step in the supply chain to an exempt business as described in subsections (3) or (4), and who themselves are not defined as an exempt business, to continue to purchase from a manufacturer and provide those items to an exempt business. It does not allow, however for that distributor to provide a banned single-use plastic item to a business that is not an exempt business.

Subsection (3) provides definitions for *exempt business or undertaking* and *healthcare business or undertaking*.

exempt business or undertaking means 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.

healthcare business or undertaking means (a) a clinic or facility that provides care to persons with a disability or healthcare needs; (b) a dental clinic; (c) a hospital; (d) a medical clinic; (e) a medical supply business or undertaking; (f) a pharmacy; or a business that is substantially similar to a business or undertaking mentioned in paragraphs (a) to (f) of the definition.

99GE Giving false or misleading information about banned single use plastic items

Section 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 that item is a banned single-use plastic item.

The maximum penalty for providing false or misleading information is 50 penalty units.

Division 3 Compostable plastic items

99GF Stating conditions under which plastic items are compostable

Section 99GF states that this section applies for plastic items that are compostable.

Subsection (1) states that this section applies if a person conducts a manufacturing, wholesale, distribution or import business or undertaking and in the course of conducting that business or undertaking sells a plastic item that is compostable to another person.

Subsection (2) states that the person selling the compostable item must ensure that the conditions under which the plastic item is compostable are clearly and legibly written on the packaging for the plastic item or in information accompanying the plastic item.

The maximum penalty for not providing this information is 50 penalty units.

Subsection (3) states that for this section a *condition* includes whether the plastic item is suitable for industrial or home composting and whether the plastic item is compostable under AS 4736 or AS 5810.

99GG Certification to chief executive about whether or not plastic items are compostable

Section 99GG provides for the chief executive to give a notice under this section to a person about a plastic item that is compostable, and the conditions of the notice.

Subsection (1) states that the chief executive may give a notice to a person if the chief executive believes that the person conducts a business or undertaking mentioned in s99GF(1) and in the course of conducting this business or undertaking sells a compostable plastic item (a *solid item*) or a plastic item that the person tells another person is a compostable plastic item.

Subsection (2) states that the notice may require the person to give the chief executive a certification about the item that is sold.

Subsection (3) states that a person who is given a notice under this section must comply with the notice within 20 business days of receiving the notice, unless the person has a reasonable excuse for not complying.

The maximum penalty is 50 penalty units.

Subsection (4) states that *certification* means a certification about whether or not the sold item is compostable that includes information decided by the chief executive and is in the form decided by the chief executive.

99GH Giving false or misleading information about whether or not plastic items are compostable

Section 99GH states that a person must not give information that the person knows is false or misleading to another person about whether or not a plastic item is compostable.

The maximum penalty for providing false or misleading information is 50 penalty units.

Division 4 Review

99GI Review of part

Section 99GH provides for a review of this Part.

Subsection (1) states that the Minister must ensure that a review of this part must start no later than 2 years following the commencement of the part.

Subsection (2) states that the review must include a review of the effect of this part on the community, especially persons with a disability or healthcare needs; the level of knowledge and understanding about this part, including what items are banned or not; and the effectiveness of this part in reducing the number of single use plastic items that are used, are littered or disposed of to landfill; the effect of this part on the use or sale of single-use plastic item alternatives; and the level of compliance with this part.

Subsection (3) states that the chief executive must provide a report on the outcome of the review to the Minister no later than 6 months from the day the review started.

Subsection (4) states that the Minister must table the report in the Legislative Assembly within 12 sitting days of receiving the report.

Clause 6 (Amendment of s 245 (Definitions for chapter)) amends section 245, definition of *prescribed provision* to insert after 73A(2) as prescribed provisions for the purposes of show cause and compliance notices sections 99CD(1), 99GE, 99GF(2), 99GG(3) and 99GH.

Clause 7 (Amendment of schedule (Dictionary)) amends the Dictionary to include relevant definitions for plastic items. An amendment is also made to the existing definition for *priority product* to undertake a minor correction to remove ‘product’ from the definition. The definition now concerns a priority statement for consistency with that part.

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