

2020

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

Plastic Reduction Bill 2020

**EXPLANATORY STATEMENT and HUMAN RIGHTS COMPATIBILITY
STATEMENT (*Human Rights Act 2004, s37*)**

**Presented by
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Minister for Transport and City Services**

PLASTIC REDUCTION BILL 2020

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

INTRODUCTION

This explanatory statement relates to the *Plastic Reduction Bill 2020* (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the Courts.

BACKGROUND

There are unprecedented levels of plastic in our environment. This has been accumulating since global plastic use exploded in the 1950s. Plastic has a very important place in our society. It is strong, adaptable, stable, lightweight and low cost. Plastic is integral in the medical field, and it keeps food safe and makes it last longer. But it can be pernicious – particularly single-use plastic.

Plastic persists in the environment and can last for hundreds or even thousands of years. It is rarely made from recycled or renewable resources, rather non-renewable resources such as oil, natural gas and coal. Once these resources have been depleted, they cannot be replaced. The United Nations (UN) estimates that, by 2050, the plastic industry could account for a fifth of the world's oil consumption and that plastic makes up about 80 per cent of marine litter.

The waste hierarchy is to reduce, reuse, recycle and recover. The last resort is disposal. Single-use plastic is difficult to avoid, which makes reducing its use difficult in the absence of regulatory action. It is also not designed to be reused, is difficult to recycle or is currently not recyclable at all. It is often used away from home where appropriate waste disposal options are limited, and often used and thrown away in mere seconds.

The Bill has been prepared to implement the [Parliamentary and Governing Agreement](#) of the 10th Legislative Assembly of the ACT's Agreed Legislative Reform item 21: *Create circular economy legislation to, amongst other things, phase out single-use plastics and require businesses to have a separate collection for co-mingled recycling and organic waste collection and a food waste reduction plan from 2023.*

The Bill gives effect to the agreed phase out of single-use plastic. It will contribute to a circular economy in the ACT by supporting people to reduce their consumption of plastic or utilise alternatives that can be readily made into other products, such as compost. This will be supported by the requirement for businesses to have separate waste collections, particularly for organic waste, by 2023.

The Bill aims to reduce the use of plastic in the ACT, particularly single-use plastic, by prohibiting the supply of identified single-use plastic items. These create significant issues for the ACT's environment (e.g. through litter) and waste management and resource recovery sector (e.g. ending up in landfill or becoming contamination in the ACT Materials Recovery Facility). It also establishes a framework for adding other products in the future, and absorbs the existing plastic shopping bag ban to streamline plastic-related regulation in the ACT.

The Bill has been titled the *Plastic Reduction Bill 2020* to provide a robust future framework for longevity to the Government's efforts to regulate to reduce the use of plastic. This acknowledges that, as global, national and local policy progresses, this Bill may need to go beyond the currently identified single-use plastic items to a broader plastic-related regulatory framework.

The Bill is focused on plastic and therefore is silent on non-plastic items such as those made from paper, cardboard, wood or bamboo.

OVERVIEW OF THE BILL

In summary, the Bill:

- decisively regulates the supply of select single-use plastic items in the ACT. The first tranche of prohibited plastic products identified in the Bill for immediate phase out are:
 - stirrers;
 - cutlery; and
 - expanded polystyrene takeaway food and beverage containers (e.g. cups, plates and 'clam shell' containers).
- establishes a framework for adding other single-use plastic products in the future via regulation, including a requirement that the Minister must give public notice of a proposed regulation.
- repeals and absorbs *Plastic Shopping Bags Ban Act 2010* to ensure that plastic bags remain banned in the ACT, and to streamline plastic-related regulation.
- creates offences and enforcement provisions to ensure compliance with the Bill.
- phases out single-use plastic through provision to declare public events (both government and non-government) as single-use plastic free. This includes provision to declare that additional single-use plastic products, beyond those identified as prohibited plastic products, will not be supplied at declared public events.
- establishes a framework for appropriate exemptions to the Bill as may be required from time to time.

CONSULTATION ON THE PROPOSED APPROACH

Public consultation was undertaken between April and July 2019 via the [Phasing out single-use plastics discussion paper](#).

The consultation received significant interest with approximately 3,300 interactions. Per head of population, this was double the rate of similar consultation in Queensland and triple that in South Australia. The [Engagement Report](#) showed that items targeted by the Bill in the first tranche received over 90 per cent support for phase out. Ninety percent of respondents were concerned about single-use plastic used in the events sector, and 10 percent of organisation submissions sought (without prompting) that the ACT Government do more to support and promote plastic-free events. Feedback also established an expectation from the community and business that the ACT Government take regulatory action.

Comprehensive consultation has been undertaken across all ACT Government Directorates at every stage of policy development, with the Bill supporting significant existing efforts across Government to phase out single-use plastics in operations.

Strong and collaborative cross-jurisdictional networks have supported policy and Bill development, particularly acknowledging assistance from partners in South Australia and Queensland. Bill development has also been supported by a Plastic Reduction Taskforce (Taskforce) of key industry, business, environment and disability advocacy representatives.

The release of a public Exposure Draft of the Bill and Explanatory Statement in the Legislative Assembly on 13 August 2020 has provided an additional feedback opportunity for the ACT community, directorates, other Australian jurisdictions and the Taskforce prior to introduction. The Exposure Draft process resulted in minor amendments to the Bill and Explanatory Statement. It also reaffirmed that one of the most critical components to the Bill's success is support for businesses and the community to implement the phase out.

CONSISTENCY WITH HUMAN RIGHTS

Directorates are obliged under the *Human Rights Act 2004* (HR Act) to act and make decisions consistent with human rights.

This includes ensuring any amendments result in a law that is proportionate (as per section 28 of the HR Act) – that is, that it limits rights in the least restrictive way possible to achieve the legitimate purpose of the legislation. This includes considering if any amendment is going to have a disproportionate impact on low income earners or other vulnerable people, engaging the right to equality under section 8 of the HR Act.

Human rights have been considered throughout policy and Bill development, supported by engagement with the ACT Justice and Community Safety Directorate (JACS) Human Rights and Social Policy (HRSP) Unit, and the ACT Human Rights Commission via the:

- Human Rights Team; and
- Commissioner for Discrimination, Health Services, and Disability and Community Services.

Additionally, Government engaged with the Community Services Directorate, Office for Disability and disability advocates during policy and Bill development. This includes dedicated disability advocacy representation on the Taskforce. This has been to ensure that the Bill is inclusive as possible from the outset.

Importantly, while Government agreed to phase out single-use plastic straws, this phase out has been delayed to the second tranche of items. Second tranche items are currently expected to be phased out 12 months from the commencement of the first tranche of items.

This delay recognises the significant engagement with additional human rights posed by single-use plastic straws. These include the rights to equality before the law, life and privacy.

The phase out of single-use plastic straws will occur via regulation. Government will continue to engage with affected stakeholders to ensure that the design of this regulation means that single-use plastic straws remain accessible for those who need them.

Item 17 of Agreed Legislative Reform in the 2020 [Parliamentary and Governing Agreement](#) includes consideration of introducing a 'right to a healthy environment' under the HR Act, and looking at the rights of nature. It is expected that the Bill and its objects (see Objects below), including the object "to reduce the impact of plastic on the environment including the impact of production and post-consumption persistence of plastic", would engage and promote any future right to a healthy environment.

Rights engaged

The Bill engages with the following:

- right to life;
- right to privacy;
- right not to have reputation unlawfully attacked;
- right to be presumed innocent until proven guilty; and
- rights in criminal proceedings.

Rights Promoted

The right to life is promoted by ensuring exemptions (Part 5) are available for those who need to retain access to prohibited plastic items. These exemptions will be particularly relevant when straws are phased out *except for those who need them* in future tranches.

The right not to have reputation unlawfully attacked is promoted through the power to obtain information (s27). This power ensures that individuals are afforded an opportunity to provide evidence that an item is not a prohibited plastic product, supported by the abrogation of privilege against self-incrimination and that a warning must be given (s28 and s29). The power to obtain information in writing (e.g. by email) may limit the need to undertake an investigation in the public domain (e.g. preventing the need for authorised officer to visit a premises to investigate a reasonable belief of non-compliance).

Rights Limited

The Bill limits the following rights:

- right to be presumed innocent until proven guilty;
- right to privacy; and
- rights in criminal proceedings.

- ***Nature of the right and the limitation (s28(a) and (c))***

The right to be presumed innocent until proven guilty is limited via strict liability offences which engage the presumption of innocence under s22(1) of the HR Act by removing the fault elements from an offence. This means an accused will be automatically presumed guilty unless they successfully raise the defence of reasonable and honest mistake.

The right to privacy is limited by s31 and s32 as a person may be compelled to disclose their name and address.

- ***Legitimate purpose (s28(b))***

The Bill is being introduced to reduce the use of plastic in the ACT, and to reduce the impact of plastic on the environment and waste management and resource recovery systems (see [Background](#)).

The Bill's introduction responds to clear outcomes of consultation (see [Consultation on the Proposed Approach](#)) that showed phase out of the items targeted by the Bill was supported by over 90% of Canberrans. Further, this consultation established an expectation that Government regulate to reduce the use of plastic in the ACT, and do more to support plastic-free events.

Introducing the Bill provides broad coverage across the economy and supply chain, and provides a high level of certainty and competitive neutrality regarding the expected phase out of the use of plastic in the ACT.

- ***Rational connection between the limitation and the purpose (s28(d))***

Right to be presumed innocent until proven guilty

Strict liability offences arise in a regulatory context where reasons such as public standards, environmental protection, safety, community wellbeing and the public interest in ensuring that regulatory schemes are observed require the sanction of criminal penalties. In particular, where a defendant can reasonably be expected to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

The rationale for inclusion of strict liability offences is to ensure that a sufficiently robust and consistent enforcement regime can operate efficiently as part of an escalating enforcement framework, without requiring prosecution in all cases, to meet the purpose of ensuring community wellbeing, environmental and safety standards. The issuing of infringement notices is guided by internal policy, where education and awareness is the primary mechanism used for compliance with the law.

The offences that are strict liability and are intended to have infringement notices, designed to enable a quick and effective response where parties have failed to meet obligations, and are intended to act to prevent a harm, being either a community wellbeing, environmental or public safety harm.

The framework is designed to encourage compliance, not disproportionately penalise those who fail to comply, and will work together with a comprehensive education and awareness package.

Right to privacy

Compelling a person to disclose their name and address under s31 and s32 is only to be used in circumstances where an authorised person believes on reasonable grounds that a person has, or is about to, commit an offence against this Act; and/or may be able to assist in the investigation of an offence against this Act. When compelling a person, an authorised officer must request the name and address of a person in a language or way of communicating that the authorised person believes reasonable.

Being able to identify and locate people who may have committed an offence under the Bill, or who may render assistance in providing evidence for the commission of the offence is crucial for the effective investigations undertaken under the Bill. Without those provisions, an authorised person will have to spend a significant amount of resources to enforce the offences, which are all designed to discourage the use of single-use plastic products.

Rights in criminal proceedings

In compelling a person to answer questions or produce documents or things under s27, the Bill engages rights in criminal proceedings in section 22 of the HR Act. The purpose of s27 to s29 is to assist authorised officers in their function as truth-seekers and their ability to undertake full and proper investigations.

The limitation on the right against self-incrimination (s28) is proportionate. Any self-incriminating material directly or indirectly obtained as a result of a person being compelled to provide information cannot be used as evidence against that person in later court proceedings, other than an offence in relation to the falsity or the misleading nature of the answer, document or information or an offence against the Criminal Code, chapter 7 (Administration of justice offences).

These provisions support authorised officers to be able to fully consider all available information when exercising their functions, while protecting the people providing the information by conferring 'use immunity'.

Use immunity is a well-established practice in relation to investigative agencies in the ACT, including the Human Rights Commission, Integrity Commission and Inspector of Correctional Services. The limitation is further circumscribed by way of the Bill providing that an authorised officer must satisfy the reasonable belief test in exercising powers under s27, and that a person must be warned (under s29) that failure to comply is an offence.

Proportionality (s28 (e))

Limiting the right to be presumed innocent until proven guilty via strict liability offences in these circumstances is considered to be reasonable and proportionate to the objective of the offence and its importance as a matter of public policy to achieve the intended objectives.

Limiting the right to privacy via a name and address direction is considered to be reasonable and proportionate, as this right is only to be limited in circumstances where there are reasonable grounds that a person has or is about to commit an offence, or where there are reasonable grounds that a person may be able to assist with an investigation of an offence. Further, names and addresses are information that may be obtained relatively easily via other channels, hence the resulting interference with privacy is kept to a minimum.

Limiting the right not to self-incriminate is reasonable and proportionate to support authorised officers to be able to fully consider all available information when exercising their functions, while protecting the people providing the information by conferring 'use immunity'.

An assessment has been made as to whether there is any less restrictive means available to achieve the purposes of the Act, such as: voluntary phase outs, staged phase outs and mandatory materials standards. A regulatory phase out, with appropriate exemptions, is considered the least restrictive means whilst ensuring high community standards, environmental protection and community safety. It also supports:

- a high level of certainty and competitive neutrality;
- success of the existing ACT plastic bag ban to reduce the use of plastic in the ACT; and
- outcomes of consultation that established that Canberrans expect Government to take action to phase out single-use plastic, and a high degree of support for a regulatory approach to the same.

The enforcement mechanisms found in the Bill are considered to be the most effective and least intrusive way of making sure the statutory requirements are complied with. In the absence of strict liability offences, compelled disclosure of identity and potentially incriminating information, compliance enforcements would likely be severely hindered which would in turn frustrate the objects of the Bill.

Human Rights Act 2004 – Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **PLASTICREDUCTION BILL 2020**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

OUTLINE OF PROVISIONS OF THE BILL

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause sets out the name of the Act as the *Plastic Reduction Act 2020*.

Clause 2 Commencement

This clause sets out that all provisions in the Act commence on 1 July 2021.

Clause 3 Dictionary

This clause states that the dictionary at the end of this Act defines certain terms used in this Act and includes references (signpost definitions) to other terms defined elsewhere in this Act.

Clause 4 Notes

This clause states that a note included in this Act is explanatory and is not part of this Act.

Clause 5 Offences against Act – application of Criminal Code etc

This clause states that other legislation applies in relation to offences against this Act:

- Chapter 2 of the *Criminal Code* (general principles of criminal responsibility and terms used for offences to which the Code applies); and
- *Legislation Act* (s133, penalty units).

Clause 6 Objects of Act

This clause states the objects of this Act are to reduce:

- the use of plastic in the ACT; and
- the impact of plastic on the environment including the impact of the production and post-consumption persistence of plastic; and
- the impact of plastic on waste management and resource recovery systems.

Reduce the use of plastic in the ACT

The Bill has been titled the *Plastic Reduction Bill 2020* to provide a robust future framework for longevity, supporting Government's efforts to regulate to reduce the use of plastic in the ACT. This acknowledges that, as global, national and local policy progresses, this Bill may need to go beyond the currently identified single-use plastic items to a broader plastic-related regulatory framework.

The Bill is also focused on plastic and therefore is silent on non-plastic items such as those made from paper, cardboard, wood or bamboo.

The Bill's predominant focus is educative, and Government will support the community and business to reduce their use of plastic through behaviour change programs. However, enforcement may be necessary from time to time to ensure that policy objectives are met, and that there is a level playing field for businesses who are doing the right thing.

The Bill will support Canberrans to rethink whether they need single-use items. The best way to reduce the environmental, social and economic impact of single-use plastic is to reduce consumption from the outset, rather than just replace it with the next available substitute. This has been verified by an independent consultancy to quantify the triple-bottom-line impacts of phasing out the items included in the first tranche. The ACT was the first Australian jurisdiction to attempt to quantify these impacts and continues to collaborate with other Australian governments to harmonise quantification methodologies wherever possible.

Ninety percent of consultation respondents believed that single-use plastic is a problem at events. The ACT will provide additional leadership by being the first jurisdiction to legislate the ability to phase out other single-use plastic items at public events, both government and non-government. Examples of plastic-free events could include Floriade and the National Multicultural Festival, or major sporting fixtures and festivals. Importantly, an event must be declared to be single-use plastic free, with appropriate restrictions around how this can be done. This is particularly important in continued navigation the impacts of COVID-19, including on events in the future.

Where possible, the Bill harmonises with equivalent legislation passed or under development in other Australian jurisdictions such as South Australia and Queensland. Where differences exist, these are for genuine policy reasons to ensure the Bill best suits the ACT context.

The impact of plastic on the environment including the impact of the production and post-consumption persistence of plastic

The Bill enhances the ACT Government's reputation as an environmentally and socially progressive jurisdiction. It is crucial to ensure the impact of plastic on the ACT environment is reduced.

By reducing plastic consumption from the outset, production impacts are reduced. These include impacts such as non-renewable resource extraction (such as oil) to make plastic, and emissions associated with these activities such as transport and manufacturing across global supply chains. This peripherally supports the ACT's pursuit of net zero emissions by 2045.

The Bill also reduces plastic's post-consumption persistence in the environment in ACT landfills and as litter. At the national level, this supports the National Waste Policy Action Plan's target of 10 percent reduction in waste generation per capita by 2030. It also supports the Action Plan's target to phase out all problematic and unnecessary plastic by 2025, and the National Packaging Target of 100% of Australian packaging being reusable, recyclable or compostable by 2025.

In the ACT, the Bill supports outcomes sought by the Waste Management Strategy, including a clean environment. Litter is an important issue to Canberrans, with an increasing number of people making contact with Access Canberra about the amenity and cleanliness of suburbs and other issues.

In 2017-18, the ACT Government spent almost \$2 million removing and disposing of litter and illegally dumped items. Recognising the gravity of this issue, in 2019 the ACT Government amended litter legislation to improve enforcement and compliance against litterbugs and illegal dumpers to protect the health, safety and wellbeing of Canberrans.

Keep Australia Beautiful's National Litter Index shows that Canberrans are reducing their litter – but an increasing proportion of this litter is now plastic, polluting waterways and landscapes. Avoiding single-use plastic where possible will have a positive impact on litter reduction. Plastic alternatives, should they unfortunately end up as litter, generally have better environmental outcomes in terms of emissions, water, energy and the time they take to break down.

Reducing the impact of plastic on waste management and resource recovery systems

Single-use plastic items often end up in landfills because they are difficult or unable to be recycled or reused. Across the world, only nine per cent of all the plastic waste ever produced has been recycled and only about 12 per cent has been recovered through incineration.

In March 2020, the Council of Australian Governments agreed on a timetable to ban the export of waste plastic, as well as waste paper, glass, and tyres. The Waste Export Ban is the first step to take responsibility for Australia's waste and use this resource to create jobs, spark innovation and deliver strong environment outcomes.

In addition to targets related to phasing out problematic and unnecessary plastics and reducing per capita waste generation, the National Waste Policy Action Plan also seeks to halve the amount of organic waste and reach 80 percent resource recovery from waste streams following the waste hierarchy by 2030.

The Bill supports these targets by reducing consumption of single-use items, encouraging avoidance over substitution. Where substitution cannot be avoided, these alternatives will be made from materials that can be recycled through organics processing. This will increase resource recovery for alternatives, supported by the ACT's commitment to a household collection service for food and garden organics and requiring businesses to have separate organics collections by 2023.

The ACT Waste Management Strategy's first outcome is to generate less waste. The Bill will also complement the objects of existing waste management and resource recovery legislation by:

- minimising the generation of waste by reducing plastic consumption in the first instance;
- maximising the recovery and reuse of resources by encouraging reusable items where it is safe to do so;
- minimising the amount of waste that goes to landfill by reducing consumption of single-use items and diverting alternatives from landfill;
- supporting innovation and investment by encouraging rapid upscaling of sustainable alternatives;
- promoting responsibility for waste reduction by reducing plastic and other single-use consumption; and
- promoting best-practice waste management in line with the waste hierarchy – avoidance, followed by reuse, and then recovery.

PART 2 IMPORTANT CONCEPTS

Clause 7 Meaning of *prohibited plastic product*

This clause states that a prohibited plastic product means any of the following:

- a single-use expanded polystyrene container for serving food or a beverage;
- a single-use plastic beverage stirrer;
- single-use plastic cutlery;
- a single-use plastic shopping bag;
- any other single-use plastic product prescribed by regulation;
- a non-compostable degradable plastic product prescribed by regulation.

This clause clarifies that a single-use item mentioned above that an integrated packaging item (definitions below) is not a prohibited plastic item.

To remove any doubt, single-use plastic cutlery *does not* include a single-use plastic straw.

This clause defines the following:

- **barrier bag** means a bag used to carry unpackaged perishable food including fruit, vegetables, meat and fish.
- **compostable**, in relation to a plastic bag, means a plastic bag that is designated—
 - compostable in accordance with Australian Standard AS 4736-2006 (Biodegradable plastics suitable for composting and other microbial treatment) as in force from time to time; or
 - home compostable in accordance with Australian Standard AS 5810-2010 (Biodegradable plastics—Biodegradable plastics suitable for home composting) as in force from time to time.
- **integrated packaging item** means an item that is an integral part of the packaging in which goods, including pre-packaged portions of food or a beverage, are sealed before the goods are supplied.
- **single-use plastic shopping bag** means:
 - a bag that is made (in whole or in part) of polyethylene with a thickness of less than 35 microns; or
 - a bag prescribed by regulation to be a single-use plastic shopping bag.

For single-use plastic shopping bags, this definition does not include a barrier bag, a compostable single-use plastic shopping bag, or a bag prescribed by regulation not to be a single-use plastic shopping bag.

For integrated packaging items, this definition provides examples of what an integrated packaging item may be, and the ability to exclude an item prescribed by regulation as not being an integrated packaging item.

This clause also notes that AS 4736-2006 and AS 5810-2010 may be purchased at www.standards.org.au. The copyright in Australian Standards is owned by a non-government organisation, Standards Australia. While it may be prohibitive for stakeholders to purchase these Standards, undue expense is minimised as the only parties that are materially affected are compostable plastic bag manufacturers. Ensuring that their products meet the relevant standards is core business for those manufacturers and they will certainly already have copies. The public can access copies of many standards at the National Library of Australia.

Clause 8 Meaning of *single-use*

This clause states that a single-use plastic product is a plastic product that is designed or intended to be used once only.

The following provides an example of an item intended for reuse:

- A café sells coffee to a customer in a plastic take-away cup under a cup-return scheme. Under the scheme, a customer buys their coffee in a plastic take-away cup and returns the empty cup to the café or any other participating café to be washed and re-used by other customers of the café. The use and return of the plastic take-away cups is tracked using a mobile phone app. The plastic take-away cups are *not* intended to be used once only.

For this Act, the meaning of single-use also applies even if the single-use plastic product may be subsequently re-used. For example:

- A restaurant selling take-away food places the prepared food in plastic take-away food containers and then in a single-use plastic shopping bag along with plastic cutlery for a customer to take away and eat. The customer washes the empty plastic take-away containers and re-uses them to take their lunch to work. The customer also re-uses the single-use plastic shopping bag as a bin liner and the plastic cutlery as planting labels for seedlings. The subsequent re-use of these items is unrelated to the restaurant's original intended use.

The subsequent re-use of the intended single-use plastic items in the above scenario is here deemed unrelated to its original intended use.

This clause also covers single-use plastic products that may have multiple purposes within the one use. For example:

- Fresh herbs are placed in a plastic sleeve by the grower. The plastic sleeve:
 - (a) portions the herbs for sale;
 - (b) protects the herbs during transport to the supermarket;
 - (c) extends the shelf-life of the herbs at the supermarket;
 - (d) protects the herbs during purchase and transport to the home of the ultimate consumer.

Here the plastic sleeve has multiple purposes, but the sleeve is designed and intended for the customer to use it once. This is an example of an item that has multiple purposes but is still covered under the meaning of a single-use plastic product as defined in this Act.

Clause 9 **Meaning of *supply***

This clause sets out the meaning of supplying a plastic product for this Act.

Supply, a plastic product:

- means provide, by way of sale or otherwise, a plastic product; and
- includes providing a plastic product to a person as a container or packaging for another product that is provided to the person; or
- for use with, or in relation to, another product that is provided to the person.

The following examples are provided to illustrate how this clause applies:

- giving a customer in a restaurant a plastic take-away container to put uneaten restaurant food into
- making plastic beverage stirrers available on the counter at a coffee shop.

This clause also sets out the meaning of providing a plastic product.

Provide, a plastic product, includes:

- offer to provide the product to someone else; or
- receive or possess the product for the purpose of providing it to someone else; or
- display the product for the purpose of providing it to someone else; or
- cause or permit the product to be provided to someone else.

This definition of supply for this Act is consistent with the definition of supply with respect to the Container Deposit Scheme under the [Waste Management and Resource Recovery Act 2016](#), s64B Definitions – pt 10A.

This definition is deliberately broad to capture all instances of supply except those related to domestic settings, such as a parent giving a child a single-use plastic fork to eat their home-packed lunch, or taking single-use plastic cutlery to a picnic.

This recognises that supply does not always happen in business or commercial settings where a product is ‘sold’ and can include settings where items are provided for free at significant volume such as hospitals or corrective services facilities.

It would be inconsistent with the objects of the Act for such settings not to be included in the Bill unless otherwise exempted by the Minister under Part 5 Exemptions.

This broadness of this definition is acknowledged in that it has the potential to capture, for example, the giving of a plastic fork from one family member to the next at a picnic and the application of a strict liability offence (under s10 below) for the same. This is **not** the intention of the Bill.

PART 3 SUPPLYING PROHIBITED PLASTIC PRODUCTS

Clause 10 Supply of prohibited plastic products

This clause relates to the supply of a prohibited plastic product defined under section 7. Supply, in relation to a plastic product, means to sell, give or offer a plastic product as a container or packaging for another product that is sold; or for use with, or in relation to, another product that is sold.

A person that commits an offence under this clause has a maximum penalty of 50 units, and it is deemed a strict liability offence. An exemption for a person or plastic product may be made by the Minister under Part 5 of this Act.

Clause 11 False representation about prohibited plastic products

This clause relates to the supply and/or false representation of a product as a non-prohibited plastic product.

This clause applies if a person, intentionally or recklessly, falsely represents a plastic product as a non-prohibited plastic product. For example:

- A restaurant selling take-away food places the prepared food in plastic take-away food containers and then in a single-use plastic shopping bag along with plastic cutlery for a customer to take away and eat. When questioned by an authorised officer, the restaurant owner declares that the items are *not* prohibited plastic products. After investigation, authorised officers find the containers, bag and cutlery to be prohibited plastic products.

In the above scenario, the person, whether recklessly or intentionally, has falsely represented the prohibited plastic product. The person in this scenario could be found to be in breach of this clause.

This clause supports stakeholder concerns of greenwashing by holding persons accountable, through strict liability offences, and disallowing defences such as mistake of fact.

This clause works alongside clauses related to misrepresentation under the Australian Consumer Law. It provides compliance officers with additional Territory laws to ensure the objects of this Bill can be met.

Clause 12 Notice to dispose of prohibited plastic products

This clause relates to the authority of an authorised person to provide written notice to a person believed to have contravened section 10 (supply of prohibited products), to dispose of the prohibited plastic product.

The authorised person is required to provide written notice to the person in breach of section 10, with direction on when and where the prohibited product is to be disposed. Way of disposal must not unreasonably financially disadvantage a person and be consistent with the objects of the Act.

The written notice must detail what will happen should the plastic product not be disposed of in accordance with the notice. It should explain that should the item not be disposed of as requested, the authorised person may authorise a stated person

to remove and dispose of the item. The cost of the removal and disposal of the item incurred would then be passed onto the person who the notice was originally issued to. This cost would be debt due to the Territory.

The clause provides an example of a direction to take the prohibited plastic product to waste management and resource recovery centre for appropriate disposal.

Clause 13 Authorised person may remove and dispose of prohibited plastic products if notice not complied with

This clause relates to the failure of a person to comply with a notice under section 12; and the timelines in which an authorised person, or stated person, can remove and dispose of the prohibited plastic product the subject of the notice.

That is, an authorised person must not remove or dispose of the prohibited plastic product:

- until the end of the period (or any extended period) within which an application may be made to the ACT Civil and Administrative Tribunal (ACAT) for review of the decision of which the notice relates; or
- if an application is made to the ACAT for a review of the decision – unless the decision is upheld or the application is withdrawn.

Clause 14 Liability for cost of disposal of prohibited plastic products

This clause relates to the financial obligation of a person who fails to comply with section 12 to pay the Territory for any removal and/or disposal under section 13.

This ensures that financial burden is not placed on the Territory and provides a disincentive for legislative compliance.

Part 4 SUPPLYING OTHER SINGLE-USE PLASTIC PRODUCTS – DECLARED PUBLIC EVENTS

Clause 15 Declaration of public events

This clause relates to the prohibition of additional declared single-use plastic products at declared government and non-government public events. This provision supports consultation outcomes that showed 90% of community survey respondents were concerned about single-use plastic at events.

This clause will only apply to *declared* public events and *declared* additional single-use plastic products. That is, this will not be a blanket requirement for all events and all single-use plastic products at those events.

A **government event** means Events that may constitute a declared public government event include, for example, Floriade, Nightfest, the Enlighten Festival, the National Multicultural Festival and events held in conjunction with New Year's Eve, Australia Day and Canberra Day.

Examples of public non-government events that may constitute a declared event may include large-scale events, such as festivals and sporting fixtures.

Examples of products that may be declared additional single-use plastic products may include additional foodware such as single-use plastic plates, cups, bowls, coffee cups and lids and takeaway containers.

The Minister may only declare a public event, that is not a government event, if:

- the declaration is made not less than 3 months before the day the event starts; and
- there is an alternative product to the declared single-use plastic product reasonably available to the organisers of the declared event; and
- the declaration will not have an unreasonable impact on the event.

This clause provides an example of the things the Minister may consider when determining whether a declaration will have an unreasonable impact on an event.

Public events and additional single-use plastic items will be declared via disallowable instrument, ensuring oversight by the Legislative Assembly.

Appropriate advance engagement will occur with public event organisers prior to declaring a public event or additional single-use plastic products.

Clause 16 Supply of declared single-use plastic products at declared public event prohibited

This clause relates to the obligations at declared events. A person commits an offence under this clause if the person supplies a declared single-use plastic product; and the supply is to a person at a declared event.

An offence under this clause is a strict liability offence.

PART 5

EXEMPTIONS

Clause 17 Minister may exempt person or plastic product

This clause specifies the Minister's ability, on application or on the Minister's own initiative, to provide an exemption to a person or a plastic product. An application under this clause must include information prescribed by regulation.

The Minister may make an exemption under this clause only if satisfied that:

- it is not practical or in the public interest for the person to comply with the provision; or
- it is not consistent with the person's human rights for the person to comply with the provision; and
- non-compliance will not have any significant adverse effect on public health, property or the environment.

An example of where it may not be in the public interest for a person to comply with the provision may include providing single-use plastic items in settings such as shelters or soup kitchens. Here, the cost of a social support organisation complying with the Bill may be disproportionate to the environmental benefit of their compliance if it means that they have less money to provide food to people who need it if alternatives are more expensive. In this case, it would not be in the public interest for a person to comply with the Bill.

In deciding whether it is not consistent with a person's human rights for the person to comply with the provision, the Minister must comply with section 40B of the *Human Rights Act 2004*. Section 40B provides that a public authority (including a Minister) must act consistently with human rights, and must give proper consideration to a relevant human right in making a decision, including a decision of whether or not to exempt a person under this section of the Bill. A decision is still consistent with human rights if the decision limits human rights but the limitations are reasonably justified under section 28 of the *Human Rights Act 2004*.

For example, those who may be discriminated against because of an identified attribute or vulnerability, such as those with a disability or other medical need, by the application of the Bill would be positively viewed in the application of the Minister's discretion.

This clause supports the delay in phasing out single-use plastic straws given the disproportionate impact this phase out will have on those with a disability or other medical need who will need to retain access to single-use plastic straws. As a result, an exemption may commence on a day earlier than its notification day.

Clause 18 Exemption conditions

This clause relates to the responsibility of a person and plastic product deemed exempt and the condition/s on which this exemption was made by the Minister.

A person who has been exempt under s17 will be deemed to have committed an offence if the person supplies a prohibited plastic product in contravention of a condition of the exemption. An offence against this section is a strict liability offence.

PART 6 ENFORCEMENT

The focus of this Bill is predominantly educative and will be supported by complementary non-regulatory measures such as behaviour change programs to support the community and business to reduce their use of plastic.

However, to meet the policy objective of reducing plastic use in the ACT there may be circumstances from time to time that mean that enforcement is necessary to achieve this.

There is currently no overarching Act that provides template enforcement provisions for all authorised officers in the ACT, therefore each clause under this part has been included to ensure total clarity surrounding the enforcement provisions that apply to this Bill.

Strong enforcement provisions have received significant support from the Plastic Reduction Taskforce to ensure a high level of competitive neutrality and prevent 'free-riders'. Free-riders are those that benefit from the triple-bottom-line impacts of the Bill without complying with it.

Access Canberra and Health Protection Service compliance models focus on a risk-based compliance approach. This approach preferences engagement and education prior to enforcement. Enforcement is then proportional to the harm or potential harm caused by non-compliance.

Division 6.1 General

Clause 19 Definitions – pt 6

This clause sets out definitions for this part.

Clause 20 Appointment of authorised people

This clause relates to the ability of the directors-general to appoint a public servant as an authorised person for the purposes of Act enforcement.

Such appointments (including acting appointments), are supported by Legislation Act, pt 19.3, and can be made by naming a person or nominating the occupant of a position. However, as per s21, an authorised person must be provided an identity card to that effect.

For this Act, authorised persons include a person appointed under specified provisions:

- as an investigator under the *Fair Trading (Australian Consumer Law) Act 1992*; or
- a public health officer authorised under the *Public Health Act 1997* or under the *Food Act 2001*.

Clause 21 Identity cards

This clause details the identity card requirements for authorised persons, and offences relating to authorised persons. Appropriate identification of authorised

persons will support confidence in the operation of compliance and enforcement measures.

A person commits an offence against this section if the person stops being an authorised person and does not return the relevant identity card within seven days. An offence against this section is a strict liability offence. Fraudulent behaviour under this section will be treated under the criminal code.

Division 6.2 Powers of authorised people

Clause 22 Authorised person must show identity card on exercising power

This clause relates to the exercise of power of the authorised person.

If the authorised person exercises power under this Act, the authorised person's identity card must be shown to the individual, or an individual the authorised person believes on reasonable grounds is an employee, officer or agent of the person.

An example is provided that shows that a person other than an individual may be a corporation or partnership.

Clause 23 Entry to premises

This section details the circumstances in which authorised officers can enter a premise.

It outlines that an authorised officer may:

- at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
- at any time, enter with the occupier's consent; or
- at any time, enter if they believe on reasonable grounds that an offence against this Act is being, or is likely to be, committed at premises not on public land; or
- enter in accordance with a search warrant; or
- without the occupier's consent, enter the land around a premises to ask for consent to enter the premises.

This clause does not authorise entry into part of a premises being used for residential purposes unless it is also a place from which business is conducted.

An authorised person who enters under this clause may inspect the premises or anything on it.

To remove any doubt, an authorised person entering under this clause may do so without payment of an entry fee or other charge.

Clause 24 Production of identity card

This clause details the occupier's right to require an authorised person (other than a police officer) to produce an identification card.

An authorised person may not remain at the premises entered under this part if they do not produce an identity card when asked.

Clause 25 Consent to entry

This clause details the requirements of an authorised person before seeking consent to enter a premises, including what information must be supplied to the occupier.

If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgement, and a copy of this must be immediately provided to them.

This clause also provides the circumstances under which a court must find that an occupier did not give consent.

Clause 26 General powers on entry to premises

This clause details what an authorised person who enters a premises may do in relation to the premises or anything at the premises.

It also provides that a person must take all reasonable steps to comply with a requirement made of the person by an authorised officer, and in which circumstances this applies.

Clause 27 Power to obtain information

This clause relates to the ability of an authorised person to, in writing, require any of the following people to give the authorised person information, or produce documents or anything else, that the person has, or has access to, that are reasonably required by the authorised person for this Act:

- a person who supplies food or beverages in the ACT;
- a person who supplies or manufactures plastic products in the ACT.

It also provides that a person must take reasonable steps to comply with the request of an authorised person.

Clause 28 Abrogation of privilege against self-incrimination

This clause relates to self-incrimination. It states that a person is not excused from answering a question or producing any document, even if the answer or the production would tend to incriminate that person or expose them to penalty.

Any information that is gained through such a circumstance may not be used in evidence against the person in a civil or criminal proceeding. It may however be used in a proceeding for an offence arising out of the false or misleading nature of the answer, information or document.

Clause 29 Warning to be given

This clause relates to the requirements of the authorised person when requesting information. The authorised person must warn the person that failure to comply constitutes an offence, and the effect of section 28.

An individual may refuse to answer a question, or refuse to provide information or documentation requested by an authorised person, if the person was not first warned. In this case, refusal to comply would not be deemed an offence of the

person. However, if any evidence is given to an authorised person voluntarily by the person, there is nothing in this section that would prevent an authorised person from using this evidence.

Clause 30 Power to seize things

This clause establishes the power of authorised persons to seize anything at the premises where seizure of the thing is consistent with the purpose of entry told to the occupier when seeking the occupier's consent.

This applies to entry under a search warrant, including the seizure of a thing the authorised person is authorised to seize under the warrant.

Regardless of whether the authorised officer has entered the premises under a warrant or with occupiers consent, or otherwise, the authorised person may seize anything at the premises if they are satisfied on reasonable grounds that the thing is connected with an offence against this Act, and seizure of the item is necessary to prevent further breaches against this Act.

An authorised person may remove the thing from the place where it was seized or leave the thing at the place of seizure but restrict access to it.

A person will commit an offence if they interfere with the seizing of the item without the permission of the authorised person. This offence is a strict liability offence.

Clause 31 Direction to give name and address

This clause relates to an authorised person's ability to request the name and address of a person in a language or way of communicating that the authorised person believes reasonable, should the authorised person have reasonable grounds to believe that a person:

- has, or is about to, commit an offence against this Act; and/or
- may be able to assist in the investigation of an offence against this Act.

An authorised person may direct a person to provide the person's full name and home address, and request the person produce evidence of the correctness of detail should they have reasonable grounds to believe the person has provided false or misleading information.

Clause 32 Offence – fail to comply with direction to give name and address

This clause provides that failure to comply with a direction under s31 is an offence. This offence is a strict liability offence.

If, however, the person produces evidence of identification no more than three days after the day the direction was given, this section does not apply.

This section does not apply if an authorised person did not produce an authorised person's identity card for inspection by the person, or warn the person of the implications should they fail to comply with the request.

Clause 33 **Entry under relevant Act**

This clause provides that an authorised person may enter a premises under a relevant Act. A relevant Act includes the *Fair Trading (Australian Consumer Law) Act 1992* or the *Food Act 2001*.

When entering under a relevant Act, an authorised person may exercise a power under this part in relation to the premises.

If the authorised person has entered with consent under a relevant Act, the occupier is taken to have given consent to entry under the *Plastic Reduction Act*.

A relevant Act does not include the *Public Health Act 1997*, as persons authorised under that Act, for the purposes of the *Plastic Reduction Act*, will also be authorised under the *Food Act*.

Division 6.3 **Search warrants**

Clause 34 **Warrants generally**

An authorised person may apply to a magistrate for a search warrant to enter a premises. The application must be sworn and state the grounds on which the warrant is sought. The magistrate may refuse to consider an application until all relevant information has been provided by the authorised person.

The magistrate may only issue the warrant if satisfied that there are reasonable grounds for suspecting there is a particular thing or activity connected with an offence against this Act, and is being engaged in at the premises, or may be engaged in at the premises, within the next 14 days.

The search warrant must state that an authorised person may, with any necessary assistance and force, enter the premises and exercise powers under this part, the offence for which the warrant is issued, the things that may be seized under the warrant, the hours when the premises may be entered, and, the date, within 14 days after the day of the warrant's issue, when the warrant ends.

Clause 35 **Warrants-application other than in person**

This clause allows an authorised person to apply for a warrant by phone, radio, email, fax, letter or other form of communication because of urgent or other special circumstances.

It outlines what an authorised person must do before applying for a warrant, and what the magistrate and authorised person's obligations are for a warrant issued under this clause.

It also provides under what circumstances the court must find that a power exercised by an authorised person was not authorised by a warrant under this clause.

Clause 36 Search warrants-announcement before entry

This clause outlines what an authorised person must do before entering a premises under a search warrant.

The authorised person must announce that they are an authorised person authorised to enter the premises, give everyone at the premises the opportunity to allow entry to the premises and identify themselves to the occupier if they are present.

The authorised person is not required to comply with this if they believe on reasonable grounds that immediate entry is required to ensure the safety of anyone or to ensure the effective execution of the search warrant is not frustrated.

Clause 37 Details of search warrant to be given to occupier etc

This clause requires that an authorised person must make a copy of the warrant or a completed warrant form and a document setting out the rights and obligations of the person available to the occupier or someone who apparently represents the occupier and is present at the premises while the search warrant is being executed.

Clause 38 Occupier entitled to be present during search etc

This clause provides that the occupier of a premises, or other person who represents the occupier who is present at the premises while a search warrant is being executed, are entitled to observe the search being conducted.

The person is not entitled to observe the search if it would impede the search or if the person is under arrest and allowing them to observe would interfere with the objectives of the search.

This clause does not prevent two or more areas of the premises being searched at the same time.

PART 7 REVIEWABLE DECISIONS

Clause 39 *Definitions – pt 7*

This clause sets out definitions for this part.

- ***affected person*** means a person given a notice to dispose of a prohibited plastic product under s12 (2).
- ***reviewable decision*** means a decision under s12 (2) to give an affected person a notice requiring the affected person to dispose of a prohibited plastic product.

Clause 40 Reviewable decision notices

This clause sets out that if a person makes a reviewable decision, the person must give a reviewable decision notice to the affected person in relation to the decision.

Clause 41 Applications for review

This clause sets out that the affected person and/or any other person whose interests are affected by the decision may apply to the ACAT for review of the reviewable decision.

PART 8 MISCELLANEOUS

Clause 42 Regulation-making power

This clause sets out that the Executive may make regulations for this Act.

It provides that, before a regulation is made under the definition of a prohibited plastic product:

- the Minister must give public notice (and what the public notice must state or include) of the proposed regulation and invite public submissions about it; and
- the Executive must consider the following:
 - any written submissions received in accordance with the public notice; and
 - the availability and utility of alternative products to replace the prescribed plastic product.

The clause also provides that a regulation may apply, adopt or incorporate an instrument as in force from time to time. This power has been included so that the Act is robust and can deal appropriately with changes in technology as they occur without additional legislative change.

Additional prohibited plastic products prescribed by regulation will trigger requirements under s34 of the *Legislation Act 2001*. Section 34 provides that if the proposed law is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law must arrange for a Regulatory Impact Statement to be prepared for the proposed law.

That is, Regulatory Impact Statements will be prepared prior to any regulation being made to prohibit additional plastic products beyond those already specified in this clause.

PART 9 REPEALS

Clause 43 Legislation repealed

With the introduction of this Act the following legislation is repealed:

- *Magistrates Court (Plastic Shopping Bags Ban Infringement Notices) Regulation 2011* (SL2011-19)
- *Plastic Shopping Bags Ban Act 2010* (A2010-49)
- *Plastic Shopping Bags Ban Regulation 2011* (SL2011-18).

Dictionary

This clause sets out the definitions used within this Act.