



Environmental  
Defenders Office

**Submission to the Senate Standing Committee in  
relation to the Product Stewardship (Packaging and  
Plastics) Bill 2019**

**December 2019**

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## Executive Summary

We commend the *Product Stewardship Amendment (Packaging and Plastics) Bill 2019* and recommend that it be passed.

The Bill provides an excellent statutory mechanism for the delivery of the Government's own waste policy and the targets set in its recently released action plan. It will also complement the actions being taken by State and Territory governments to reduce plastic waste and increase recycling rates.

The mandatory nature of the product stewardship scheme created by the Bill is appropriate to the scale of the problem and, unlike the current *National Environmental Protection (Used Packaging Materials) Measure 2011<sup>1</sup>*, will create mandatory, consistent national obligations to ensure that businesses take responsibility for the waste they generate.

We do, however, suggest that the Bill could be improved by the following amendments:

1. A requirement for an evaluation of the requirements of the Packaging and Plastics scheme against the packaging and plastics targets, at both the mid-point of its operation and again in 2025 when the targets are intended to have been achieved;
2. An amendment to the current s107 of the *Product Stewardship Act 2011 (Cth)* to include reporting against the packaging and plastics requirements in the annual report of the operation of the Act;
3. Expand the consultation obligations in relation to the Packaging and Plastics Scheme, to include State, Territory and local governments and the community, and not just entities that may have a financial interest in minimising their obligations under the scheme;
4. A minor amendment to clause 40M of the Bill to avoid the prohibitions on certain single-use plastics from being bypassed through the use of ostensibly reusable substitutes; and
5. The insertion of an amendment of 'lightweight carrier bag' that is consistent with the bans that have been put in place by most States and Territories.

This submission addresses:

### The Bill in context

- **The need for enhanced product stewardship - recycling crisis and marine plastics**
- **Existing Product Stewardship schemes**
- **Recent Government policy**
- **Components of the Bill**

### Improvements that could be made to the Bill

1. **Review of scheme requirements**
2. **Annual reporting**
3. **Consultation on details of the scheme**
4. **Prohibited plastics: preventing substitutions**
5. **Prohibited plastics: definition of lightweight carrier bag**

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<sup>1</sup> Made under the *National Environmental Protection Council Act 1994 (Cth)*.

## The Bill in context

### The need for enhanced product stewardship - recycling crisis and marine plastics

The justification for this bill is clear:

- Waste disposal is expensive and, to the extent that it is landfilled, alienates land from more productive use and requires long-term management;
- The significant quantities of plastic debris in our oceans are largely locally generated<sup>2</sup>, harm marine life through ingestion, suffocation and entanglement, can transport invasive species and concentrates toxic pollutants<sup>3</sup>, with further impacts likely to emerge as we learn more about the impacts of microplastics and nanoplastics;<sup>4</sup> and,
- The 'recycling crisis'<sup>5</sup>, which has been precipitated by the significant curtailing of our ability to export waste for recycling to China and many other destinations, as well as our failure to develop an adequate domestic industry.

For all of these reasons, urgent action is needed to:

- significantly reduce the amount of (particularly plastic) waste generated in this country;
- bolster the domestic recycling industry; and
- foster a transition to single-use products that can be safely either converted into useable products or disposed of without the need for landfill through options such as composting.

A key tool for delivering such outcomes is product stewardship, which ensures that companies which import, produce, sell or use products that become packaging or plastic waste take responsibility for their products throughout their lifecycle.

### Existing Product Stewardship schemes

Waste **management** is largely a matter within the jurisdiction of state/territory and local governments.

State and Territory governments have taken many positive steps in recent years to reduce waste and incentivise recycling, including bans on light-weight plastic bags, container deposit schemes and waste levies. However, unintended consequences can arise from inconsistent action at the state level (eg. the removal of Queensland's previous waste levy created an incentive for waste to be exported from NSW<sup>6</sup>) and the States and Territories have jurisdictional limitations on the extent to which they can require effective product stewardship from the companies responsible for the creation, import or use of packaging.

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<sup>2</sup> Hardesty B, Lawson T, van der Velde T, Lansdell M and Wilcox C, 2016, Estimating quantities and sources of marine debris at a continental scale, *Frontiers in Ecology and the Environment*, <https://doi.org/10.1002/fee.1447>

<sup>3</sup> Thevenon, F., Carroll C., Sousa J. (editors), 2014.

*Plastic Debris in the Ocean: The Characterization of Marine Plastics and their Environmental Impacts, Situation Analysis Report*. Gland, Switzerland: IUCN. 52 pp.

<sup>4</sup> Nanoplastic should be better understood. *Nat. Nanotechnol.* **14**, 299 (2019) doi:10.1038/s41565-019-0437-7

<sup>5</sup> See, for example: <https://theconversation.com/chinas-recycling-ban-throws-australia-into-a-very-messy-waste-crisis-95522>

<sup>6</sup> Queensland Government, 2018, Transforming Queensland's Recycling and Waste Industry: Directions Paper, found at: [https://www.qld.gov.au/\\_data/assets/pdf\\_file/0021/69060/transforming-qlds-recycling-waste-industry-directions-paper.pdf](https://www.qld.gov.au/_data/assets/pdf_file/0021/69060/transforming-qlds-recycling-waste-industry-directions-paper.pdf)

In that regard, waste **minimisation** and **product stewardship** are areas in which the Commonwealth Government can, and should, deliver nationally consistent policy, legislation and programs. The Commonwealth government's interventions in this area have, in the past, largely been limited to the *Product Stewardship Act 2011* and the *National Environmental Protection (Used Packaging Materials) Measure 2011*.

The *Product Stewardship Act 2011 (Cth)* (in its current form) makes provision for the creation of schemes for product stewardship that could be designed to address a variety of different forms of waste. Schemes under the Act may be voluntary, co-regulatory or mandatory. However, there are currently no mandatory product stewardship schemes, only one co-regulatory scheme<sup>7</sup> (in relation to televisions and computers) and two voluntary schemes (in relation to mobile phones and fluorescent lightbulbs). The Act is currently the subject of a statutory review.<sup>8</sup> The Bill uses this existing statutory architecture to create a new mandatory scheme for plastics and packaging.

The *National Environmental Protection (Used Packaging Materials) Measure 2011*<sup>9</sup> (**NEPM**) is implemented through the Australian Packaging Covenant<sup>10</sup> (**APC**), which is administered by the Australian Packaging Covenant Organisation (**APCO**). The Covenant is a voluntary scheme which relies on state/territory laws to create incentives for covered brand owners to participate in the scheme.<sup>11</sup>

While the NEPM and the APC have achieved some success, there are a number of weaknesses in the regulatory framework.

The APC is a voluntary scheme, with the result that many creators of waste packaging may find it more financially beneficial to 'free-ride' unless the state/territory laws apply stricter requirements and/or more stringent penalties and are supported by a robust compliance program. Unfortunately, in some cases the penalties for non-compliance with the state/territory laws are quite low<sup>12</sup> and exemptions are available (generally without a transparent application process or ongoing reporting) for companies achieving 'equivalent outcomes'.<sup>13</sup>

The goals<sup>14</sup> in the APC itself are very vague, and lack any specific, measurable and time-bound objectives ("SMART objectives"). While more specific targets are now found in supporting documents<sup>15</sup> incorporated by reference into the APC, the drafting of section 10 of

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<sup>7</sup> *Product Stewardship (Television and Computers) Regulation 2011 (Cth)*.

<sup>8</sup> <https://www.environment.gov.au/protection/waste-resource-recovery/product-stewardship/consultation-review-ps-act-incl-ntcrs>

<sup>9</sup> Made under the *National Environmental Protection Council Act 1994 (Cth)*.

<sup>10</sup> See: <https://www.packagingcovenant.org.au/documents/item/1037>

<sup>11</sup> See, for example, Part 5A of the *Waste Reduction and Recycling Regulation 2011 (Qld)*, *Protection of the Environment Operations (Waste) Regulation 2014 (NSW)*, *Environmental Protection (NEPM-UPM) Regulations 2013 (WA)*, *Environment Protection (Used Packaging Materials) Policy 2012 (SA)*.

<sup>12</sup> For example, the penalty under s9 of the *Environmental Protection (NEPM-UPM) Regulations 2013 (WA)* for failing to achieve the prescribed target is \$5,000 and the maximum penalty under the *Waste Reduction and Recycling Regulation 2011 (Qld)* is 20 penalty units (by contrast the maximum penalty for littering is 40 penalty units, while penalty for illegally dumping larger amounts of waste is the greater of 1,000 penalty units or twice the waste levy that would have been payable).

<sup>13</sup> See, for example, section 5(b) of the *Environmental Protection (NEPM-UPM) Regulations 2013 (WA)*, section 6(4) *Environmental Protection (Used Packaging Materials) Policy 2012 (SA)*, s41C(b)(i) *Waste Reduction and Recycling Regulation 2011 (Qld)* and s84(2)(a)(ii) of the *Protection of the Environment Operations (Waste) Regulation 2014 (NSW)* (which has the virtue of applying only to approved arrangements notified by gazette notice).

<sup>14</sup> The goals of the APC are (1) Optimising resource recovery of Consumer Packaging through the supply chain and (2) Preventing the impacts of fugitive packaging on the environment.

<sup>15</sup> For example, the National Packaging Targets now found in APCOs current strategic plan (*Australian Packaging Covenant: Strategic Plan 2017 – 2022*, version 2, January 2019).

the APC and the supporting documents would make it very difficult to enforce compliance with the targets.

Finally, in the critical areas of plastic packaging, the most recent reporting by APCO found a recovery rate of only 32% (with the National Waste Report<sup>16</sup> which looks at a broader range of wastes finding that just 12% of plastics were recycled, with 87% sent to landfill). Clearly, better recovery rates are required to address the problem of marine plastics.

Given the scale of the problem and the significant consequences we are already experiencing from inaction (or inadequate action), it is past time to move beyond vaguely defined voluntary schemes and to start using a mandatory national scheme with concrete, clearly defined, time-bound objectives and real consequences for non-compliance. That is what this Bill delivers.

### Recent Government policy

The eighth Meeting of Environment Ministers (**MEM**) on 7 December 2018 saw the release of an updated national waste policy (*National Waste Policy: Less Waste, More Resources*, 2018<sup>17</sup>).

This was followed by a Communique from the COAG meeting of 9 August 2019<sup>18</sup> which includes a commitment to create a timetable to ban the export of waste plastic (and other forms of waste) and the development of a strategy to, among other things, 'reduce waste, especially plastics'.

The MEM of 8 November 2019<sup>19</sup> announced an Action Plan to sit under the updated national waste policy. However, the communique from the MEM appears to suggest that the targets will be delivered through the existing, inadequate, mechanism of the NEPM/APC. We believe that the current Bill provides a much better regulatory framework for delivering these policies.

While the updated national policy announced by the MEM doesn't itself include firm targets, the newly announced Action Plan<sup>20</sup> that sits under it has specific, measurable and time-bound targets including:

- “1. *Ban the export of waste plastic, paper glass and tyres commencing in the second half of 2020;*
2. *Reduce total waste generated in Australia by 10% per person by 2030;*
3. *80% average resource recovery rate from all waste streams following the waste hierarchy by 2030;*
- ....
5. *Phase out problematic and unnecessary plastics by 2025*
- .....

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<sup>16</sup> Pickin J, Randell P, Trinh J and Grant B, 2018, National Waste Report 2018, prepared by Randell Environmental Consulting on behalf of Department of Environment and Energy, found at: <https://www.environment.gov.au/system/files/resources/7381c1de-31d0-429b-912c-91a6dbc83af7/files/national-waste-report-2018.pdf>

<sup>17</sup> See: <https://www.environment.gov.au/system/files/resources/d523f4e9-d958-466b-9fd1-3b7d6283f006/files/national-waste-policy-2018.pdf>

<sup>18</sup> See: <https://www.coag.gov.au/meeting-outcomes/coag-meeting-communique-09-august-2019>

<sup>19</sup> See: <https://www.environment.gov.au/system/files/pages/4f59b654-53aa-43df-b9d1-b21f9caa500c/files/mem-9-agreed-statement.pdf>

<sup>20</sup> See: <https://www.environment.gov.au/system/files/resources/5b86c9f8-074e-4d66-ab11-08bbc69da240/files/national-waste-policy-action-plan-2019.pdf>

7. *Make comprehensive, economy-wide and timely data publicly available to support better consumer, investment and policy decisions.<sup>21</sup>*

These targets and the policy sitting above them, while containing many positive elements, do not have statutory force, are not currently linked to a national system of mandatory reporting of waste data and are not yet supported by other necessary regulatory tools.

These are issues which are, or could with minor amendment be, addressed to a significant extent in the Bill (at least in relation to plastic waste).

Target 3, in relation to average resource recovery rates, is disappointing in that it would enable higher rates of resource recovery from other waste streams to compensate for poor recycling rates of plastics. For example, APCOs most recent material flow analysis<sup>22</sup> (which is limited to consumer packaging) reported a 56% overall recovery rate for all waste streams, with higher recovery rates for other waste streams (particularly the 72% recovery rate for paper) bringing the total recovery rate well above the 32% recovery rate for plastics.

### Components of the Bill

The Bill broadly contains four elements:

- The setting of **'packaging and plastics targets'** which contain specific, measurable and time-bound objectives for all packaging to become 'reusable, recyclable or compostable' by 2025 and, importantly, also include targets for packaging to actually be recycled or composted;
- Establishes the **Packaging and Plastics scheme**, which is intended to achieve the targets;
- Bans certain **unnecessary plastics**; and
- Requires that **consumers** be provided with **information** about the plastic content of other products.

The **packaging and plastics targets** are set in clause 40B(2) of the Bill, and include:

- all packaging to be 'reusable, recyclable or compostable by 2025';
- for 70% of all packaging, and 70% of all plastic packaging, to be recycled or composted by 2025;
- for all packaging to have, on average, 30% recycled content by 2025;
- to phase out problematic and unnecessary plastics;
- reduce consumption of plastic single-use food containers and beverage cups by 25% by 2025;
- explicit targets for beverage containers (such as bottles and cans); and
- such other targets as are prescribed by regulation.

These targets have the SMART characteristics which can be used to monitor and evaluate the success of the Packaging and Plastics Scheme (discussed below) and to set appropriate targets for product stewardship obligations of individual companies.

While not identical to the targets in the Government's Action Plan, these targets are generally consistent with those targets and, as discussed above, have more explicit goals in

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<sup>21</sup> Note, however, that there is no list of what will constitute 'problematic and unnecessary plastics' yet in the Action Plan.

<sup>22</sup> APCO Packaging Material Flow Analysis 2018, Madden, B. and Florin, N. (2019). Characterising the material flows through the Australian waste packaging system, Institute for Sustainable Futures, University of Technology Sydney, found at: <https://www.packagingcovenant.org.au/documents/item/2171>

relation to plastics which should lead to a reduction in plastics reaching the marine environment and ensure that poor recycling/composting rates of plastics can't be disguised by good performance in other waste streams.

Significantly, these targets were derived from the targets developed by APCO through consultation with industry. In that regard, they must also be viewed as achievable targets.

#### The **Packaging and Plastics Scheme**:

- Includes, as scheme members, all corporations that manufacture, import, distribute or use packaging for commercial purposes<sup>23</sup>;
- Requires the Minister to make regulations setting out the requirements that all Packaging and Plastics scheme members must comply with (clauses 40C and 40D). The Minister must be satisfied that the scheme requirements will 'further the objects of the Act' and are directed towards achieving the packaging and plastics targets;
- Scheme members with higher annual turnover will also have reporting obligations against their obligations under the scheme (see clause 40H).

This is a step forward from the APC in that it is a mandatory scheme, which should prevent companies from free-riding. While it leaves important details to be set in regulation, we believe that this is an appropriate approach to enable the details of the scheme to be developed in consultation with industry, state/territory/local governments and the community.

The detailed scheme requirements developed in this way should also be able to facilitate a smooth transition for existing members of the APC and to tailor obligations that, if necessary, are appropriate to different geographical locations and different sized organisations.

The **prohibitions in relation to problematic and unnecessary plastics** contained in the Bill are:

- Lightweight carrier bags and microbeads by 1 January 2021;
- Six-pack rings, plastic cotton bud sticks and balloon sticks by 1 January 2023;
- Straws, stirrers, cutlery, plates, bowls and other dishes by 1 January 2023; and
- Food or beverage containers containing expanded polystyrene or oxo-degradable plastic by 1 January 2023.

There is capacity built into the Bill to facilitate any necessary exemptions for food safety, access, medical, therapeutic and health purposes or security, as well as an express exemption to provide straws for persons experiencing disability.

This appears to be an excellent first step towards the Government's goal of phasing out problematic and unnecessary plastics by 2025 and creates the mechanism for other such plastics to be added to the ban by regulation as they are identified.

Finally, the Bill requires the **labelling** of certain products (including wet wipes) if they contain plastics.<sup>24</sup> This is a positive move to help consumers to make choices that are consistent with their values.

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<sup>23</sup> See: s40C (note that the corporations captured are limited to 'constitutional corporations').

<sup>24</sup> See: s40R.



## Improvements that could be made to the Bill

While we support the passage of the Bill in its current form, we would also recommend the following minor amendments to facilitate clarity on some aspects of the Bill and to ensure that there is transparency of, and accountability for, the outcomes created by the Bill.

### 1. Review of scheme requirements

The details of the Packaging and Plastics scheme are largely a matter that has been left to regulations (see clauses 40D and 40E).

The scheme requirements set by regulation should be subject to regular evaluation to ensure that they are having their intended effect and that adequate progress is being made towards achieving the packaging and plastics targets.

There is an existing requirement under s109 of the *Product Stewardship Act 2011 (Cth)* for a review of the operation of the Act to take place every 5 years. As identified above, one such review is currently underway.

We recommend that the existing review obligations be strengthened by the inclusion of specific reviews of the scheme requirements on the basis of progress towards achieving targets. Such reviews should occur halfway towards the date upon which the targets are intended to be achieved (perhaps 2022) and again in 2025 (when the targets are intended to have been met).

### 2. Annual reporting

There is an existing obligation in section 107 of the *Product Stewardship Act 2011* for the Minister to prepare and table a report about the operation of the Act each financial year.

The reporting by scheme members under s40H, together with other sources of waste data, should be adequate to enable this report to include evaluation of progress towards meeting the packaging and plastic targets in in clause 40B(2)(e) of the Bill.

Given that the current requirements for the annual report currently set out in section 107 of the Act leave considerable room for discretion as to the content of the report, we would recommend that the Bill include an amendment to section 107 to expressly require annual reporting against the plastics and packaging targets.

This public reporting should help to ensure that both government and scheme members can be made accountable for the success or otherwise of the scheme.

This amendment would be consistent with Target 7 of the National Waste Policy Action Plan.

### 3. Consultation on details of the scheme

As discussed above, the details of the Packaging and Plastics Scheme are to be made by a regulation (which must be directed to achieving the targets set in the Bill). However, the Bill currently limits the consultation that must be undertaken prior to the regulations being made is limited to scheme members. This provision doesn't prevent the Minister from consulting with other sectors of the community with an interest in the detail of the scheme (including, but not limited to, community groups and local and state/territory governments), but does not require it.

In order to ensure that consultation is not limited to entities with a financial interest in minimising scheme obligations, the consultation requirements in clause 40E(c) of the Bill should be broadened to become an open consultation including public notification of draft scheme requirements. Such broader consultation would be consistent with the principles set out in the *Australian Government Guide to Regulation*.<sup>25</sup>

#### **4. Prohibited plastics: preventing substitutions**

Plastic bag bans put in place by the states have, in some cases, seen bans on lightweight bags resulting instead in the use of heavier-weight, ostensibly reusable, bags increasing.

In order to avoid the risk of the ban on single-use prohibited plastics being from being by-passed through the use of ostensibly reusable substitutes we would recommend a change to the language used in clause 40M(2), (3) and (4) by the including of the underlined words in as follows:

*“the product is manufactured to be, or is likely to be, principally used by a person only once before being disposed of”*

This amendment would be of assistance in delivering Targets 2 and 5 of the National Waste Policy Action Plan.

#### **5. Prohibited plastics: definition of lightweight carrier bag**

The Bill does not contain a definition of ‘lightweight carrier bag’ to provide clarity about the scope of the ban in s40M(1).

Those states that have implemented a ban on lightweight carrier<sup>26</sup> bags have defined such bags as having a thickness of 35 microns or less<sup>27</sup>, and may include other criteria to allow continued use of ‘barrier bags’ (being bags used for perishable fruit and vegetables).

Consistency with existing state bans would be appropriate, unless there is evidence from those experiences which suggests that a different definition is necessary to make the ban more effective.

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<sup>25</sup> Available at: <https://www.pmc.gov.au/resource-centre/regulation/australian-government-guide-regulation>

<sup>26</sup> NSW does not have such a ban, however, all other states and territories do.

<sup>27</sup> See, for example, s3 *Plastic Shopping Bags (Waste Avoidance) Act 2008 (SA)*, s99B *Waste Reduction and Recycling Act 2011 (Qld)* and s4 *Environment Protection Act 1970 (Vic)*.