

2020

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

Plastic Reduction Bill 2020

EXPLANATORY STATEMENT

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PLASTIC REDUCTION BILL 2020

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

INTRODUCTION

This explanatory statement relates to the Plastic Reduction Bill 2020 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the Courts.

BACKGROUND

There are unprecedented levels of plastic in our environment. This has been accumulating since global plastic use exploded in the 1950s. Plastic has a very important place in our society. It is strong, adaptable, stable, lightweight and low cost. Plastic is integral in the medical field, and it keeps food safe and makes it last longer. But it can be pernicious – particularly single-use plastic.

Plastic persists in the environment and can last for hundreds or even thousands of years. It is rarely made from recycled or renewable resources, rather non-renewable resources such as oil, natural gas and coal. Once these resources have been depleted, they cannot be replaced. The UN estimates that, by 2050, the plastic industry could account for a fifth of the world's oil consumption and that plastic makes up about 80 per cent of marine litter.

The waste hierarchy is to reduce, reuse, recycle and recover. The last resort is disposal. Single-use plastic is difficult to avoid, which makes reducing its use difficult in the absence of regulatory action. It is also not designed to be reused, is difficult to recycle or is currently not recyclable at all. It is often used away from home where appropriate waste disposal options are limited, and often used and thrown away in mere seconds.

The Bill has been prepared to implement the Government's December 2019 policy decision via the [Next Steps policy document](#) to reduce plastic use in the ACT through a phase out of problematic and unnecessary single-use plastic items.

The Bill aims to reduce the use of plastic in the ACT, particularly single-use plastic, by prohibiting the sale, supply and distribution of identified single-use plastic items. These create significant issues for the ACT's environment (e.g. through litter) and waste management and resource recovery sector (e.g. ending up in landfill or becoming contamination in the ACT Materials Recovery Facility). It also establishes a framework for adding other products in the future, and absorbs the existing plastic shopping bag ban to streamline plastic-related regulation in the ACT.

The Bill has been titled the *Plastic Reduction Bill 2020* to provide a robust future framework for longevity to the Government's efforts to regulate to reduce the use of plastic. This acknowledges that, as global, national and local policy progresses, this Bill may need to go beyond the currently identified single-use plastic items to a broader plastic-related regulatory framework.

The Bill is focused on plastic and therefore is silent on non-plastic items such as those made from paper, cardboard, wood or bamboo.

OVERVIEW OF THE BILL

This Bill gives effect to policy agreed by Government in the [Next Steps policy document](#) to reduce plastic use in the ACT through a phase out of problematic and unnecessary single-use plastic items. In summary, the Bill:

- decisively regulates the sale, supply and distribution of select single-use plastic items in the ACT. The first tranche of prohibited plastic products identified in the Bill for immediate phase out are:
 - stirrers;
 - cutlery; and
 - expanded polystyrene takeaway food and beverage containers (e.g. cups, plates and 'clam shell' containers).
- establishes a framework for adding other single-use plastic products in the future via regulation, including a requirement that the Minister must give public notice of a proposed regulation.
- repeals and absorbs *Plastic Shopping Bags Ban Act 2010* to ensure that plastic bags remain banned in the ACT, and to streamline plastic-related regulation.
- carries over the existing strict liability offence regime and maximum penalty of 50 penalty units with an infringement notice attached from the *Plastic Shopping Bags Ban Act 2010*, supported by appropriate enforcement provisions.
- phases out single-use plastic through provision to declare public events (both government and non-government) as single-use plastic free. This includes provision to declare that additional single-use plastic products, beyond those identified as prohibited plastic products, will not be supplied at declared public events.
- establishes a framework for appropriate exemptions to the Bill as may be required from time to time.

CONSULTATION ON THE PROPOSED APPROACH

Public consultation was undertaken between April and July 2019 via the [Phasing out single-use plastics discussion paper](#). Feedback was invited through:

- community and business surveys;
- formal submissions;
- Your Say comments;
- information sessions;

- pop up stalls;
- presentations; and
- social media.

The consultation received approximately 3,300 interactions, compared to South Australia's similar consultation which received 3,630 interactions despite a population four times the size. The [Engagement Report](#) showed that items targeted by the Bill received over 90 per cent support for phase out. Feedback also established an expectation from the community and business that the ACT Government take regulatory action.

Comprehensive consultation has been undertaken across all ACT Government Directorates at every stage of policy development, with the Bill supporting significant existing efforts across Government to phase out single-use plastics in operations. Strong and collaborative cross-jurisdictional networks have supported policy and Bill development, particularly acknowledging assistance from partners in South Australia and Queensland. Bill development has also been supported by a Plastic Reduction Taskforce (Taskforce) of key industry, environment and disability advocacy representatives.

CONSISTENCY WITH HUMAN RIGHTS

Directorates are obliged under the *Human Rights Act 2004* (HR Act) to act and make decisions consistent with human rights.

This includes ensuring any amendments result in a law that is proportionate (as per section 28 of the HR Act) – that is, that it limits rights in the least restrictive way possible to achieve the legitimate purpose of the legislation. This includes considering if any amendment is going to have a disproportionate impact on low income earners or other vulnerable people, engaging the right to equality under section 8 of the HR Act.

Human rights have been considered throughout policy and Bill development, supported by engagement with the ACT Justice and Community Safety Directorate (JACS) Human Rights Unit, and the ACT Human Rights Commission via the:

- Human Rights Team; and
- Commissioner for Discrimination, Health Services, and Disability and Community Services.

Government engaged with disability advocates during policy development and, to ensure the Bill is inclusive as possible from the outset, has engaged with disability advocates through the Taskforce.

Importantly, while Government agreed to phase out single-use plastic straws, this phase out has been delayed to the second tranche of items. Second tranche items will be phase out 12 months from the commencement of the first tranche of items.

This delay recognises the significant engagement with additional human rights posed by single-use plastic straws, including the rights to:

- equality before the law;
- life; and
- privacy.

The phase out of single-use plastic straws will occur via regulation. Government will continue to engage with affected stakeholders to ensure that the design of this regulation means that single-use plastic straws remain available for those who need them.

Rights engaged

The Bill engages with the following:

- right to life;
- right to privacy;
- right not to have reputation unlawfully attacked;
- right to be presumed innocent until proven guilty; and
- rights in criminal proceedings.

Rights Promoted

The right to life is promoted by ensuring exemptions (Part 5) are available for those that need to retain access to prohibited plastic items. These exemptions will be particularly relevant when straws are phased out *except for those who need them* in future tranches.

The right not to have reputation unlawfully attacked is promoted through the power to obtain information (s26). This power ensures that individuals are afforded an opportunity to provide evidence that an item is not a prohibited plastic product, supported by the abrogation of privilege against self-incrimination and that a warning must be given (ss27 and 28). The power to obtain information in writing (e.g. by email) may limit the need to undertake an investigation in the public domain (e.g. preventing the need for authorised officer to visit a premises to investigate a reasonable belief of non-compliance).

Rights Limited

The Bill limits the following rights:

- right to be presumed innocent until proven guilty is limited;
- right to privacy; and
- rights in criminal proceedings.

1. Nature of the right and the limitation (s28(a) and (c))

The right to be presumed innocent until proven guilty is limited via strict liability offences which engage the presumption of innocence under s22(1) of the HR Act by removing the fault elements from an offence. This means an accused will be automatically presumed guilty unless they successfully raise the defence of reasonable and honest mistake.

The right to privacy is limited by ss30 and 31 as a person may be compelled to disclose their name and address.

2. Legitimate purpose (s28(b))

The Bill is being introduced to reduce the use of plastic in the ACT, and to reduce the impact of plastic on the environment and waste management and resource recovery systems (see [Background](#)).

The Bill's introduction responds to clear outcomes of consultation (see [Consultation on the Proposed Approach](#)) that showed phase out of the items targeted by the Bill was supported by over 90% of Canberrans. Further, this consultation established an expectation that Government regulate to reduce the use of plastic in the ACT.

Introducing the Bill provides broad coverage across the economy and supply chain, and provides a high level of certainty and competitive neutrality regarding the expected phase out of the use of plastic in the ACT.

3. Rational connection between the limitation and the purpose (s28(d))

Right to be presumed innocent until proven guilty

Strict liability offences arise in a regulatory context where reasons such as public standards, environmental protection, safety, community wellbeing and the public interest in ensuring that regulatory schemes are observed require the sanction of criminal penalties. In particular, where a defendant can reasonably be expected to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

The rationale for inclusion of strict liability offences is to ensure that a sufficiently robust and consistent enforcement regime can operate efficiently as part of an escalating enforcement framework, without requiring prosecution in all cases, to meet the purpose of ensuring community wellbeing, environmental and safety standards. The issuing of infringement notices is guided by internal policy, where education and awareness is the primary mechanism used for compliance with the law.

The offences that are strict liability and have infringement notices are designed to enable a quick and effective response where parties have failed to meet obligations, and are intended to act to prevent a harm, being either a community wellbeing, environmental or public safety harm.

The framework is designed to encourage compliance, not disproportionately penalise those who fail to comply, and will work together with a comprehensive education and awareness package.

Right to privacy

Compelling a person to disclose their name and address under ss30 and 31 is only to be used in circumstances where an authorised person believes on reasonable grounds that a person has, or is about to, commit an offence against this Act; and/or may be able to assist in the investigation of an offence against this Act. When compelling a person, an authorised officer must request the name and address of a person in a language or way of communicating that the authorised person believes reasonable.

Being able to identify and locate people who may have committed an offence under the Bill, or who may render assistance in providing evidence for the commission of the offence is crucial for the effective investigations undertaken under the Bill.

Without those provisions, an authorised person will have to spend significant amount of resources to enforce the offences, which are all designed to discourage the use of single-use plastic products.

Rights in criminal proceedings

In compelling a person to answer questions or produce documents or things under s26, the Bill engages rights in criminal proceedings in section 22 of the HRA. The purpose of ss26 to 28 is to assist authorised officers in their function as truth-seekers and their ability to undertake full and proper investigations.

The limitation on the right against self-incrimination (s27) is proportionate. Any self-incriminating material directly or indirectly obtained as a result of a person being compelled to provide information cannot be used as evidence against that person in later court proceedings, other than an offence in relation to the falsity or the misleading nature of the answer, document or information or an offence against the Criminal Code, chapter 7 (Administration of justice offences).

These provisions support authorised officers to be able to fully consider all available information when exercising their functions, while protecting the people providing the information by conferring 'use immunity'.

Use immunity is a well-established practice in relation to investigative agencies in the ACT, including the Human Rights Commission, Integrity Commission and Inspector of Correctional Services. The limitation is further circumscribed by way of the Bill providing that an authorised officer must satisfy the reasonable belief test in exercising powers under s26, and that a person must be warned (under s28) that failure to comply is an offence.

Proportionality (s28 (e))

Limiting the right to be presumed innocent until proven guilty via strict liability offences in these circumstances is considered to be reasonable and proportionate to the objective of the offence and its importance as a matter of public policy to achieve the intended objectives.

Limiting the right to privacy via a name and address direction is considered to be reasonable and proportionate, as this right is only to be limited in circumstances where there are reasonable grounds that a person has or is about to commit an offence, or where there are reasonable grounds that a person may be able to assist with an investigation of an offence. Further, names and addresses are information that may be obtained relatively easily via other channels, hence the resulting interference with privacy is kept to a minimum.

Limiting the right not to self-incriminate is reasonable and proportionate to support authorised officers to be able to fully consider all available information when exercising their functions, while protecting the people providing the information by conferring 'use immunity'.

An assessment has been made as to whether there is any less restrictive means available to achieve the purposes of the Act, such as: voluntary phase outs, staged phase outs and mandatory materials standards. A regulatory phase out, with appropriate exemptions, is considered the least restrictive means whilst ensuring high community standards, environmental protection and community safety. It also

supports:

- a high level of certainty and competitive neutrality;
- success of the existing ACT plastic bag ban to reduce the use of plastic in the ACT; and
- outcomes of consultation that established that Canberrans expect that Government take action to phase out single-use plastic, and a high degree of support for a regulatory approach to the same.

The enforcement mechanisms found in the Bill are considered to be the most effective and least intrusive way of making sure the statutory requirements are complied with. In the absence of strict liability offences, compelled disclosure of identity and potentially incriminating information, compliance enforcements would likely be severely hindered which would in turn frustrate the objects of the Bill.

OUTLINE OF PROVISIONS OF THE BILL

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause sets out the name of the Act as the Plastic Reduction Act 2020.

Clause 2 Commencement

This clause sets out that all provisions in the Act commence on the day after the Act's notification day.

Clause 3 Dictionary

This clause states that the dictionary at the end of this Act defines certain terms used in this Act; and includes references (signpost definitions) to other terms defined elsewhere in this Act.

Clause 4 Notes

This clause states that a note included in this Act is explanatory and is not part of this Act.

Clause 5 Offences against Act – application of Criminal Code etc

This clause states that other legislation applies in relation to offences against this Act, namely Chapter 2 of the *Criminal Code* (general principles of criminal responsibility and terms used for offences to which the Code applies) and *Legislation Act* (s133, Penalty Units).

Clause 6 Objects of Act

This clause states the objects of this Act are to reduce:

- the use of plastic in the ACT; and
- the impact of plastic on the environment; and
- the impact of plastic on waste management and resource recovery systems.

PART 2 **IMPORTANT CONCEPTS**

Clause 7 **Meaning of *single-use***

This clause states that a single-use plastic product is a plastic product that is designed or intended to be used once only.

The following provides an example of an item intended for reuse:

- A café sells coffee to a customer in a plastic take-away cup under a cup-return scheme. Under the scheme, a customer buys their coffee in a plastic take-away cup and returns the empty cup to the café or any other participating café to be washed and re-used by other customers of the café. The use and return of the plastic take-away cups is tracked using a mobile phone app. The plastic take-away cups are not intended to be used once only.

The following provides an example of an item *not* intended for reuse. Here the item is intended to be used once only:

- A restaurant selling take-away food places the prepared food in plastic take-away food containers and then in a single-use plastic shopping bag along with plastic cutlery for a customer to take away and eat.

For this Act, the meaning of single-use also applies even if the single-use plastic product may be subsequently re-used. For example:

- The customer from the above scenario washes the empty plastic take-away containers and re-uses them to take their lunch to work. The customer also re-uses the single-use plastic shopping bag as a bin liner and the plastic cutlery as planting labels for seedlings.

The subsequent re-use of the intended single-use plastic items in the above scenario is here deemed unrelated to its original intended use.

This clause also covers plastic products that may have multiple purposes. For example:

- Fresh herbs are placed in a plastic sleeve by the grower. The plastic sleeve:
 - (a) portions the herbs for sale;
 - (b) protects the herbs during transport to the supermarket;
 - (c) extends the shelf-life of the herbs at the supermarket;
 - (d) protects the herbs during purchase and transport to the home of the ultimate consumer.

Here the plastic sleeve has multiple purposes, but the sleeve is designed and intended for the customer to use it once. The sleeve is here an example of an item that has multiple purposes but is still covered under the meaning of if a single-use plastic product as defined in this Act.

Clause 8 **Meaning of *prohibited plastic product***

This clause states that a prohibited plastic product means any of the following:

- a single-use expanded polystyrene container intended for use as a food or beverage container;
- a single-use plastic beverage stirrer;
- single-use plastic cutlery;
- a single-use plastic shopping bag;
- any other prescribed single-use plastic product.

It also sets out steps the Minister must take to give public notice of a proposed regulation to prescribe a single-use plastic product.

Here the definition of a single-use plastic shopping bag from the Bag Ban Act is carried over. Meaning that, for the purposes of this Bill, a single-use plastic shopping bag will *not* include:

- a compostable bag;
- barrier bags (a bag used to carry unpackaged perishable food); and/or
- a plastic bag that is an integral part of packaging in which goods are sealed prior to sale.

Here, plastic is compostable if it meets the commercial or home composting Australian Standards AS4376-2006 or AS5810-2010 respectively as in force from time to time. This clause also informs readers where copies of the relevant Australian Standards may be obtained.

The copyright in Australian Standards is owned by a non-government organisation, Standards Australia. While it may be prohibitive for stakeholders to purchase these Standards, undue expense is minimised as the only parties that are materially affected are compostable plastic bag manufacturers. Ensuring that their products meet the relevant standards is core business for those manufacturers and they will certainly already have copies. The public can access copies of many standards at the National Library of Australia.

Here a single use expanded polystyrene container is considered a prohibited plastic product *if* it is used for *servicing* food and/or beverage. For example:

- a vendor at an event is selling take-away noodles. The vendor serves the noodles to a customer in a single use expanded polystyrene container.

In the above scenario the container *is* considered a prohibited plastic product and *is* covered under this clause.

A prohibited plastic product does *not* include a single use expanded polystyrene container that is considered an integral part of packaging. For example:

- a supermarket that is selling sealed noodles in a single-use expanded polystyrene container.

In the above scenario the container *is* considered an integral part of packaging and *is not* covered under this clause.

To ensure absolute clarity, single-use plastic cutlery *does not* include a straw.

Additional prohibited plastic products prescribed by regulation will trigger requirements under Section 34 of the *Legislation Act 2001*. Section 34 provides that

if the proposed law is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a Regulatory Impact Statement to be prepared for the proposed law.

That is, Regulatory Impact Statements will be prepared prior to any regulation being made to prohibit additional plastic products beyond those already specified in this clause. For example, a Regulatory Impact Statement will be prepared for the second tranche of products agreed for phase out by Government in 12-months which includes single-use plastic straws, single-use plastic barrier bags, and oxo-degradable plastic products.

PART 3

SUPPLYING PROHIBITED PLASTIC PRODUCTS

Clause 9 Supply of prohibited plastic products

This clause relates to the supply of a prohibited plastic product defined under section 9. Supply, in relation to a plastic product, means to sell, give or offer a plastic product as a container or packaging for another product that is sold; or for use with, or in relation to, another product that is sold.

As stated below in clause 12(1), if an authorised person believes on reasonable grounds that a person has contravened this section a notice to dispose may be issued.

If a plastic product is manufactured in the ACT for wholesale supply or distribution outside the ACT, this meaning of supply does not apply. Currently, there is no known plastic manufactured within the ACT. Should the situation change, legislative amendment may be sought.

A person that commits an offence under this clause has a maximum penalty of 50 units, and it is deemed a strict liability offence. An exemption for a person or plastic product may be made by the Minister under Part 5 of this Act.

Clause 10 False representation about prohibited plastic products

This clause relates to the supply and / or false representation of a product as a non-prohibited plastic product.

This clause applies if a person, intentionally or recklessly, falsely represents a plastic product as a non-prohibited plastic product. For example:

- A restaurant selling take-away food places the prepared food in plastic take-away food containers and then in a single-use plastic shopping bag along with plastic cutlery for a customer to take away and eat. When questioned by an authorised officer, the restaurant owner declares that the items are *not* prohibited plastic products. After investigation, authorised officers find the containers, bag and cutlery to be prohibited plastic products.

In the above scenario, the person, whether recklessly or intentionally, has falsely represented the prohibited plastic product. The person in this scenario could be found to be in breach of this clause and section 10(1).

This section supports stakeholder concerns of greenwashing by holding persons accountable, through strict liability offences, and disallowing defences such as mistake of fact.

Clause 11 Notice to dispose of prohibited plastic products

This clause relates to the authority of an authorised person to provide written notice to a person believed to have contravened section 10 (supply of prohibited products), to dispose of the prohibited plastic product.

The authorised person is required to provide written notice to the person in breach of section 10, with direction on when and where the prohibited product is to be

disposed. Way of disposal must not unreasonably financially disadvantage a person and be consistent with the objects of the Act.

The written notice must detail what will happen should the plastic product not be disposed of in accordance with the notice. It should explain that should the item not be disposed of as requested, the authorised person may authorise a stated person to remove and dispose of the item. The cost of the removal and disposal of the item incurred would then be passed on to the person who the notice was originally issued to. This cost would be debt due to the Territory.

Clause 12 Authorised person may remove and dispose of prohibited plastic products if notice not complied with

This clause relates to the failure of a person to comply with a notice under section 12; and the timelines in which an authorised person, or stated person, can remove and dispose of the prohibited plastic product the subject of the notice.

That is, an authorised person must not remove or dispose of the prohibited plastic product a) until the end of the period (or extending period) within which an application may be made to the ACAT for review of the decision of which the notice relates; b) if an application is made to the ACAT for a review of the decision – unless the decision is upheld or the application is withdrawn.

Clause 13 Liability for cost of disposal of prohibited plastic products

This clause relates to the financial obligation of a person who fails to comply with section 12 to pay the Territory for any removal and/or disposal under section 13. This ensures that financial burden is not placed on the Territory and provides a disincentive for legislative compliance.

Part 4 **SUPPLYING OTHER SINGLE-USE PLASTIC PRODUCTS –
DECLARED PUBLIC EVENTS**

Clause 14 **Declaration of public events**

This clause relates to the prohibition of additional declared single-use plastic products at declared government and non-government public events. This provision supports consultation outcomes that showed 90% of community survey respondents were concerned about single-use plastic at events.

This clause will only apply to *declared* public events and *declared* additional single-use plastic products. That is, this will not be a blanket requirement for all events and all single-use plastic products at those events.

Public events and additional single-use plastic items will be declared via disallowable instrument.

Examples of events that may constitute a declared public government event include events such as Floriade, Nightfest, the Enlighten Festival, the National Multicultural Festival and events held in conjunction with New Year's Eve, Australia Day and Canberra Day.

Examples of public non-government events that may constitute a declared event may include large-scale events and sporting fixtures.

Examples of products that may be declared additional single-use plastic products may include additional foodware such as single-use plastic plates, cups, bowls, coffee cups and lids and takeaway containers.

The Minister may only declare a public event, that is not a government event, if:

- the declaration is made not less than 3 months before the day the event starts; and
- there is an alternative product to the declared single-use plastic product reasonably available to the organisers of the declared event; and
- the declaration will not have an unreasonable financial impact on the event.

Appropriate advance engagement will occur with public event organisers prior to declaring a public event or additional single-use plastic products.

Clause 15 **Supply of declared single-use plastic products at declared
public event prohibited**

This clause relates to the obligations of vendors at declared events. A person commits an offence under this clause if the person supplies a declared single-use plastic product; and the supply is to a person at a declared event.

PART 5

EXEMPTIONS

Clause 16 Minister may exempt person or plastic product

This clause specifies the Minister's ability, on application or on the Minister's own initiative, to provide an exemption to a person or a plastic product. An application under this clause must include information prescribed by regulation.

The Minister may make an exemption under this clause only if satisfied that:

- it is not practical for the person to comply with the provision; or
- it is not consistent with the person's human rights for the person to comply with the provision; and
- non-compliance will not have any significant adverse effect on public health, property or the environment.

In deciding whether it is not consistent with a person's human rights for the person to comply with the provision, the Minister must comply with section 40B of the *Human Rights Act 2004*. Section 40B provides that a public authority (including a Minister) must act consistently with human rights, and must give proper consideration to a relevant human right in making a decision, including a decision of whether or not to exempt a person under this section of the Bill. A decision is still consistent with human rights if the decision limits human rights but the limitations are reasonably justified under section 28 of the *Human Rights Act 2004*.

For example, those who may be discriminated against because of an identified attribute or vulnerability, such as those with a disability or other medical need, by the application of the Bill would be positively viewed in the application of the Minister's discretion.

This clause supports the 12-month delay in phasing out single-use plastic straws given the disproportionate impact this phase out will have on those with a disability or other medical need who will need to retain access to single-use plastic straws. As a result, an exemption may commence on a day earlier than its notification day.

Clause 17 Exemption conditions

This clause relates to the responsibility of a person and plastic product deemed exempt. A person who has been exempt as per section 17, will be deemed to have committed an offence if the person supplies a prohibited plastic product in contravention of a condition of the exemption. An offence against this section is a strict liability offence.

PART 6 ENFORCEMENT

The focus of this Bill is predominantly educative and will be supported by complementary non-regulatory measures such as behaviour change programs to support the community and business to reduce their use of plastic. However, to meet the policy objective of reducing plastic use in the ACT there may be circumstances from time to time that mean that enforcement is necessary to achieve this.

The Taskforce was also strong in their support for the Bill to include appropriate enforcement provisions to ensure a level playing field. That is, where those that comply with the Bill are not disadvantaged by potential 'free-riders', who benefit from the policy without complying with it.

There is currently no overarching Act that provides template enforcement provisions for all authorised officers in the ACT, therefore each clause under this part has been included to ensure total clarity surrounding the enforcement provisions that apply to this Bill.

Division 6.1 General

Clause 18 Definitions – pt 6

This section sets out definitions for this part.

Clause 19 Appointment of authorised people

This clause relates to the ability of the directors-general to appoint a public servant as an authorised person for the purposes of Act enforcement. Such appointments (including acting appointments), are supported by Legislation Act, pt 19.3, and can be made by naming a person or nominating the occupant of a position. However, as per section 21, an authorised person must be provided an identity card to that effect.

For this Act, authorised persons include a person appointed under specified provisions:

- as an investigator under the *Fair Trading (Australian Consumer Law) Act 1992*; or
- a public health officer authorised under the *Public Health Act 1997* or under the *Food Act 2001*.

Clause 20 Identity cards

This clause details the identity card requirements for authorised persons, and offences relating to authorised persons. Appropriate identification of authorised persons will support confidence in and the operation of compliance and enforcement measures.

A person commits an offence against this section if the person stops being an authorised person and does not return the relevant identity card within 7 days. An offence against this section is a strict liability offence. Fraudulent behaviour under this section will be treated under the criminal code.

Division 6.2 Powers of authorised people

Clause 21 Authorised person must show identity card on exercising power

This clause relates to the excision of power of the authorised person. If the authorised person exercises power under this Act, the authorised person's identity card must be shown to the individual, or an individual the authorised person believes on reasonable grounds is an employee, officer or agent of the person.

Clause 22 Entry to premises

This section details the circumstances in which authorised officers can enter a premise. It outlines the activities an inspector can undertake after entering the premises. If the authorised person believes on reasonable grounds that an offence against this act is being, or likely to be, or has just been committed at a premise, the authorised person may, without the occupiers consent, enter the land around the premises to seek consent to enter the premise.

Clause 23 Production of identity card

This clause details the occupiers right to require an authorised persons identification card and request dismissal of premise of authorised person and accompanying personal (other than a police officer) should an identification card not be produced.

Clause 24 Consent to entry

This section details the requirements of the authorised person when seeking consent to entry of a premises, including what information must be supplied to the occupier. The occupier must be told the purpose of the entry. A copy of an acknowledgement of consent, should one be signed, must immediately be provided to the occupier.

Clause 25 General powers on entry to premises

This clause details the rights of an authorised person who enters an occupier's premise.

Clause 26 Power to obtain information

This clause relates to the ability of an authorised person to seek documentation should there be reasonable belief that a prohibited plastic product (as stated in section 9) are utilised and distributed by the premise. A person must take reasonable steps to comply with the request of the authorised person.

Clause 27 Abrogation of privilege against self-incrimination

This clause relates to self-incrimination. It states that a person is not excused from answering a question or producing any document, even if the answer or the production would tend to incriminate that person or expose them to penalty.

Any information that is gained through such a circumstance may not be used in evidence against the person in a civil or criminal proceeding. It may however be used in a proceeding for an offence arising out of the false or misleading nature of the answer, information or document.

Clause 28 Warning to be given

This clause relates to the requirements of the authorised person when requesting information. The authorised person must warn the person that failure to comply constitutes an offence, and the effect of section 28.

An individual may refuse to answer a question, provide information or documentation requested by an authorised person, if the person was not first warned. In this case, refusal to comply would not be deemed an offence of the person. However, if any evidence is given to an authorised person voluntarily by the person, there is nothing in this section that would prevent an authorised person from using this evidence.

Clause 29 Power to seize things

This clause establishes the power of authorised persons to seize anything at the premises where there is reasonable belief of contravention of the Act, or where it is consistent with the purpose of entry with the occupier's consent. An authorised person who enters premises under a warrant may seize anything at the premises that they are authorised to seize under the warrant. Regardless of whether the authorised officer has entered the premise under a warrant or with occupier's consent, the authorised person may seize anything at the premise if they are satisfied on reasonable grounds that an offence against this Act has occurred and seizure of the item is necessary to prevent further breaches against this Act. If this has occurred the person will be seen to be committing an offence if they interfere with the seizing of the item without the permission of the authorised officer.

Clause 30 Direction to give name and address

This clause relates to an authorised officer's ability to request the name and address of a person in a language or way of communicating that the authorised person believes reasonable, should the authorised person have reasonable grounds to believe that a person has, or is about to, commit an offence against this Act; and/or may be able to assist in the investigation of an offence against this Act.

An authorised person may direct a person to provide the person's full name and home address, and request the person produce evidence of the correctness of detail should they have reasonable grounds to believe the person has provided false or misleading information.

Clause 31 Offence – fail to comply with direction to give name and address

This clause details what constitutes a person's failure to comply with an authorised person's request for name and address. If a person fails to comply with a direction under section 31 of this Act. An offence against this section is said to have occurred and is a strict liability offence. If, however, the person produces evidence of identification no more than 3 days after the day the direction was given, this section does not apply. Additionally, if an authorised officer did not produce an authorised person's identity card for inspection by the person or warn the person of the implications should they fail to comply with the request, this section does not apply.

Division 6.3 Search warrants

Clause 32 Warrants generally

An authorised person may apply to a magistrate for a search warrant to enter a premise. The application must be sworn and state the grounds on which the warrant is sought. The magistrate may refuse to consider an application until all relevant information has been provided by the authorised officer.

The magistrate may only issue the warrant if satisfied that there are reasonable grounds for suspecting there is a particular thing or activity connected with an offence against this Act, and is being engaged in at the premises or may be engaged in, at the premises within the next 14 days.

The search warrant must state that an authorised person may, with any necessary assistance and force, enter the premises and exercise powers under this part, the offence for which the warrant is issued, the things that may be seized under the warrant, the house when the premises may be enters and the date, within 14 days after the day of the warrants issue, and warrant ends.

Clause 33 Warrants-application other than in person

This section allows an authorised person to apply for a warrant by phone, radio, email, fax or letter because of urgent or other special circumstances. The authorised person may apply for the warrant before the application is Sworn.

Clause 34 Search warrants-announcement before entry

This section applies before an authorised person enters a premise under a search warrant.

The authorised person must announce that they are an authorised person authorised to enter the premises, give everyone at the premises the opportunity to allow entry to the premises and identify themselves to the occupier if they are present.

The authorised person is not required to comply with this if they believe on reasonable grounds that immediate entry is required to ensure the safety of anyone or the effective execution of the search warrant.

Clause 35 Details of search warrant to be given to occupier etc

This section requires an authorised person to give an occupier, or person who represents an occupier, a copy of the search warrant and a document setting out the rights and obligations of the person when executing a search warrant.

Clause 36 Occupier entitled to be present during search etc

This section allows the occupier of a premises, or other person who represents the occupier, to be present when a search warrant is being executed. The person is not entitled to observe the search if it would impede the search or if the person is under arrest.

PART 7 REVIEWABLE DECISIONS

Clause 37 Meaning of *reviewable decision* – pt 7

This section sets out definitions for this part.

Clause 38 Reviewable decision notices

This section sets out that if the decision maker makes a reviewable decision, the decision maker must give a reviewable decision notice to the affected person in relation to the decision.

Clause 39 Applications for review

This section sets out that the affected person and /or any other person whose interests are affected by the decision the people, can apply to the ACAT for review of the decision.

PART 8 MISCELLANEOUS

Clause 40 Regulation-making power

This section sets out that the Executive may make regulations for this Act. A regulation may apply, adopt or incorporate an instrument as in force from time to time. This power has been included so that the Act is robust and can deal appropriately with changes in technology as they occur without additional legislative change. Note 1 refers to Sections 47(5), (6) and (7) of the Regulation Act.

PART 9 REPEALS

Clause 41 Plastic Shopping Bags Ban Act 2010 – repeal

With the introduction of this Act the following legislation is repealed:

- Magistrates Court (Plastic Shopping Bags Ban Infringement Notices) Regulation 2011 (SL2011-19)
- Plastic Shopping Bags Ban Act 2010 (A2010-49)
- Plastic Shopping Bags Ban Regulation 2011 (SL2011-18).

Dictionary

This section sets out vocabulary used within this Act.