

22 February 2019

greenindustries@sa.gov.au

Re: Single Use Plastics Discussion Paper

The Environmental Defenders Office (SA) Inc (“the EDO”) is an independent community legal centre with over twenty five years experience specialising in environmental and planning law. EDO functions include legal advice and representation, law reform and policy work and community legal education. The EDO appreciates the opportunity to provide a submission. Below is a summary of the Questions from the *Turning the Tide on Single-use Plastic Products Discussion Paper* (“**Discussion Paper**”) addressed in the submission:

1. It is estimated there is over 150 million tonnes of plastic in the ocean today.¹ Humans are likely to be ingesting plastic via seafood,² and there is predicted to be more plastic in the ocean than fish by 2050.³
2. The most important issues to be addressed regarding single use plastics are, firstly, rapid government intervention on the most harmful products. Secondly, developing a circular economy whereby all products are recyclable and reusable.
6. The ban could apply to products identified in the *Single Use and Other Plastics (Waste Avoidance) Bill 2018* (“**The Bill**”).⁴
7. The Discussion Paper outlines products which could be excluded from the ban.⁵ The EDO supports this contention, but also submits the government could consider phasing out such products via education, labelling and reduction targets.

¹ *Turning the Tide on Single-use Plastic Products Discussion Paper* page 11.

² <https://www.independent.co.uk/environment/plastic-microparticles-fish-flesh-eaten-humans-food-chain-mackerel-anchovy-mullet-a7860726.html>

³ <https://www.abc.net.au/news/2016-01-21/more-plastic-than-fish-in-the-oceans-by-2050-report-warns/7105936>

⁴ Legislative Council—No 31, introduced by Honourable Mark Parnell MLC and read the first time on 25 July 2018; [https://www.legislation.sa.gov.au/LZ/B/CURRENT/SINGLE%20USE%20AND%20OTHER%20PLASTICS%20\(WASTE%20AVOIDANCE\)%20BILL%202018_%20HON%20MARK%20PARNELL%20MLC/B_AS%20INTRODUCED%20IN%20LC/SINGLE%20WASTE%20AVOIDANCE%20BILL%202018.UN.PDF](https://www.legislation.sa.gov.au/LZ/B/CURRENT/SINGLE%20USE%20AND%20OTHER%20PLASTICS%20(WASTE%20AVOIDANCE)%20BILL%202018_%20HON%20MARK%20PARNELL%20MLC/B_AS%20INTRODUCED%20IN%20LC/SINGLE%20WASTE%20AVOIDANCE%20BILL%202018.UN.PDF)

⁵ *Turning the Tide on Single-use Plastic Products Discussion Paper* page 30.

12. Government intervention is required. The legal framework plays a critical role in reducing the harm single use plastics cause the environment. The most harmful single use products which have alternatives could be prohibited such as those in section 5 of The Bill. While others can be phased out through education, labelling and reduction targets.

1. Do you consider single-use plastic products are causing environmental problems?

Plastic products are accumulating in seas, oceans and on beaches across the world. These products are ingested by marine wildlife, including some species that are consumed by humans such as fish and shellfish.⁶

According to the European Commission, more than 80 per cent of marine litter is made up of plastics and it is estimated that 10 to 20 million tonnes of plastic is finding its way into the world's oceans each year.⁷ Single-use plastics items are among the items most commonly found on beaches, and represent an estimated 50% of marine litter. Single use plastics are a major source of plastic leakage into the environment, as they can be difficult to recycle, are often used away from home and littered.

According to the European Circular on single-use plastics,⁸ because plastics are persistent, plastic waste is growing and the impacts of plastic litter are growing. Plastic residues are now found in many marine species – sea turtles, seals, whales, birds as well as in several species of fish and shell fish and therefore enter the food chain. We are likely ingesting it ourselves in seafood,⁹ and there is predicted to be more plastic in the ocean than fish by 2050.¹⁰

The European Commissioner for environment, maritime affairs and fisheries, Karmenu Vella said: "when we have a situation where one year you can bring your

⁶ <https://www.dezeen.com/2018/10/26/european-parliament-ban-single-use-plastics/>

⁷ <http://wedocs.unep.org/handle/20.500.11822/9238>

⁸ http://ec.europa.eu/environment/circular-economy/pdf/single-use_plastics_proposal.pdf

⁹ <https://www.independent.co.uk/environment/plastic-microparticles-fish-flesh-eaten-humans-food-chain-mackerel-anchovy-mullet-a7860726.html>

¹⁰ <https://www.abc.net.au/news/2016-01-21/more-plastic-than-fish-in-the-oceans-by-2050-report-warns/7105936>

fish home in a plastic bag, and the next year you are bringing that bag home in a fish, we have to work hard and work fast'.¹¹

Global action is required to tackle this widespread problem. The Australian Government recognises that action is required and established the Australian Packaging Covenant (APC) in partnership with industry.¹² The APC is a voluntary scheme that aims “to encourage the use of more sustainable packaging, increase recycling rates and reduce packaging litter”.¹³

2. What do you consider to be the most important problem associated with single-use plastic products that needs to be addressed?

The most harmful single use plastics

In South Australia, top littered single use plastics items include snack bags, confectionary wrappers, take away cups and containers, packages and boxes, straws, bottle tops clothing and packaging tape.¹⁴ These items should receive immediate regulatory attention. If South Australia is considering prohibiting certain items, particular attention should be paid to products which already have alternatives such as coffee cups, straws and snack bags.

Creating a circular economy

According to the European Strategy for Plastics in a Circular Economy,¹⁵ urgent action is needed to tackle plastics that are used and discarded rather than being recycled into products that have a market use. Increasing on-the-go consumption of food and drink is fuelling the growth of single-use plastics and the problem is therefore expected to grow. The EU Strategy for Plastics in a Circular Economy aims to make all plastic packaging recyclable by 2030 in order to achieve a circular economy.¹⁶

¹¹ <https://www.abc.net.au/news/2018-12-20/european-officials-agree-on-ban-of-some-single-use-plastics/10637058>

¹² <https://www.packagingcovenant.org.au/>

¹³ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Marine_plastics/Report

¹⁴ *Turning the Tide on Single-use Plastic Products Discussion Paper* page 17

¹⁵ <http://ec.europa.eu/environment/circular-economy/pdf/plastics-strategy-brochure.pdf>

¹⁶ <http://ec.europa.eu/environment/circular-economy/pdf/plastics-strategy-brochure.pdf>

6. Do you think South Australia should introduce measures to address items such as single-use plastic straws and plastic-lined takeaway coffee cups? What other single-use plastic items or single-use products would you like to be considered for possible government intervention?

Measures could be most readily introduced to ban single use plastic products where alternatives are readily available and affordable. The ban could apply to products identified in The Bill.

Section 5 of The Bill defines prohibited plastic as *an article comprised of or containing plastic that is intended 15 for disposal after a single use, and includes—*

- (a) a plastic drinking straw; and*
- (b) plastic cutlery; and*
- (c) a plastic plate, bowl or cup; and*
- (d) a plastic food or beverage container (other than a container that is the subject 20 of a beverage container approval); and*
- (e) the plastic lid of a disposable coffee cup; and*
- (f) a plastic-stemmed cotton bud; and*
- (g) a plastic beverage stirrer; and*
- (h) a plastic balloon stick; and 25*
- (i) a plastic balloon tie*

In addition, section 9 sets out that it is an offence to release helium balloons and section 10 outlines retailers must provide disposal instructions with fishing tackle and personal hygiene products. More information on The Bill is provided under Questions 7 and 12.

7. What are your views on the list of items excluded and do you think there are others that do not require additional action or should be exempt from possible government intervention, and why? Are there exclusions that should be included? Why?

Page 30 of the Discussion Paper suggests there are “some single-use plastics for which existing efforts to tackle them are in place or that require more information to determine the best approach. These include:

- Microplastics / microbeads – specifically those intentionally added to a product are not in scope as they are being addressed through other processes – refer page 20, and the national approach to eliminating microbeads.¹⁷
- Debris emanating from sea-based sources (e.g. lost or discarded fishing gear) - it is difficult to estimate the scale of this problem in the South Australian context.
- Non-plastic single-use disposable items (e.g. packaging) – packaging comprising exclusively fibre will degrade and littered items comprising glass and
- Single-use plastic beverage containers – many are already addressed through existing legislation (CDS). The EPA intends to review South Australia’s CDS legislation and could consider single-use plastic beverage containers alongside other beverage containers not currently subject to the legislation - as such these products are not examined further in this discussion paper.
- Sanitary applications (wet wipes, sanitary towels).

The Bill excludes biodegradable and compostable plastics.¹⁸

¹⁷ “The Australian Government Department of the Environment and Energy is working with industry and state and territory governments to ensure a voluntary phase-out of microbeads from personal care and cosmetic products. It has also committed to eliminating remaining microbeads from the Australian market and will examine options to broaden the phase-out to other products”: <http://www.environment.gov.au/protection/waste-resource-recovery/plastics-and-packaging/plastic-microbeads>; *Turning the Tide on Single-use Plastic Products Discussion Paper* page 20.

¹⁸ *Turning the Tide on Single-use Plastic Products Discussion Paper* page 38: “something is biodegradable when living things, like fungi or bacteria can break it down. Biodegradable plastics are made from plant-based materials like corn and wheat starch rather than petroleum and break down into organic material and water over time and under certain conditions (e.g. temperatures above 50°C)”. Compostable is “a subset of biodegradable plastic, compostable plastics are generally made from plant material that return to base organic components when processed under certain conditions such as those provided in a commercial composting environment operating”.

12. Do you think government intervention is required in relation to single-use plastic products or other single-use items? If so, what type and in what timeframe?

Intervention

The large changes which are needed to reduce the impact of single use plastics cannot occur simply through “voluntary approaches” by business and individuals. It requires collaboration through both top-down and bottom-up solutions – this crucially includes top-down government intervention via legislation and regulation. “Our huge problem with plastic is the result of a permissive legal framework that has allowed the uncontrolled rise of plastic pollution, despite clear evidence of the harm it causes to local communities and the world’s oceans.”¹⁹

In 2016, the Commonwealth Government conducted a review of The Australian Packaging Covenant (APC). The report was released entitled *Toxic tide: the threat of marine plastic*.²⁰ Criticism was received on the voluntary nature of the APC (Chapter 7 of the report). Submissions urged that compliance with measures under the APC should be mandatory, and that enforcement and application of penalties would significantly improve the effectiveness of the scheme:²¹

7.7 Ms Rachel Walmsley, Policy and Law Reform Director from EDOs of Australia commented that the voluntary approach lacks 'regulatory teeth' while Mr Jeff Angel from the Total Environment Centre went further and described the APC as an 'utter failure'.

7.8 Dr Sarah Waddell from the National Environmental Law Association (NELA) told the committee that: 'the voluntary approach is often seen as a way of government stepping back from taking a regulatory approach... But I think that, because it started as a voluntary approach, it has allowed the government to drop the ball in backing it up with a regulatory approach.'

7.9 NELA also noted that under the APC, failure to adhere to certain obligations, 'theoretically results in the organisation being referred to the relevant government for review and a possible fine'. However, fines are not

¹⁹ <https://blogs.scientificamerican.com/observations/more-recycling-wont-solve-plastic-pollution/>

²⁰ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Marine_plastics/Report

²¹ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Marine_plastics/Report/c07

applied as: 'while the required mirror legislation has been enacted in each jurisdiction in Australia, the associated regulations under which signatories can be fined for non-compliance with their obligations have not yet been implemented.

7.10 NELA went on to suggest that implementing regulations and enforcing them could significantly increase the effectiveness of the APC, 'as well as any expanded or complementary scheme intended to address plastic life cycles more generally'.

What type of intervention?

As the container deposit scheme has shown us in Australia, the most effective action is legislated mandatory schemes that are enforceable.²² For example, according to the Keep South Australia Beautiful (KESAB) [CDL Containers and Plastic Shopping Bags in the Litter Stream Report 2018](#), beverage container litter currently represents only 2.8% of litter items in South Australia. This result is the same as the NT which recorded 2.8%. About 6.2% of Queensland's litter was beverage containers with 6.5% in Victoria, 8.2% in NSW and 14.7% in Western Australia.²³ In addition, the ban on lightweight shopping bags in *The Plastic Shopping Bags (Waste Avoidance) Act 2008*, has been regarded as highly effective in reducing this form of single use plastic.²⁴

The EU framework and The Bill can offer guidance for law reform. Prohibition on certain single use plastics and regulation to incentivise and educate could help achieve the overarching goal of a circular economy.

Legislation could be introduced with specific objectives and measures to regulate the sale and supply of the most littered single use and other plastic. The Bill suggests prohibition of certain single-use plastics as mentioned in Question 6.

The EU aims to build its legislative framework in light of the overarching objective of a circular economy.²⁵ The EU legislation will ban the most harmful products which also have alternatives (i.e. cutlery, cotton buds, straws and stirrers) by 2021.²⁶

²² <http://theconversation.com/container-deposit-schemes-work-so-why-is-industry-still-opposed-59599>

²³ https://www.epa.sa.gov.au/environmental_info/container_deposit/faqs

²⁴ *Turning the Tide on Single-use Plastic Products Discussion Paper* page 26.

²⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1516265440535&uri=COM:2018:28:FIN>

In identifying which products to prohibit and when, the EU will also allow a clause for possible changes to products and measures covered by the legislation.²⁷ Perhaps this clause could be replicated in any South Australian legislation to allow a flexible and adaptive framework which can respond appropriately to environmental, social and economic issues.

In addition to prohibition, the EU aims to create a framework which allows for investment and innovation to drive a circular economy. The EU wants to meet its objectives of a circular economy by 2030 by also investing in research and innovation.²⁸ It includes education, incentives and harnessing global action in a holistic approach to achieving a circular economy.²⁹ This could be possible under The Bill which allows for Regulations to be created under section 11.³⁰

Timeframe

Section 6 of The Bill sets out that retailers must provide alternatives to prohibited plastics before 1 July 2023 and section 7 outlines retailers must not sell or supply prohibited plastics after 1 July 2023.

Similar to The Bill, The EU framework aims to prohibit certain items while phase out others via education, labelling. The EU framework will phase out single use plastics by prohibiting items which have the most harmful impacts but also have alternatives (i.e. cutlery, cotton buds, straws and stirrers) by 2021.³¹ For other single use plastics which do not have alternatives and do not have as severe environmental impact, education and labelling for consumers will be implemented. Different to The Bill, the EU will implement mandatory EU Member State reduction targets for such items; %25 by 2025.³² Perhaps a mandatory reduction target, within a certain timeframe, alongside education and labelling, could be considered in South Australia for products that have no current alternative and lesser impact on the environment.

²⁶ *Turning the Tide on Single-use Plastic Products Discussion Paper* page 36.

²⁷ *Turning the Tide on Single-use Plastic Products Discussion Paper* page 16.

²⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1516265440535&uri=COM:2018:28:FIN>

²⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1516265440535&uri=COM:2018:28:FIN>

³⁰ The Single Use and Other Plastics (Waste Avoidance) Bill 2018 s 11

³¹ *Turning the Tide on Single-use Plastic Products Discussion Paper* page 36

³² *Ibid.*

Please advise if you have any queries in relation to this submission.

Yours faithfully

A handwritten signature in cursive script that reads "mBallantyne". The signature is written in dark ink on a light-colored background.

Melissa Ballantyne

Coordinator/Principal Solicitor

Environmental Defenders Office (SA) Inc.