Environmental Defenders Office

24 July 2020

Committee Secretary
Natural Resources, Agricultural Industry Development and Environment Committee
Parliament House
George Street
Brisbane Qld 4000

By email: NRAIDEC@parliament.qld.gov.au

Dear Committee Secretary

Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020

Thank you for the opportunity to make a submission in relation to the *Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020*.

EDO Ltd is a community legal centre with a long history of constructive engagement in the development of Queensland's environmental laws, including laws in relation to waste management.

We commend the Queensland Government for this positive step and for being, with the ACT and South Australia, at the forefront of efforts to tackle problematic and unnecessary plastics. The proposed bans in the Bill are consistent with Queensland's waste and resource management hierarchy,[1] the polluter pays principle,[2] and the National Waste Strategy[3] and are a step towards addressing the problem of ocean plastics as well as the plastic litter which pollutes our beaches, parks and other public places.

As outlined in our submission to the Consultation Regulatory Impact Statement (**RIS**) (a copy of which is **attached**), we support the proposed ban but are somewhat disappointed that it doesn't

[1] See *Waste Reduction and Recycling Act 2011*, section 9, which lists the order in which waste management options should be considered – with the first options being to **avoid** unnecessary resource consumption and to **reduce** waste generation and disposal.
[2] *Waste Reduction and Recycling Act 2011*, section 4(2)(b) (the waste and resource management principles include the polluter pays principle) and section (which defines the polluter pays principle as being that all costs associated with the management of waste should be borne by the person who generated the waste)
[3] See Target 5 (Phase out problematic and unnecessary plastics by 2025) of the National Waste Policy Action Plan 2019, which sits under the National Waste Policy 2018: Less Waste More Resources (found at: https://www.environment.gov.au/protection/waste-resource-recovery/publications/national-waste-policy-2018)

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go further to ban other unnecessary single use plastics (such as balloon sticks, promotional toys and unnecessary plastic wrapping of fresh fruits and vegetables).

We note that proposed section 99GC in clause 5 of the Bill will allow regulations to be made to add further single use plastic products to the ban (as contemplated in the RIS). Given the severity of the plastic pollution of our oceans, we would question the wisdom of delaying further bans.

We also believe that one of the mandatory prerequisites to such regulations (contained in proposed section 99GC(3)) could be drafted in a way that is less restrictive and better meets the intent of the Bill. Proposed sub-section 99CG(3)(b)(ii) requires the Minister to consider *"whether voluntary or other measures to achieve the objectives of this part have been shown not to be effective."*

This drafting is:

- unclear as to what "voluntary or measures" must be considered;
- suggests that "voluntary or other measures" may need to have been trialled for each type of waste (which appears to us to involve considerable uncertainty for business and unnecessary regulatory investments);
- is unclear as to whether a "voluntary or other measure" being only partially effective would be adequate; and
- does not appear to support a consistent approach being taken to all problematic and unnecessary plastics.

We recommend that this sub-section be re-drafted to provide that the Minister must consider *"whether there are voluntary or other measures that are likely to be equally or more effective."*

We also note that the Department of Environment and Science will, in addition to its other responsibilities, need to undertaken education and enforcement activities to ensure that the proposed ban is properly implemented and enforced (and to ensure that businesses complying with their obligations are not placed at a competitive disadvantage to bad operators). We trust that the current hiring freeze[4] on 'non-frontline' public servants will not leave the Department under-resourced. We note, in that regard, that environmental laws have a tendency to fail at the implementation stage[5] for reasons including lack of political will and poorly resourced regulators. It is also notable that the Commonwealth Environment Department has been criticised recently in independent reviews[6] for failures in its administration of environmental legislation, including through inadequate resourcing of the regulator.

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[4] http://statements.qld.gov.au/Statement/2020/7/9/new-savings-measures-for-queensland

[5] UNEP (2019). Environmental Rule of Law: First Global Report, found at: https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y

[6] See Auditor-General Report No. 47 of 2019-20: Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999 (https://www.anao.gov.au/work/performance-audit/referrals-assessments-and-approvals-controlled-actions-under-the-epbc-act) and the Interim Report of the Independent Review of the EPBC Act (https://epbcactreview.environment.gov.au/resources/interim-report)

Overall, we commend the Bill to the Committee, subject to the above amendments to proposed section 99CG(3)(b)(ii) in clause 5.

If you have any queries, please don't hesitate to contact Jo-Anne Bragg [redacted].

Yours sincerely,
Environmental Defenders Office

Jo-Anne Bragg
Executive Director, Brisbane

Environmental Defenders Office

15 April 2020

Single-use Plastics Consultation
Department of Environment and Science
PO Box 2454
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By email only: wastepolicy@des.qld.gov.au

Dear Sir/Madam,

Single-use plastic items: Consultation Regulatory Impact Statement

Thank you for the opportunity to comment on the Consultation Regulatory Impact Statement for the proposed ban on certain single-use plastic items.

The Environmental Defenders Office is a community legal centre specialising in public interest environmental law. We have a long history of involvement in in waste laws at the Commonwealth and state level.

We commend the Queensland government for its continuing action to reduce plastic pollution and support the proposed ban on certain problematic and unnecessary plastics. However, we note that this is only a small step in addressing what is a large and complex problem.

Executive summary

Our response to the following questions asked in the Consultation Regulatory Impact Statement[1] (**RIS**) can be summarised as follows:

- In relation to question 1, we **recommend** that stage 1 of the ban be expanded to also include balloon sticks and that stage 2 of the ban include beverage container lids, wet wipes and plastic cotton buds. We further **recommend** that the government commit publicly to a timeframe to introduce stage 2.
- In relation to question 3, we do not support an exemption for 'shelf-ready' packaged products, nor do we believe that such products should be treated as a single category. There may be a case for delayed implementation of the ban for products only where the plastic item is an inherent part of the way in which the product is opened and consumed (to allow for re-design of the packaging) (eg. juice boxes).

[1] Single-use Plastic Items – Consultation Regulatory Impact Statement, found at: https://www.qld.gov.au/environment/pollution/management/waste/recovery/reduction/plastic-pollution/reducing-plastic/business

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- In relation to question 5, In our view option 2 (the proposed regulatory ban) is the only option which is likely to be effective and consistent both with the polluter pays principle and the waste hierarchy. The other options considered in the RIS are unlikely to be effective and are inconsistent with both the polluter pays principle and the waste hierarchy.
- In relation to question 6, while we believe that public awareness campaigns could supplement regulatory measures (such as the proposed ban), they should not be viewed as a substitute for the proposed ban.

Detailed discussion

Question 1: support for the ban

We commend the Queensland government on the proposed ban, which we support.

While we acknowledge that reducing plastic pollution is a staged process, which involves both regulatory and non-regulatory interventions, there do seem to be some products that have not been addressed under either existing initiatives or under either stage one or two of the proposed ban.

In particular, we believe that there has yet to be adequate action on:

- Beverage container lids, which are a significant source of ocean plastics not addressed under the existing container refund scheme. This source of waste could be addressed through design of beverage containers to have attached lids with an associated ban of untethered lids;
- Wet wipes, which are a single use item that frequently contains plastic;
- Cotton buds with plastic stems, which can be banned and replaced with cardboard stems (with appropriate exceptions for medical uses);
- Balloon sticks, which are included in the European Union directive banning single use plastics and would seem to be an easily eliminated source of waste. It is not at all clear why they have been left to stage 2 of the ban (which appears to consist of single use plastics that are somewhat more difficult to replace).

In that regard, we **recommend** that stage 1 of the ban be expanded to include balloon sticks and that stage 2 of the ban include beverage container lids, wet wipes and plastic cotton buds.

We further support stage 2 of the ban and **recommend** that the government commit publicly to a timeframe to introduce stage 2. This would not only give the community confidence that the Queensland government is serious about eliminating problematic and unnecessary plastics but would give business additional time to identify substitutes.

Question 2: Exemption for shelf-ready products

We do not support an exemption for shelf-ready products, however, in some cases allowing a delayed implementation of the ban may be necessary to provide businesses with additional time to re-design the product.

Treating 'shelf-ready' products as a single, homogenous category is perhaps somewhat misleading. The examples used in the RIS are juice boxes (in respect of which the straws are an

inherent part of how the packaging is opened and the product consumed) and ready to eat tuna salad with an included fork (where the fork can be easily substituted for non-disposable cutlery). While there may be some justification for a delay in implementing the ban for juice boxes, that reasoning does not apply to other 'shelf-ready products'.

We **recommend** that the proposed ban include shelf-ready products, with a delayed commencement only for those products where the single-use plastic item is a component needed to both open and consume the product, that cannot be substituted for a non-disposable alternative (such as metal cutlery).

Question 5: Positive and negative impacts of identified options

The identified options are:

- Option 1: Maintain the status quo
- Option 2: A legislated ban on the supply of single-use plastic straws, stirrers, plates and cutlery;
- Option 3: Implement non-regulated approaches, including greater education and awareness
- Option 4: Install additional collection and clean up infrastructure, such as bins, stormwater interception devices and gross pollutant traps.

In our view, the key considerations for assessing the relative merits of these options should be:

- Effectiveness;
- Consistency with the polluter pays principle[2] which seeks to internalise (to the polluter) costs that would otherwise be externalised (ie. transferred to society as a whole, in the form of plastic pollution in this case); and
- Consistency with the waste hierarchy,[3] which places the highest priority on waste avoidance.

<u>Option 1: status quo</u>

Option 1 is likely to see Queensland continue on a trajectory of increasing use of single use plastics, with consequent impacts for ocean plastics and our biodiversity.

<u>Option 2: Proposed ban</u>

In our view, proposed option 2 (a regulatory ban on the identified single use plastics) is the only potentially viable option of the four discussed in the RIS.

The RIS presents early evidence of reductions in litter resulting from the current plastic bag ban and container refund scheme. This evidence demonstrates that regulatory bans, such as the

[2] The polluter pays principle is a key principle of the *Waste Reduction and Recycling Act 2011 (Qld)* (see ss4 and 10). In the Act, the polluter pays principle is defined as the principle that all costs associated with the management of waste should be borne by the persons who generated the waste.

[3] The waste and resource management hierarchy is a key principle of the *Waste Reduction and Recycling Act 2011 (Qld)* (see ss4 and 9) and the foundation of Queensland's current waste policy (*Waste Management and Resource Recovery Strategy*, found at: https://www.qld.gov.au/environment/pollution/management/waste/recovery/strategy)

proposed ban, can be an effective tool for reducing pollution of problematic and unnecessary plastics.

This option will avoid the creation of unnecessary waste and will not see the costs of cleaning up unnecessary plastic transferred onto the community. It is therefore consistent with both the polluter pays principle and the waste hierarchy.

The RIS unfortunately understates the environmental benefits of this option (and similarly understates the disadvantages of the other options) by limiting the description of community benefits to "a reduction in littering", without including a more detailed discussion of benefits such as:

- reducing the plastic load in our local marine environment (given that the significant quantities of plastic debris in our oceans are largely locally generated[4]);
- avoiding the harm that ocean plastics can cause to marine life through ingestion, suffocation and entanglement;
- reducing the transport of invasive species and concentration of toxic pollutants;[5]
- avoiding the further impacts that are likely to emerge as we learn more about the impacts of microplastics and nanoplastics;[6]
- reducing the fossil fuel emissions released by plastic production.[7]

While these benefits may be difficult to quantify, the RIS guidelines allow such benefits to be described qualitatively.[8]

Option 3: Education and awareness campaign

Option 3 would essentially involve placing the responsibility for solving a systemic problem onto individuals, without attempting to avoid the creation of the waste.

In our view, it is not reasonable to expect all consumers to, with sufficient education, make environmentally positive choices within a system that provides environmentally damaging choices as the most convenient (and often only) option.

As a consequence, we think that this option is unlikely to be effective. It is also inconsistent with both the polluter pays principle and the waste hierarchy.

Option 4: Additional bins, stormwater interception devices and gross pollutant traps

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[4] 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

[5] 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

[6] Nanoplastic should be better understood. Nat. Nanotechnol. 14, 299 (2019) doi:10.1038/s41565-019-0437-7

[7] Zheng J and S Suh, 2019, Strategies to reduce the global carbon footprint of plastics, Nature Climate Change, DOI: 10.1038/s41558-019-0459-z

[8] Queensland Government Guide to Better Regulation, May 2019, found at: https://qpc.blob.core.windows.net/wordpress/2019/06/Queensland-Government-Guide-to-Better-Regulation-May-2019.pdf

Option 4 could be described as an end-of-pipe solution, which is out of step with modern environmental regulation. It is similarly inconsistent with both the waste hierarchy and the polluter pays principle.

Question 6: More voluntary action, such as educational campaigns on the impacts of single-use plastics

There appears to be some evidence that well-designed educational campaigns can be effective to some degree. However, in order to be effective, such campaigns must create behaviour change across a much larger number of entities than is the case for a simple ban. Further, despite quite a long history of public anti-littering campaigns in this country, there are increasing amounts of plastic waste entering our oceans.

As a consequence, while we believe that public awareness campaigns could supplement regulatory measures (such as the proposed ban), they should not be viewed as a substitute for regulatory measures.

If you have any queries, please don't hesitate to contact Deborah Brennan [redacted].

Yours sincerely,
Environmental Defenders Office

Deborah Brennan
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