Environmental Defenders' Office
AUSTRALIAN CAPITAL TERRITORY

30 July 2019

City Services, Transport Canberra and City Services Directorate
ACT Government
GPO Box 158
Canberra ACT 2601

By email: communityengagement@act.gov.au

Dear Community Engagement Team,

Phasing out single-use plastics discussion Paper: Environmental Defenders Office ACT submission

The Environmental Defenders Office (ACT) Inc ('EDO ACT') is a community legal centre specialising in public interest environmental law in the ACT and surrounds. We provide legal representation and advice, take an active role in environmental policy and law reform, and produce community legal educational publications and sessions.

In the past 12 months, our law reform work has touched upon a number of similar issues to those raised in regard to single-use plastics. This includes our recent submission to the Waste-to-Energy consultation[1] and a guide for policymakers and legislative drafters for regulating plastics in Pacific Island Countries, in collaboration with EDO NSW.[2]

Plastics pollute our environment throughout their entire lifecycle – from production to consumption and disposal. They impact our land, waterways, wildlife, and contribute to the production of harmful greenhouse gas emissions. More than half of plastics are single-use – used only once before being discarded. The environmental impacts of single-use plastics is increasingly recognised in Australia, with moves at all levels of government to regulate single-use plastics.

As an environmentally aware jurisdiction, the ACT must be amongst those leading the response and regulation of single-use plastics. The Phasing out Single Use Plastics Discussion Paper (the Discussion Paper) discusses a broad overview of possible responses. These responses must be supported by legislative and regulatory change.

[1] Available at http://www.edoact.org.au/submission_waste_to_energy_in_the_act
[2] Available at www.edoact.org.au/plastics.

Question 1: Do you agree with the consumer single-use plastic items listed?

The Discussion Paper provides a list of items that are likely to be focussed on, and others that are unlikely to be included - and offers no explanation as to the consideration of either. Reasoning and justifications as to why some single-use plastic items have been selected for regulation and others have not is required. This necessarily involves research and analysis of baseline conditions (see below at Recommendation 4).

In the absence of research as to which items should be addressed to most effectively reduce the impacts of single-use plastics, the Discussion Paper should include as many items as possible for consideration. In particular, the following excluded items should be included for consideration:

- Reusable plastic bags above 35 microns in thickness: The ACT Commissioner for Sustainability and the Environment's review of the current plastic bag ban found that there has been an increase in the consumption of plastic bags thicker than 35 microns.[3] A recent article by Moore and Raff noted that it is important to regulate these bags, and suggests a levy on bags thicker than 35 microns.[4] Alternatively, an ANU review of the ban suggests increasing the minimum thickness of plastic shopping bags encompassed by the legislation.[5] In either case, it is clear that a response is needed to address the environmental impacts of these bags.
- Plastic beverage containers: The ACT has taken steps to address plastic beverage container use, through the Container Deposit Scheme, which has been in place for about a year. The effectiveness of the scheme, and its implementation of the Extended Producer Responsibility principle must be assessed. This Discussion Paper should also consider other mechanisms to regulate plastic beverage containers, such as improved recycling at core consumption centres or industry commitments.
- Other plastic packaging e.g. food packaging, consumer goods: A wholistic response to plastics regulation involves the consideration of all plastic packaging. For example,

[3] Office of the Commissioner for Sustainability and the Environment (2018). Unfantastic Plastic - Review of the ACT Plastic Shopping Bag Ban, page 9.

[4] D Moore and M Raff (University of Canberra), 2019: Can the Market Decide? A Law and Economics Analysis of Models of Legislation Banning Plastic Bags 36 *Environmental and Planning Law Journal* 242.

[5] A Macintosh, A Simpson and T Neeman (ANU), 2018: Regulating Plastic Shopping Bags in the Australian Capital Territory: Plastic Shopping Bags Ban Act 2010 Options Analysis.

the City of Hobart's recent Single-Use Plastics By-Law includes a ban on sauce sachets and plastic sandwich wedges.[6]

- Cotton bud sticks: There are non-plastic alternatives to cotton bud sticks, and they are covered by the EU Single-Use Plastics Directive (with exemptions for some Directives related to medical use). See below for further detail on the EU directive.

As mentioned above, the Discussion Paper is unclear as to why some items have been selected for consideration, and others have not. The selection of single-use plastic items to be included needs to be evidence-based and follow good practice from other jurisdictions, such as the European Union. A brief summary of the relevant EU directive is outlined below as an example of how the ACT may regulate single-use plastics.

EU directive on the reduction of the impact of certain plastic products on the environment
The European Parliament has adopted rules on single-use plastics by approving the proposal for a Directive on the reduction of the impact of certain plastic products on the environment.

The EU Single-Use Plastics Directive includes a ban on the following items (Article 5):

- Cotton bud sticks (unless if they fall within certain EU Directives relating to medical use)
- Cutlery (forks, knives, spoons, chopsticks);
- Plates;
- Straws (unless they fell within certain EU Directives relating to medical use) [1]
- Beverage stirrers;
- Sticks to be attached to and to support balloons, except balloons for industrial or other professional uses and applications that are not distributed to consumers, including the mechanisms of such sticks;
- Food containers made of expanded polystyrene, i.e. receptacles such as boxes, with or without a cover, used to contain food which:
    - is intended for immediate consumption, either on-the-spot or take-away,
    - is typically consumed from the receptacle, and
    - is ready to be consumed without any further preparation, such as cooking, boiling or heating, including food containers used for fast food or other meal ready for immediate consumption, except beverage containers, plates and packets and wrappers containing food;
- Beverage containers made of expanded polystyrene, including their caps and lids;

[6] Hobart City Council, Single-use Plastics By-Law (BY-LAW No. 1 of 2019) Part 1. Available at https://www.hobartcity.com.au/Business/Food-businesses/Single-Use-Plastics-By-Law-Information

- Cups for beverages made of expanded polystyrene, including their covers and lids.

It includes measures to regulate the consumption of the following products (Article 7), through requiring manufacturers to outline appropriate waste management options and the negative impacts of inappropriate waste disposal on product packaging for the following items:

- Sanitary towels (pads), tampons and tampon applicators;
- Wet wipes, i.e. pre-wetted personal care and domestic wipes;
- Tobacco products with filters and filters marketed for use in combination with tobacco products;
- Cups for beverages.

The Directive also creates Extended Producer Responsibility schemes covering the cost to clean-up litter and collection targets and design requirements for plastic bottles.

Recommendation 1: Conduct thorough research into the efficacy of phasing out single-use plastics, including into the rationale behind particular items to be phased out. The ACT Government should select a broad range of items for regulation to work towards better environmental outcomes.

Question 2: What regulatory or other approaches do you support to address consumer single-use plastic in the ACT? When do you think action is needed, and why?

A variety of tools and mechanisms are needed to address consumer single-use plastic in the ACT. The Discussion Paper contemplates a number of these tools, but not to any specific detail. Tools and mechanisms refer to processes and systems that are used to achieve legislative goals and objects, and to operationalise principles. Examples of tools and mechanisms to govern plastic pollution include:[7]

- product bans (e.g. for high environmental impact, single-use, substitutable products);
- economic instruments and behavioural incentives based on a polluter pays approach (e.g. product levies, deposit/ refund schemes or service levies that internalise costs);
- licences and permits (e.g. licences granted to bottle manufacturers, recycling companies or plastics importers);
- technology design and product specification standards (e.g. standards for plastic contents, recycled or recyclable materials);

[7] SPREP Guide for Policymakers and Legislative Drafters, available at www.edoact.org.au/publications.

- prohibitions on harmful practices (e.g. illegal disposal of waste);
- performance standards (e.g. targets for percentage of waste recycled);
- reporting requirements (e.g. pollution and incident reporting, annual returns for container deposit schemes);
- management plans (e.g. for recycling centres or shipping garbage);
- penalties such as warning letters, fines, confiscation of banned products;
- co-management arrangements;
- community rights to information access;
- community rights to bring legal challenges; and
- periodic reviews of laws and regulations to ensure they are effective and up-to-date.

Not all tools and mechanisms need be legislated. Tools and mechanisms can be non-mandatory and sit outside of legislation. Examples include:

- voluntary reporting for the purposes of strengthening a company's 'social licence to operate';
- education and awareness programmes;
- voluntary industry commitments; and
- government-backed voluntary programmes, and voluntary product certification

Although voluntary approaches are an important addition to the policy mix, legislative responses are also necessary. For example, in the 2016 Commonwealth Government review of the Australian Packaging Covenant, the EDOs of Australia and National Environmental Law Association noted the limitations of voluntary approaches, and the importance of strong regulation and government intervention.[8] Legislative changes are needed to implement rapid change to address the impacts of single-use plastics.

Recommendation 2: Assess the efficacy of a mix of tools and mechanisms to regulate the phasing out of single-use plastics, including required legislative changes.

Question 8: What else do you think needs to be considered as part of this discussion?

Previous expert reviews and analysis of the ACT plastic bag ban

8 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Marine_plastics/Report chapter 7, page 120

University of Canberra researchers Dai Moore and Murray Raff recently published an analysis of the plastic bag ban.[9] Their article discussed that the legislation allows for the manufacture and consumption of environmentally harmful substitutes to plastic bags. This includes promoting greater consumption of thicker plastic bags and of non-banned lightweight plastic bans. They recommend a progressive law and economics response including reforms to legislate an environmental levy on the purchase of thick plastic bags to operate in conjunction with the ban on lightweight plastic shopping bags. Relevantly, this article discusses the importance of regulating plastic bags above 35 microns in thickness – an item that has been excluded from this discussion paper.

As noted by the discussion paper, the ACT Commissioner for Sustainability and the Environment recently conducted a review of the ACT Plastic Shopping Bag Ban and recommended a number of measures, informed by a *Plastic Shopping Bag Ban Act 2010 Options Analysis* from ANU.[10]

The ACT Government should implement the recommendations of the ACT Commissioner for Sustainability and the Environment's review, including:

- Introduce a mandatory plastic bag disclosure scheme: as discussed below, is essential to measure and understand plastic bag use in order to effectively respond;
- Introduce minimum plastic bag pricing: a legislated minimum price, applying to thick plastic bags and composable bags in addition to shopping bags, was recommended in order to prompt behavioural change. Putting a price on resources is also an important step in implementing sustainable development principles;
- Improve government's governance on plastic bag regulation: the review found that government responsibilities must be clarified to ensure effective and certain implementation of the legislation;
- Research synergies for compostable plastic and the proposed household organic collection scheme.

Recommendation 3: Engage with and build on existing expert studies to develop future responses to single-use plastics.

[9] Dai Moore and Murray Raff, "Can the Market Decide? A Law and Economics Analysis of Models of Legislation Banning Plastic Bags" *Environmental and Planning Law Journal* Vol 36 Pt 3

[10] A Macintosh, A Simpson and T Neeman (ANU), 2018: Regulating Plastic Shopping Bags in the Australian Capital Territory: Plastic Shopping Bags Ban Act 2010 Options Analysis

Assessing baseline conditions

The ACT Commissioner for Sustainability and the Environment's review of the ACT Plastic Shopping Bag Ban noted the difficulties encountered in obtaining relevant data to assess the effectiveness of the plastic bag ban.[11] It is essential to determine baseline conditions of the ACT's use of single-use plastics – this is the first step in the Single-Use Plastic Roadmap to Sustainability report by UN Environment.[12] The Roadmap suggests the policy-makers assess:

- what are the most problematic single-use plastics that require government action;
- what is the extent of the problem;
- what are the impacts that the mismanaged single-use plastics are imparting on human health and wildlife, the environment, and the economy; and
- what is currently causing the problem (what is the source of pollution – citizen negligence, poor collection systems, improper disposal sites, etc.)

That this data is not detailed in the discussion paper may be a factor in justifying which items are selected for regulation (see above Recommendation 1).

Recommendation 4: Ensure that appropriate baseline studies are conducted to select and regulate single-use plastics.

[redacted]

[redacted]

[11] Office of the Commissioner for Sustainability and the Environment (2018). Unfantastic Plastic - Review of the ACT Plastic Shopping Bag Ban, page 16
[12] See https://www.unenvironment.org/resources/report/single-use-plastics-roadmap-sustainability