

**Consultation on the *Single-use and Other Plastic Products (Waste Avoidance)*
Bill 2019**

Summary of consultation feedback and the government's response

1. INTRODUCTION

The *Turning the tide on single-use plastic products* discussion paper (Turning the tide) was released on 13 January 2019 for public feedback. It referenced a range of literature regarding the impacts of single-use plastic products and proposed that intervention is required to minimise and eliminate those impacts.

The response from the South Australian community was overwhelming with almost universal recognition that single-use plastics are causing environmental problems, and that government intervention was needed.

On 6 July 2019, the Minister for Environment and Water announced the government's intentions regarding single-use plastics with the release of the *Turning the tide on single-use plastic products – Approach and next steps* document.

Since that announcement, a taskforce of select business, industry, local government and interest group stakeholders has been formed (**list provided at appendix 1**), a plastic-free precinct pilot program has been launched and the Single-use and Other Plastic Products (Waste Avoidance) Bill 2019 was released for public consultation and concluded on 7 February 2020.

The purpose of the consultation was to gather views from stakeholders on the draft legislation which aims to prohibit from sale and supply certain single-use plastic products and in doing so further protect the environment from the urgent problem of plastic pollution. It was important to capture the views of business to ensure that any impacts arising from the government's approach are minimised and people who rely on using single-use plastic straws for disability or accessibility purposes are still able to access them.

In addition to the important views contributed through the stakeholder taskforce, Green Industries SA received 44 formal submissions in total (**list provided at appendix 2**). 24 were from industry associations and industry stakeholders, 7 were from environmental and community groups, and 13 were from individual members of the public (including one 'petition style' submission from 148 different authors).

1,417 survey responses were received, including a large number of responses as part of a non-governmental environmental organisation lobbying campaign, and some that were incomplete.

This document summarises submissions that responded to the content proposed in the draft legislation and provides the government's response. The government acknowledges the continued extraordinary public interest in the issue of single-use and other problematic and unnecessary plastic products and thanks all those who contributed their views, opinions and aspirations.

2. SUMMARY OF RESPONSES

Issues raised in submissions have been grouped for ease of reference and to align with the provisions of the draft legislation.

2.1 Intent of legislation

Several submissions requested that the ‘intent of the legislation’ be specified within the Bill itself. Two respondents requested the inclusion of an ‘Objects’ section for this purpose. The Stakeholder taskforce was also generally supportive of the inclusion of an ‘objects of the Act’.

It was requested that the information provided in the draft Bill’s explanatory information, which referenced the intention of the Bill to address marine pollution, be included in the legislation.

In addition to reducing marine pollution, respondents also sought that the purpose of the Bill include reducing litter in general and emphasised the need to acknowledge the role of the legislation in minimising waste sent to landfill, as well as supporting and expanding the organics circular economy in the state.

Government response

The government will include an ‘Objects’ section in the legislation with reference to better waste management practices, including reducing marine and other litter, the waste management hierarchy and principles of the circular economy.

Note that an ‘Objects’ section is not always featured or required in legislation and the *Plastic Shopping Bags (Waste Avoidance) Act 2008* is an example of this. Further information regarding the purpose of the legislation will be included in the Minister’s speech to Parliament when introducing the Bill (the second reading speech).

2.2 Prohibited plastic products

While not the purpose of consultation on the draft Bill, many submissions used it as an opportunity to comment on the products included in the legislation.

Respondents were predominantly in favour of the government’s decision to phase out the initial items listed as prohibited plastic products in the Bill.

A number of respondents recommended additional items for phase-out, both as part of the first tranche of products and at a later date.

Additional items commonly recommended for inclusion in the Bill alongside the existing listed items were:

- barriers bags for fruit and vegetables
- plastic plates, bowls
- cups for cold drinks
- coffee cups and lids
- thick plastic bags

- Other expanded polystyrene food service products (i.e. meat/produce trays and takeaway ice cream containers).

Items recommended for further consideration (i.e. at a later stage), in addition to those already mentioned in the *Turning the Tide: Next Steps* document, included:

- Balloons and balloon sticks
- Plastic bottles and bottle caps
- Compostable bags used in the commercial sector
- Flushable wipes
- Cotton buds
- Stickers on fruit
- Bread tags

Government response

The prohibited plastic products identified in the legislation recognise the community's call for action on these products, the availability of alternatives and also the need to allow the industry to be given time to develop alternatives and to adapt. Nevertheless, the government notes the interest in phasing out a broader range of problematic and unnecessary single-use plastic items. In recognition of this interest, the legislation establishes a framework to enable the addition of products into the future subject to public consultation requirements.

2.3 National consistency

Two submissions emphasised the importance of establishing legislation that considers national consistency. This included in relation to national packaging targets, consistency of criteria and types of products.

Government response

The government recognises that a harmonised national approach to phasing out single-use plastics is preferred by the business community in particular. However, as first movers nationally on this issue the government anticipates that other jurisdictions will look to our approach and leadership.

South Australia will monitor approaches interstate, and the legislation provides the flexibility to add other products in the future.

2.4 Non-plastic products

While the majority of respondents supported the proposed definition of 'plastic', two respondents recommended that this term be limited to 'fossil fuel-derived plastic', and consequently requested that compostable plastic, specifically PLA (poly-lactic acid), be excluded from the ambit of the definition.

Government response

The SA government has adopted a precautionary approach in relation to its definition of 'plastic' noting that in relation to PLA products, only those PLA products that are prohibited products under the legislation are affected.

PLA is a natural polymer typically derived from sugarcane or corn¹. While touted by the bioplastics industry² as a 'solution' to plastic pollution, the European Parliament has determined that, in meeting the objectives of its *Single-Use Plastics Directive* (2018), single-use PLA products should be treated in the same way as fossil fuel derived single-use plastic products^{3 4 5 6}.

Following consultation on its proposals to ban the distribution and/or sale of plastic straws, plastic stemmed cotton buds and plastic drink stirrers in England, the UK government stated:

"It is currently unclear whether plastics currently labelled as biodegradable are fully biodegrading in all environments, especially the marine environment in the absence of heat and UV light. Therefore, the ban will cover all types of plastic straws including those carrying a biodegradable or compostable standard."

In making its decision on this issue, the SA government noted that technical opinions and positions were put to the European Union and the UK government by the bioplastics sector and that the EU and UK governments were not persuaded by those representations.

2.5 Legislative process for addition of other products

Two organisations recommended that amendments be made to the part of the Bill that outlines the process required to propose other products for inclusion in the legislation. The organisations suggested that the legislation prescribe the requirements for which a product or class of product would be considered for inclusion in the legislation, and suggested using the wording from the Bill Explanatory Information:

Consistent with contemporary international and domestic definitions, plastic products may be considered problematic and unnecessary when they:

- *are not readily reusable, recyclable or compostable; or*
- *hinder or disrupt the recyclability or compostability of other products; or*
- *have a high likelihood of being littered or ending up in the natural environment; and*
- *can be avoided (or replaced by a reusable / recyclable / compostable alternative) while maintaining utility.*

¹ European Commission 2019, *Environmental impact assessments of innovative bio-based products – Summary of methodology and conclusions*, <<https://publications.europa.eu/en/publication-detail/-/publication/9ab51539-2e79-11e9-8d04-01aa75ed71a1>> (see p.112)

² European Bioplastics 2018, 'Single-use plastics directive fails to acknowledge potential of biodegradable plastics', European Bioplastics, <<https://www.european-bioplastics.org/single-use-plastics-directive-fails-to-acknowledge-potential-of-biodegradable-plastics/>>.

³ European Commission 2018, *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the reduction of the impact of certain plastic products on the environment*, European Union, published: 28th of May, 2018, http://ec.europa.eu/environment/circular-economy/pdf/single-use_plastics_proposal.pdf (see p.20)

⁴ European Commission 2018, *IMPACT ASSESSMENT: Reducing Marine Litter: action on single use plastics and fishing gear*, Part 1, <https://eur-lex.europa.eu/resource.html?uri=cellar:4d0542a2-6256-11e8-ab9c-01aa75ed71a1.0001.02/DOC_1&format=PDF> (see p.60)

⁵ European Commission 2018, *IMPACT ASSESSMENT: Reducing Marine Litter: action on single use plastics and fishing gear*, Part 3, <https://eur-lex.europa.eu/resource.html?uri=cellar:4d0542a2-6256-11e8-ab9c-01aa75ed71a1.0001.02/DOC_3&format=PDF> (see p.10)

⁶ European Commission 2018, *Assessment of measures to reduce marine litter from single use plastics - Final report and Annex*, <http://ec.europa.eu/environment/waste/pdf/Study_sups.pdf> (see p.13)

The comments also suggested that the information regarding alternative products consider their suitability/adequacy to meet health and safety requirements and desired environmental outcomes.

One comment was received on the proposed consultation period. It recommended that the period of consultation be extended from a minimum of 8 weeks to a minimum of 12 weeks.

Government response

The government notes the desire from a small number of submissions for further elaboration in the legislation regarding the regulation making process that the Minister must undertake on a proposal to bring a product, or product of a class, within the ambit of the definition of **prohibited plastic product**.

The government is satisfied that the legislation as currently drafted provides an adequate approach to the potential inclusion of additional products in the future. The suggested approach provides flexibility regarding the attributes, nature and type of product that could conceivably consign/refer a product to this process. The consultation required under this section provides the opportunity for other factors to be considered, without being overly prescriptive.

The government considers a minimum 8 week consultation process sufficient to enable submissions by interested persons, and is consistent with other legislation consultation requirements. For example, South Australia's 5 year Waste Strategy under the *Green Industries SA Act 2004* and Environment Protection Policies under the *Environment Protection Act 1993* undergo consultation periods of 8 weeks / 2 months. If required, an extended consultation period can be applied.

2.6 Alternative products

Respondents consistently outlined the importance of ensuring that, throughout the transition period, the general public and businesses are provided with sufficient information about acceptable alternatives. The Stakeholder Taskforce commented that this should also consider effective disposal options.

While a state-wide communications campaign was acknowledged as the key means of disseminating this information, three submissions recommended that references to alternative products be made within the legislation itself.

Government response

The Act intends to prohibit the sale and supply of certain single-use and other plastic products and not stipulate alternatives, as the nature and characteristics of any alternatives are likely to change. It is anticipated that new and innovative product design and performance will be stimulated by this type of legislation, and that of similar approaches nationally and internationally.

A communications campaign will form part of the government's approach to support the introduction of the legislation, and will include guidance on alternative products and disposal options.

2.7 Terminology/Definitions [Interpretations]

2.7.1 Oxo-degradable plastic

Two organisations raised that the term 'oxo-degradable' may not be broad enough to capture the full range of problematic plastics and suggested the term 'oxo-degradable' be replaced with either 'fragmentable' or 'photo-fragmentable'.

Government response

The government notes the suggestion, however, considers the current definition suitable and notes the term oxo-degradable is widely used both nationally and internationally.

2.7.2 Authorised Officer

Clarification was sought as to whether or not a local government official would be regarded as an authorised officer under this Act.

Government response

Councils act on a range of environmental protection matters at the local level, and the government understands the concerns from local government regarding the potential for additional responsibilities to be imposed upon some council employees. Compliance with the single-use and other plastic products legislation is intended to be undertaken by authorised officers of the Environment Protection Authority pursuant to Section 85(1) of the *Environmental Protection Act 1993*.

However, in relation to the single-use plastic products legislation, this does not prevent any council from authorising specified officers or employees of the council for the purposes of ensuring compliance with this legislation should they wish to do so and Section 85 of the *Environmental Protection Act 1993* outlines the powers to appoint authorised officers under the Act.

2.7.3 Single-use

Three respondents commented on the definition of 'single-use' in the Bill and suggested it does not contain enough detail, and sought further information to ensure that the legislation is not misinterpreted.

It was noted that references to the concept of 'reusability' could assist in reinforcing the meaning of single-use within the context of the Bill.

For this reason, two submissions specifically requested that a separate definition for 'reusable' be added to Clause 3.

The Stakeholder Taskforce further discussed refining the definition for 'single-use' to support enforcement of the legislation.

Government response

The government agrees that an accurate and concise definition of single-use is imperative for the proposed legislation. The International Standard ISO 472: 2013⁷ defines re-use as ‘use of a product more than once in its original form’. The potential for prohibited products that fall within the ambit of the proposed legislation being simply re-branded or re-labelled as multiple use is a possibility.

The main concern with the definition as initially drafted is that it relied on the wording ‘1 use’. Following consideration of a range of options for the definition, including durability, reusability and pricing, the government has decided to amend the definition to “*single-use; in relation to a product, means a product designed or intended to be used once or for a limited number of times before being disposed of*”.

The Bill contains an evidentiary provision that will support the definitions of prohibited plastic products.

2.7.4 Expanded polystyrene products

A submission referred to the importance of communicating the types of expanded polystyrene (EPS) products that will be prohibited. It was recommended that, where possible, the government clearly differentiates between single-use consumer-based EPS products (specifically takeaway food packaging) and reusable EPS products that are used in business to business transactions and “back of house”.

Government response

The government notes the suggestion and is of the view that the expanded polystyrene products (i.e. cup, bowl, plate and clam-shell container) are sufficiently distinct enough not to be confused with larger polystyrene packaging formats used to transport fresh produce etc..

2.7.5 Prescribed person

It was recommended that the term ‘retailer’ be added to the definition of ‘prescribed person’ in the legislation.

Government response

The government does not support including ‘retailer’ in the definition of ‘prescribed person’. Retailers were deliberately omitted from the definition of a prescribed person, and relates to the different expiation fees and penalties under this section for retailers compared with ‘prescribed persons’.

⁷ International Standard ISO 472 : 2013 – Plastics – Vocabulary

2.8 Commencement

Several respondents provided feedback on the commencement date of the legislation.

Three submissions were received from the retail sector, two of which recommended a transitional period of 12 months from the date of proclamation and one recommended a phase-out period of 18 to 24 months.

Two environmental organisations commented on the commencement date and sought that the prescribed phase-out period not exceed 6 months.

A submission from the waste sector recommended a transitional period of anywhere from 6 months to 12 months, at most.

Two submissions questioned what will happen to prohibited items once the transition period ends, and expressed concerns that these items would be unnecessarily sent to landfill.

Survey responses

Of the 1417 survey responses received, seven respondents identified as a *'Business that sells or supplies a product that fits within the definition of a prohibited plastic product'*, one respondent identified themselves as a *'Manufacturer, producer or distributor of a prohibited item'* and one respondent identified themselves as an *'Industry association'*.

Of these 9 responses, 7 recommended a transitional period of 0 to 6 months, one recommended 0 to 3 months and one recommended 6 to 12 months.

Government response

The government notes the divergence of views on this issue from both submissions and the deliberations of the Stakeholder Taskforce. In making a determination regarding the commencement date for the legislation, the government recognises the need to balance the overwhelming view of the community for swift action alongside the needs of business and industry to have sufficient time to prepare and adapt to the phase-out of the prohibited products.

The government wants to implement an ambitious but realistic timeline to ban the supply of prohibited plastic products, to ensure the ban is as effective as possible in tackling plastic pollution and protecting our environment.

The government announced in July 2019 that it will be developing legislation to phase-out the products listed in the Bill, and some businesses are already transitioning away from these products.

On commencement of the legislation, single-use plastic drinking straws, single-use plastic cutlery and single-use plastic beverage stirrers will be prohibited from sale, supply and distribution (subject to exemptions).

The expanded polystyrene food service products listed in the Bill, as well as all oxo-degradable plastic products, will be prohibited 12 months following the commencement of the legislation.

The government will provide an indication on commencement timeframes when introducing the Bill to Parliament.

The government notes that transitional arrangements will vary from business to business. Retailers that are part of national supply chains may be able to send stock interstate, and others may be able to negotiate alternative arrangements with their suppliers. The government will give consideration to options for businesses that may be left with stocks of prohibited plastic products on commencement of the legislation.

2.9 Offences

One submission sought an exemption for ‘retailers, wholesalers and distributors’, in addition to ‘manufacturers and producers’, to sell, supply or distribute a prohibited product to a person outside the State.

Two submissions requested that the defence for the sale, supply or distribution of a prohibited plastic product include an additional point outlining that ‘it is not a defence if the person thought the product was recyclable or compostable’.

A submission also suggested that the maximum penalties in the Bill may be insufficient to deter illegal practices, and that the penalty be raised incrementally for repeat offenders.

One submission discussed the enforcement regime of the Bill, specifically the interaction of the legislation with the *Environment Protection Act 1993*, and the possibility of civil penalties being used. This submission also requested that the Bill allow third parties to apply to the courts without risk of undue impediments (i.e. legal costs).

Government response

The government notes that some businesses that distribute prohibited plastic products interstate are not the manufacturer or producer of the products, and supports the inclusion of “distributor” in this section.

The government does not consider the further information regarding ‘recyclable or compostable’ is required for the defence provision. The products listed in the Bill are prohibited regardless of their recyclability or compostability.

The offences in the Bill are largely consistent with other legislation (e.g. *Plastic Shopping Bags (Waste Avoidance) Act 2008*), and the government considers them sufficient. Penalties can be applied for each offence, where there are multiple offences, and prior offences can also be considered in determining penalties up to the maximum amount.

The Single-use and Other Plastic Products (Waste Avoidance) legislation does not, and is not intended to, amend any of the enforcement provisions of the *Environment Protection Act 1993*. The government has decided that Authorised Officers under the EP Act will enforce this legislation, and there are relevant provisions that enable the interaction between the two pieces of legislation for this purpose.

2.10 Exemptions

2.10.1 Single-use plastic drinking straws

The Stakeholder Taskforce, industry representatives, environmental groups and the broader community were supportive of exemptions for people with disabilities to access single-use plastic drinking straws.

Public responses

The general public favours exemptions that allow persons with disabilities and/or medical needs to:

- a) freely access plastic straws on request in cafes, restaurants and hotels, and
- b) access these items via medical facilities, pharmacies and council offices.

Of the responses received via the online survey, 14 were attributed to individuals who used plastic straws for accessibility reasons. These individuals responded to question 6 of survey as follows*:

Q.6 Do you have a preference for how to best ensure accessibility of single-use plastic straws for people with a disability or medical requirements?

- 64.3% of respondents were in favour of the 'sale/supply on request' option.
- 38.7% of respondents were in favour of the 'sale/supply via particular outlets' option.
- 28.6% of respondents supported the availability of the 'online purchases' option.

*Note: Some respondents selected multiple options.

Submissions

One submission raised concerns in regards to the workability of the legislation in the context of a hospitality setting. The respondent noted that, if exemptions were granted for the supply of plastic straws in these settings, the following issues could arise:

- a) That staff may feel pressured to ask for proof of a person's disability or medical need in order to avoid expiation and that such acts will lead to customers feeling uncomfortable and discriminated against.
- b) That businesses will be expected to stock both plastic and non-plastic straws and will therefore face additional financial burden.

For these reasons, the submission did not support the option of allowing straws to be supplied on request in cafes, restaurants and hotels, or the like.

Another respondent raised concerns that the supply of plastic straws in retail and hospitality settings may diminish over time as a result of the reduced market for these products.

One submission recommended that the South Australian government subsidise the supply of single-use plastic straws until suitable alternatives become available. They similarly encourage the state government to support work to develop suitable alternatives.

Local government advised it is willing to be granted an exemption under the legislation to sell or supply plastic straws. However, it was requested that individual councils have the ability to undertake consultation with their community prior to confirming their commitment to this action.

Government response

In announcing the development of the legislation to prohibit certain single-use plastic products, the government advised that it would be considering the needs of people who require single-use plastic straws. To assist in the government's deliberations the Single-Use Plastic Stakeholder Taskforce comprises representatives who live with a disability and/or represent their interests.

Drafting legislation that seeks to prohibit single-use plastic products like straws and at the same time enable access to the product for people that require single-use plastic straws will be achieved through exemptions from the Act. The exemption making powers are provided in the Act with the specific nature of the exemption set by regulation.

The submissions received on the draft bill did not respond adequately or provide clear direction on this matter, however, the government's view is that two 'exemption' options emerge as possibilities, namely that certain businesses (as defined) be exempt from the Act or that those with a medical requirement can obtain them more broadly.

The government will provide details on the proposed exemption when introducing the Bill to Parliament.

2.10.2 Attached items

For the purpose of providing clarity to manufacturers and suppliers, one respondent requested that the exemption for 'attached items' (i.e. straws on fruit juice boxes) be specifically referenced in the Bill.

Government response

The government notes this suggestion, however, it is generally regarded as limiting within the framework of the Act and more appropriately dealt with via regulation.

2.10.3 Manufacture and production of prohibited plastic products

Respondents were predominantly in favour of the government's decision to continue to permit the manufacture and production of prohibited plastic products. Two respondents raised concerns regarding this matter, recognising the potential to extend the scope of the legislation's restrictions to include manufacturers.

Government response

The government notes this feedback, but will not prevent South Australian businesses from supplying these products to other jurisdictions where they are able to be sold and supplied.

2.10.4 Additional comments regarding exemptions:

Two respondents requested that the process used to prepare exemptions be explicitly outlined in the legislation.

Government response

The government notes this view, however, does not consider that further elaboration regarding this process is necessary. The legislation is not intended to contain a mechanism by which companies can seek an exemption for their products.

2.11 Oxo-degradable plastic products

The vast majority of submissions supported the government's decision to prohibit the manufacture, distribution, sale and supply of oxo-degradable products.

Two submissions contested this decision and were attributed to organisations directly or indirectly involved in the production of oxo-biodegradable products. One organisation requested that Part 3 of the Bill be removed in its entirety by outlining the environmental merits of oxo-biodegradable technology and one sought an exemption on oxo-biodegradable bin liners.

A number of respondents, specifically environmental organisations and members of the community, queried the meaning and function of the clause of the Bill that referred to potential recycled plastic products that may contain oxo-degradable plastic. Respondents raised that the terms 'trivial' and 'insignificant' are difficult to define and that a lack of a precise definition could provide a loophole for manufacturers of oxo-degradable products. It was requested that this clause be removed or that the terms trivial and insignificant be clarified.

It was also requested that the Bill include further information to clarify what may be constituted as "reasonable grounds".

Government response

The government remains unconvinced by submissions arising from manufacturers of oxo-degradable products. The government's view is informed by similar consultative processes undertaken internationally (as referenced earlier in this document).

The arguments, opinion and position provided by associations representing oxo-degradable product manufacturers received considerable exposure in relation to the approach contemplated, and despite such representations, subsequently taken by the European Union (representing 27 member countries). Article 5 of the EU's Directive 2019/904 on the reduction of the impact of certain plastic products on the environment states "*Member States shall prohibit the placing on the market of the single-use plastic products listed in Part B of the Annex and of products made from oxo-degradable plastic.*"

The government recognises that clause 8 of the draft Bill created some confusion and concern and this clause will be removed from the proposed Act and dealt with via a regulation if required.

Single-Use Plastics Stakeholder Taskforce members

Australian Food and Grocery Council

Australian Hotels Association (SA)

Australian Packaging Covenant Organisation

Australian Retailers Association

Conservation Council of SA

Disability Elders of All Ages

Environment Protection Authority

Green Industries SA

JFA Purple Orange

KESAB *environmental solutions*

Local Government Association of SA

National Retail Association

Restaurant and Catering Industry Association

SA Independent Retailers

Waste Management and Resource Recovery Association Australia

Woolworths Group

List of organisations who made submissions on the draft Bill

Australasian Bioplastics Association
Australian Food and Grocery Council
Australian Organics Recycling Association
Australian Packaging Covenant Organisation
Australian Hotels Association SA
Australian Marine Conservation Society
BioBag World Australia
Boomerang Alliance
City of Adelaide
City of Mitcham
City of Norwood Payneham & St Peters
City of Port Adelaide Enfield
City of Tea Tree Gully (*Admin staff*) – *Not endorsed position*
City of Victor Harbor
City of West Torrens
Compliance Coordinator (Light Regional Council)
District Council of Streaky Bay
East Waste
Environmental Defenders Office
Expanded Polystyrene Australia
Horwood Life
Lafayette
Local Government Association
Marion Living Smarties
National Retail Association
Oxo-Biodegradable Plastics Association
SA Country Women's Association
Sea Shepherd Australia
Waste Management and Resource Recovery Association
Woolworths Group
World Wide Fund for Nature