

Plastic Reduction Regulation 2022

Regulatory Impact Statement

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Transport Canberra and City Services

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Executive summary

Since the 1950's there has been a rapid global rise in single-use plastic consumption, resulting in an increase in litter, waste to landfill and plastic pollution in the environment. In response, the ACT Government established the *Plastic Reduction Act 2021* (the Act). The Act provides for the prohibition of single-use plastic items as defined by the regulations. The first tranche of single-use plastic bans under the Act came into force in 2021 and ban the sale, supply or distribution of single-use plastic cutlery, plastic beverage stirrers and expanded polystyrene takeaway food and beverage containers.

The *Plastic Reduction Regulation 2022* (the Regulation) which is the subject of this Regulatory Impact Statement proposes to further extend the suite of banned items to include:

- plastic fruit and vegetable barrier bags;
- single-use plastic straws (with exemptions for those who need them);
- oxo-degradable plastic products; and,
- cotton buds with plastic sticks.

Expanded polystyrene gelato tubs, which were exempted for twelve months under the first tranche of products to provide additional time for businesses who rely on these items to transition to non-plastic alternatives, have also been examined in detail in this RIS.

The banning of additional items will further reduce single-use plastic consumption in the ACT, resulting in positive environmental outcomes.

Public consultation on the proposed Regulation indicated high levels of support and awareness for a ban on the listed items among individuals. It was noted that while businesses supported a ban on certain items, transitioning away from fruit and vegetable barrier bags represented a challenge for the majority of business respondents, and there was confusion surrounding the available alternatives for oxo-degradable plastic products. Further, there were conflicting opinions in the community on the most appropriate exemption model for single-use plastic straws for those with disability and medical needs for these items.

The viability and suitability of three different options for the progression of the Regulation have been considered:

1. do not introduce a Regulation,
2. progress the Regulation, and
3. make amendments to the proposed Regulation for example where a ban on a certain item is not practicable due to significant barriers or limited alternatives.

Cost-benefit analysis quantified the economic impacts of implementing the Regulation. While alternatives to certain single-use plastic items, such as oxo-degradable dog waste bags, represented a cost saving, alternatives to other items, such as barrier bags, are expected to cost more. There will also be an up-front administration cost for the ACT Government associated with implementing the Regulation and raising community awareness.

The recommended option is to progress the Regulation. However, it is noted that a reform with amendments may also be appropriate in certain circumstances to enable more flexible implementation of the proposed reform in response to ongoing stakeholder feedback.

Need for a regulatory impact statement

ACT Government policy requires that a regulatory impact statement (RIS) is prepared for any new, or amending legislation proposals, that may impact on a stakeholder group, for example, Government, a community group, the general public, industry or a business group.

Section 34 of the *Legislation Act 2001* provides that if the proposed law or disallowable instrument 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 RIS to be prepared for the proposed law or disallowable instrument.

This RIS examines the regulatory impacts of the proposed Plastic Reduction Regulation 2022 to be prepared under s42 of the *Plastic Reduction Act 2021*. It identifies where the proposed Plastic Reduction Regulation 2022 may impact on Government, industry, business, community organisations or the community, and provides a cost-benefit analysis for each option likely to impose a cost.

Introduction

Plastic has become ubiquitous in modern society due to its strength, adaptability, stability, light weight and low cost. However, the features that make plastic so successful also generate significant environmental and human health impacts.

Reducing the use of single-use plastics in the ACT forms a key component of the ACT Government's waste management agenda, which aims to divert up to 90% of waste from landfill by 2025. To deliver on this aim, the ACT Plastic Reduction Bill 2020 was passed in the ACT Legislative Assembly on 2 December 2020, establishing the *Plastic Reduction Act 2021* (the Act) which came into effect on 1 July 2021.

The Act aims to reduce the amount of plastic in the ACT, particularly single-use plastic, by prohibiting the supply of identified single-use plastics. Single-use plastic stirrers, plastic cutlery and expanded polystyrene takeaway food and beverage containers were included in the initial tranche of 'prohibited plastic products' subject to regulation under the Act.

The Act absorbed the existing shopping bag ban to streamline plastic-related regulation in the ACT and established a framework for adding other products in the future via Regulation. In addition to regulating key products, the Act also gave the Minister power to declare government and non-government public events (subsequently referred to as public events) to prohibit the supply of certain single-use plastic items not already banned under the Act.

The proposed reforms outlined in this RIS are an important step towards expanding on the ACT Government's commitment to tackling single-use plastic by regulating a second tranche of single-use plastic products. Regulating these additional products, which include fruit and vegetable barrier bags, single-use plastic straws (with exemptions for those who need them), oxo-degradable plastic products, cotton buds with plastic sticks, and expanded polystyrene gelato tubs, will further reduce the use of single-use plastics in the ACT and support a healthier, cleaner and vibrant city.

Impact of single-use plastic

Plastic plays an important role in everyday life. It is used in a wide range of applications as a low-cost manufacturing option. Its uses include protecting food, keeping medical equipment clean and free of germs, and making cars and planes lighter, which saves fuel and reduces greenhouse gas emissions. However, plastic has a number of downsides. It presents three key problems:

1. **Persistence in the environment** - commonly used plastics do not readily break down and can persist in the environment in some shape or form for hundreds or even thousands of years.ⁱ Plastic pollution is compromising the safety of food supplies, soils, waterways and wildlife.
2. **Rising global plastic consumption** - global consumption of plastic is increasing and compounding its negative effects. Since the 1950s, plastic production has grown faster than any other material. Plastic production is expected to double again in the next 20 years and almost quadruple by 2050 based on current trends. It is also estimated that by 2050 there will be more plastic (by weight) in the world's oceans than fish.ⁱⁱ
3. **True cost of plastic** - the downstream costs and perverse outcomes of the consumption of plastic to the economy, environment and society are not accounted for, and are borne by the

environment, waste management and health sectors. This means the consumption and disposal of single-use plastic products impacts the ACT's economy.

Much of the plastic consumed in the ACT is designed to be thrown away after a single use. Many of the single-use plastic products used are difficult to recycle, and as a result, these products end up in landfill, or are littered in the natural environment.ⁱⁱⁱ

For these reasons, the ACT Government considers it important to introduce policies and legislation that support the consumption of these products being avoided.

Identifying the problem

The global use of plastic has grown exponentially since it was commercialised in the 1950s. Plastic has become ubiquitous in modern society due to its key qualities of strength, adaptability, stability, light weight and low cost, which can be applied to a wide range of products and packaging.

The features that make plastic so successful also generate significant environmental and human health impacts. The low price of plastic masks the environmental and human health costs associated with production, distribution and disposal of plastic.

Its light weight allows plastic pollution to be widely distributed across the environment, its strength poses physical risks to wildlife and its stability means it is able to persist in the environment and as microplastics in the food chain.

In the ACT, the consumption and disposal of single-use plastic represents significant problems for the environment, in the form of litter, and for the ACT's waste management and resource recovery sector. Single-use plastics are also considered a particular expression of the convenience society, as they are highly consumed away from home and designed to be thrown away after a single use, in some cases after just a few seconds.

Single-use plastic products remain a significant challenge for pollution in ACT waterways, city parks and bush landscapes. A National Litter Index survey indicated that from 2012 to 2019, plastic items accounted for up to 25% of the ACT litter stream.^{iv} They also create significant problems when incorrectly sent to recycling, where they interfere with recycling equipment, contaminate clean recyclables and pose health and safety risks.

There are a number of alternatives to single-use plastic that are promoted as being more sustainable, particularly for the environment, when compared to commonly used plastic products. However, reducing the social, environmental and economic impact of single-use plastics is best achieved by reducing our consumption of single-use products in general. This requires a conscious effort to consider how single-use products can be avoided completely. This is important because, while some single-use alternatives may be more sustainable when compared to plastic products, there is still a significant environmental and economic cost associated with creating, collecting and recycling single-use products.

There is still uncertainty about the sustainability of single-use plastic alternatives. There may not be suitable alternatives for all problematic single-use plastic products at this point in time, and the complete lifecycle impacts of available products are not well understood. Understanding the lifecycle impacts of alternatives is important to inform decision making. This includes considering whether the ACT currently has the infrastructure and waste processing capacity to manage alternative products

without resulting in unintended impacts. These considerations are informed through the qualitative assessment included in this RIS.

Consultation statement

The ACT Government has undertaken extensive consultation with business and the community on the ban of single-use plastics under the Act to ensure meaningful engagement across industry, business and the community about problematic single-use plastic waste and pollution.

In November 2021, the ACT Government released the updated *2021 Phasing out single-use plastics Next Steps Policy*, which outlined how the ACT would implement the proposed phase out of a second tranche of single-use plastics as well as future considerations.

The Minister for Transport and City Services gave public notice of a proposed Regulation on 14 October 2021, and the ACT Government undertook a consultation period on the second tranche of single-use plastic items proposed to be banned until 12 January 2022. During the consultation period, the ACT Government invited comment on a proposed ban on the following single-use plastic products:

- single-use plastic fruit and vegetable barrier bags;
- single-use plastic straws (with exemptions for those who need them);
- oxo-degradable plastic products; and
- cotton buds with plastic sticks.

The public notice also advised that exemptions to the proposed banned items would be considered where necessary, including to allow plastic straws to be supplied to those who need them.

Industry and the community were invited to complete a survey through YourSay Conversations and/or to provide a written submission. Stakeholder discussions were also held through monthly ACT Plastic Reduction Taskforce meetings (with members from key national and local business, industry, environment and disability advocacy bodies), as well as one-to-one meetings with businesses, disability advocacy groups and industry peak bodies.

ACT NoWaste received 136 survey submissions through the YourSay consultation platform, 21 written submissions and a further 387 email submissions received through an online environmental campaign, with the majority of these being from ACT residents.

Key findings of 2021 consultation

The consultation demonstrated that 88% of survey respondents were aware of the ACT Government's ban on the first tranche of problematic single-use plastics that began in 2021. Respondents showed a strong level of support overall for the second tranche of the single-use plastics ban. The consultation results indicate that most respondents have already changed their behaviours to reduce their use of these single-use plastics items.

The majority of individual survey respondents indicated that there were no foreseeable issues for banning plastic fruit and vegetable barrier bags (66%), cotton buds with plastic sticks (87%), or oxo-degradable plastics (81%) (Figure 1).

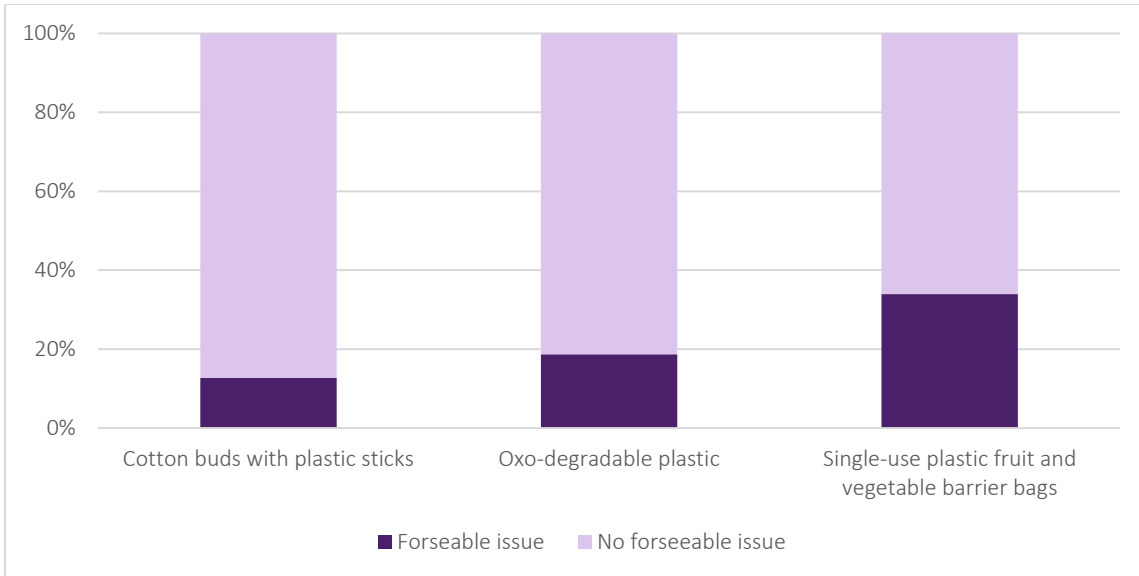


Figure 1: Indication from individuals on whether there are foreseeable issues with banning certain single-use plastic items

Similarly, the majority of responding businesses indicated that there were no foreseeable issues for banning cotton buds with plastic sticks (67%), or oxo-degradable plastics (60%) (Figure 2). However, the majority of businesses responded that they did foresee issues with banning plastic fruit and vegetable barrier bags (71%).

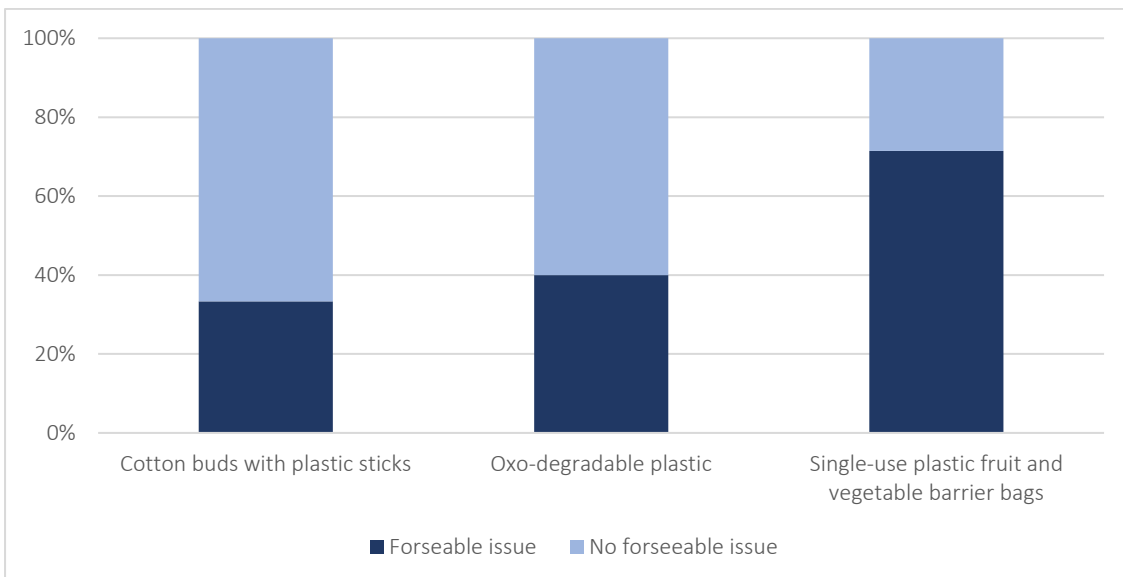


Figure 2: Indication from businesses on whether there are foreseeable issues with banning certain single-use plastic items

Cotton buds with plastic sticks

As illustrated in Figures 1 and 2, the majority of individuals (87.3%) and businesses (66.7%) did not foresee any issues with banning cotton buds with plastic sticks.

Most individuals indicated that they would switch from using cotton buds with plastic sticks, to alternatives with hard paper, bamboo or sugarcane sticks (91%). The majority of businesses were very confident they could transition to selling cotton buds made from hard paper, bamboo or sugarcane

sticks (83%), with the majority already aware of alternative products (83%) and would consider selling alternative products (66.7%).

A number of retailers indicated that they either no longer sell cotton buds with plastic sticks, or are currently in the process of phasing these products out.

Oxo-degradable products

The majority of individuals (81.3%) and businesses (60%) did not foresee an issue with banning oxo-degradable products. A number of written submissions demonstrated strong support for banning all oxo-degradable products, including a broadening of the scope of the ban to all degradable products.

The majority of businesses surveyed did not stock oxo-degradable products (80%). Of the businesses that did stock oxo-degradable products, 50% indicated that there was no compostable alternative to substitute the product with, while the other 50% did not know whether or not there was a compostable alternative available. Feedback suggests that businesses that do stock oxo-degradable plastic products would need support to find certified compostable alternatives.

Single-use plastic fruit and vegetable “barrier bags”

Based on submissions received during the consultation period, barrier bags represent a greater challenge for business to transition to alternatives. Most businesses or community organisations that sell fruits and vegetables indicated that they provided single-use plastic barrier bags for their customers (75%). Of those who indicated they do not (25%), paper bags were provided as an alternative (66.7%), while some respondents did not provide bags at all (33.3%).

A large majority of businesses foresee issues if single-use plastic barrier bags for fruits and vegetables were banned in the ACT (71.4%), and indicated that they were not confident in successfully transitioning their businesses away from single-use plastic barrier bags for fruits and vegetables (70%) (Figure 3).

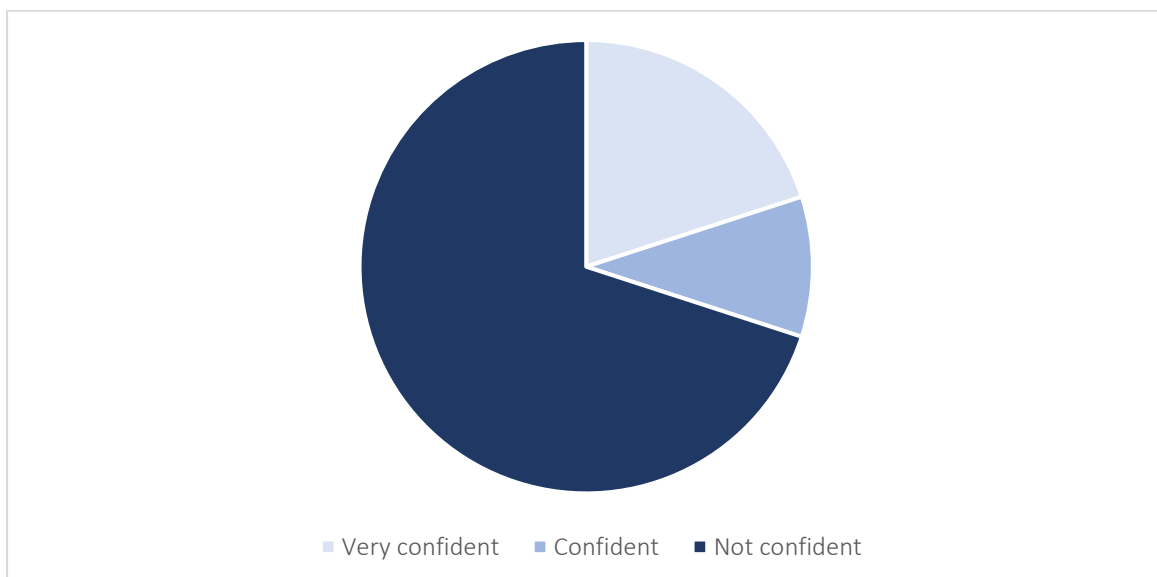


Figure 3: Business confidence in the transition away from single-use plastic fruit and vegetable barrier bags

Conversely, most individuals did not foresee an issue with banning single-use plastic fruit and vegetable barrier bags (66%), with 54% of individuals noting that they currently use single-use plastic barrier bags when shopping for fruits and vegetables.

Key concerns raised through written submissions with regard to a ban on single-use plastic fruit and vegetable barrier bags included:

- Changes required to infrastructure,
- Supply chain issues due to COVID-19,
- Food safety and potential to increase food waste, and,
- Viability of alternative products and the ability to recycle them.

Single-use plastic straws

The 2021 consultation built upon prior work to understand what types of exemptions for the supply of single-use plastic straws would be favoured in the ACT context. Both Queensland and South Australia have already banned single-use plastic straws and included exemptions allowing those with disability or medical needs to access them.

Of respondents, 58% of individuals and 70% of businesses preferred the Queensland model (where individuals are encouraged to bring their own straws if they require them to hospitality venues, market stalls and not-for-profit organisations, and are still able to buy them from exempt businesses such as medical clinics, pharmacies, etc.) over the South Australian model (where businesses such as cafés, hotels and restaurants may stock and provide a single-use plastic straw upon request) (Figure 4).



Figure 4: Preferred model for the phase out of single-use plastic straws

Hospitality and retail industry representatives who provided written submissions demonstrated support for the Queensland model as this may be simpler for businesses to comprehend and comply with, and may be simpler for regulators to monitor compliance. It was also noted that where businesses still use plastic straws, given their cost advantage, this may put others who have

transitioned away at a competitive disadvantage. Several written submissions indicated a preference for the South Australian model over the Queensland model.

While a preference was indicated by one of the responding disability advocacy organisations that single-use plastic straws not be banned, disability advocacy representatives recommended that if a model was to be adopted, the South Australian model should be adopted with further considerations including that plastic straws must be available upon request with no requirement that the customer provides evidence of their disability. The submission also recommended that legislative reforms should be accompanied by an educational campaign to remind businesses of their pre-existing duties not to discriminate against people with disabilities.

Key findings of 2019 consultation

A significant majority of community survey respondents said they would ‘definitely’ or ‘probably’ support a phase out of polystyrene containers (94%), straws and stirrers (93%), and light-weight fruit and vegetable barrier bags (87%) (Figure 5a). Support amongst business respondents was also high, with respondents ‘definitely’ or ‘probably’ supporting a phase out of polystyrene containers (90%), plastic straws and stirrers (88%) and light-weight plastic barrier bags (83%) (Figure 5b).

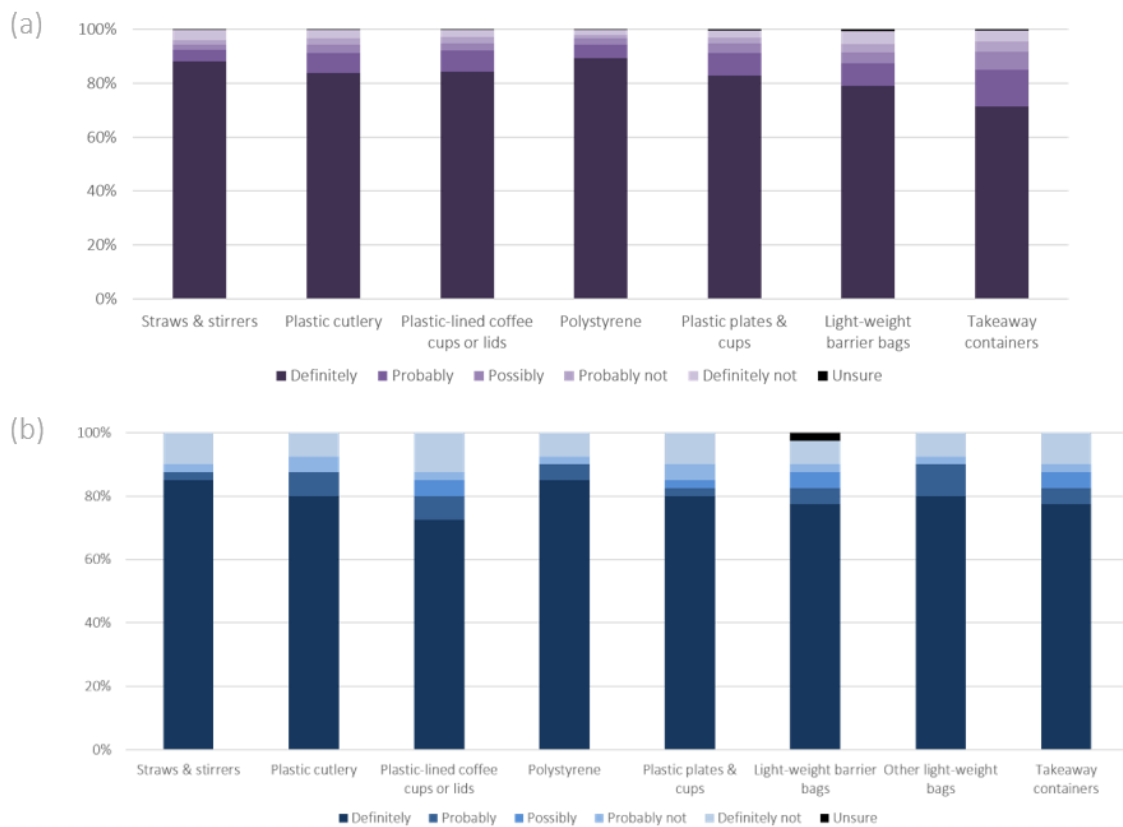


Figure 5: Community (a)^v and business (b)^{vi} respondents support for phasing out single-use plastic products

The 2019 consultation also identified the importance of single-use plastic straws remaining available for people living with disabilities, and for some other groups in the community (e.g., people with medical conditions and the elderly):

- 20% of community survey respondents, who are either ‘probably’ or ‘definitely’ not supportive of phasing out single-use plastic, cite impacts to people living with disabilities, and
- 30% of organisational submissions and 8% of community submissions recommend the ACT Government consider approaches to ensure people living with disabilities are not impacted.

A number of written submissions, including two organisational submissions from disability advocacy groups, highlighted that current alternatives to single-use plastic are considered to be unusable, high risk and dangerous for people living with disabilities, particularly those with high support needs.

There was concern amongst these groups that phasing out single-use plastic straws will require people with disabilities to carry their own straws. Advocates have indicated restricting access to plastic straws creates social equity issues, including:

- financial impacts that disproportionately and adversely affect people living with a disability, many of whom already experience financial hardship, and
- privacy and inclusion issues, where people with disabilities may need to prove a medical necessity to access single-use plastic straws.

As a result of these concerns, the ACT Government delayed the phase out of single-use plastics straws until this second tranche of products to be phased out via Regulation. This approach provided additional time for the ACT Government to work with key stakeholders to develop options to ensure single-use plastic straws remain available for those who need them.

Other items and considerations

Written submissions indicated support for the items listed for banning under future tranches, as well as providing ideas for additional items to be included.

Several written submissions highlight the importance of extensive community and business education required ahead of the second tranche ban, for businesses to source alternative products, arrange logistics, retrain staff and inform their customers.

Submissions also raised concerns around timeframes needed to source alternatives, as well as the unprecedented global shipping delays arising from the COVID-19 pandemic.

Why is Government action required?

Government action on single-use plastic products is needed due to a failure of the market to self-correct.

Open and unrestricted competition in markets is generally regarded as the most efficient mechanism for allocating resources; however, the nature of some goods and services prevents markets from attaining optimal economic and social outcomes for the community.^{vii} This market failure can occur in the presence of a number of factors; in the case of single-use plastics, market failure has arisen in the presence of negative externalities.

Externalities arise where an activity, service or good confers spill-over benefits or imposes spill-over costs on third parties. As the spill-over is not borne by the source of the issue, in this case the creation

of single-use plastic, there is little incentive to engage in the activity in the case of a positive externality or decrease the activity in the case of a negative externality.^{viii} The social costs of problematic single-use plastic are a type of environmental externality incorporating the negative impacts of waste plastic being generally present in the food chain, the environment and other impacts including air pollution, greenhouse gas emissions, and water pollutants through leachate.

In the case of single-use plastics, those responsible for creating single-use plastic items are not affected by the spill-over environmental and social costs, which are borne by third parties such as government (i.e., the waste management and health sectors), individuals and the community. As such, there is little incentive for the originators of single-use plastic items to decrease the negative externality; in this case, reduce the production and supply of single-use products and identify and produce environmentally friendly alternatives.

The ACT Government has considered a number of approaches to address this market failure and lessen the environmental and social costs of single-use plastics, including economic incentives and voluntary agreements.^{ix} However, these options are unlikely to be as effective as ACT Government regulatory reform. This is because economic incentives are likely to be prohibitively expensive, given the number and size of the different industries involved, while voluntary arrangements are unlikely to address the issues of littering and waste management of single-use plastic items.

In addition, quasi-regulation,^x such as prescribed material standards, is unlikely to be an effective method of reducing the costs of single-use plastics. There are no peak bodies that represent the numerous industries responsible for single-use plastics, and it would be challenging to enable the necessary coverage and enforcement of the different measures seeking to address the problem.

In comparison, government regulatory action provides certainty to industry and the community, while providing the most effective way to lessen the environmental and social costs of problematic single-use plastics. Government regulation^{xi} would have universal application across the multiple groups and industries that manufacture, supply and use problematic single-use plastic, thereby eliminating free-riders. As a result, the ACT Government has determined regulation is the most effective approach.

Explicit government regulation would involve costs to government, including costs related to compliance and enforcement under the Act. However, these costs are expected to be at least partially offset by reducing the pressure on waste management and resource recovery systems, reduced environmental impacts and reduced pressure on the health sector, as a result of reduced consumption and disposal of problematic single-use plastics.

Objectives of Government action

The proposed Regulation aims to support the objectives of the Act and reduce:

- the use of plastic in the ACT;
- 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.

Current policy and regulation

The Act is the primary legislation to regulate the supply of select single-use plastic items in the ACT. The Act established 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.^{xii}

Summary of proposed reform

Through extensive consultation undertaken between 2019 and 2021, industry, business and the community indicated they want, and expect, ACT Government action to address the issues associated with single-use plastic.

The proposed reform is an extension of the ACT Government's action on single-use plastic under the Act. The explanatory statement that accompanied the Plastic Reduction Bill 2020 acknowledged that, as global, national and local policy progresses, the Act may need to expand on currently identified single-use plastic items through the broader plastic-related regulatory framework.^{xiii}

This reform constitutes part of that expansion by introducing an immediate regulatory ban on the sale, supply and distribution of a second tranche of single-use plastic products via Regulation in accordance with s42 of the Act.

Products to be regulated under the proposed reform include:

- fruit and vegetable barrier bags,
- single-use plastic straws (with exemptions for those who need them),
- oxo-degradable plastic products,
- cotton buds with plastic sticks (with exemptions for medical, scientific and/or forensic purposes), and
- expanded polystyrene gelato tubs (these items were exempted for twelve months under the first tranche of products to provide additional time for businesses who rely on these items to transition to non-plastic alternatives).

Social cost benefit analysis

Given the limited alternative options for many of the single-use plastic items in question, it is expected that retailers will encounter increased initial costs associated with the prohibition that will be passed on to consumers.

Certain business types will carry the bulk of the responsibility for implementing the prohibition of these items, for example, hospitality venues and supermarkets.

Hospitality venues will encounter costs when stocking more expensive alternatives to plastic straws, while gelato vendors will experience a saving as alternatives to expanded polystyrene gelato tubs are cheaper (although less insulative).

Supermarkets will be required to source more expensive alternatives to barrier bags, but will also stock cheaper alternative products such as dog dropping bags (alternatives to oxo-degradable bags).

Dog owners will save on dog dropping bags, as these alternative products are also more affordable. The impacts of the single-use plastic regulation will therefore not be evenly distributed throughout the community, however exemptions will protect the users of single-use plastic products for medical and care purposes, as well as their suppliers. Expanded regulation of single-use plastic products will

further benefit the community by reducing the amount of plastic entering the environment, and improving visual amenity and overall environmental health.

Mutual recognition principles

The *Mutual Recognition Act 1992* (Cth) (MR Act) and the *Trans-Tasman Mutual Recognition Act 1997* (Cth) (TTMR Act) aim to remove regulatory barriers to the free flow of goods and labour between Australian states and territories. These Acts apply as laws of the ACT by virtue of the *Mutual Recognition (Australian Capital Territory) Act 1992* (ACT) and the *Trans-Tasman Mutual Recognition Act 1997* (ACT), respectively.

In relation to goods, the MR Act and TTMR Act apply the ‘mutual recognition principle’. The principle provides that goods produced or imported into one Australian jurisdiction can be distributed and sold freely throughout Australia.^{xiv} The Trans-Tasman mutual recognition principle provides that goods produced in or imported into New Zealand that may be lawfully sold in New Zealand may also be lawfully sold in an Australian jurisdiction.^{xv}

These Acts provide that sales of goods to which the principle applies do not require compliance with ‘further requirements’ of a type set out in the Acts that might otherwise be required under the laws of the importing jurisdiction. These include quality or performance standards, inspection requirements and labelling standards.

Impact of the Regulation on mutual recognition

The ACT Government has a self-appointed 12-month exemption period for mutual recognition, under both the MR Act and TTMR Act, valid until 30 June 2022.^{xvi, xvii}

The ACT Government is working closely with other Australian jurisdictions to progress a permanent exemption for items regulated under the Act. This involves undertaking a process to amend national legislation for mutual recognition; this is an established process for when states and territory actions place potential restrictions on cross-border trade. This process has been successfully completed for the ACT Container Deposit Scheme and plastic bag ban.

As other Australian jurisdictions also advance with phasing out single-use plastic items and cross-jurisdictional collaboration remains ongoing, the ACT Government is confident in its ability to progress the process for the required amendments.

Transitional arrangements

The proposed reform is an extended application of the existing Act through the establishment of a Regulation to regulate additional single-use plastic products. The proposed reform does not have retrospective effect and is proposed to be effective from 1 July 2022.

The regulated community, including industry and businesses, has been aware of the proposed single-use plastics reform since 2019. The products proposed to be regulated through the proposed Regulation were first outlined in the ACT Government’s *Phasing out single-use plastics updated next steps policy*, released in August 2020, as the next tranche of products to be banned.^{xviii} Cotton buds were then flagged as an additional inclusion in the *Phasing out single-use plastics Next Steps Policy*, released in November 2021.^{xix} This early advice from the ACT Government, supported by associated education campaigns, has provided a period of transition for industry and business to prepare for the changes proposed through this reform.

The ACT Government will undertake additional education campaigns in the lead up to these products being banned to further prepare the community prior to the expanded ban taking effect.

For these reasons no transitional arrangements are necessary.

Recommended option

Three options have been considered as part of this RIS:

- do not introduce a Regulation at this time (option 1),
- progress the Regulation (option 2), and
- make amendments to the proposed Regulation for example where a ban on a certain item is not practicable due to significant barriers or limited alternatives (option 3).

Based on the analysis outlined in this RIS, it is recommended that a Regulation to prohibit the sale, supply and distribution of single-use plastic fruit and vegetable barrier bags, single-use straws, cotton buds with plastic sticks, oxo-degradable plastic items and expanded polystyrene gelato tubs be introduced through the proposed Regulation (option 2).

The option of not introducing a Regulation at this time (option 1) is not recommended. This is due to the benefits and the extremely high community support for taking regulatory action to phase out single-use plastics. If the Regulation is not introduced, the status quo will likely be retained meaning consumption of these products will remain at current levels and these products will remain represented in the litter stream.

The option of making amendments to the proposed Regulation (option 3) is generally not recommended as the objective of the proposed reform is less likely to be achieved. However, amendments to the proposed reform may be appropriate where a ban on a certain item is not practicable due to significant barriers or there are limited alternatives available that meet the market need.

The ACT Government's *Phasing out single-use plastics updated next steps policy* (August 2020) and the *Phasing out single-use plastics Next Steps Policy* (November 2021), which identified the next tranche of products to be banned, has provided early advice and a period of transition for industry and business to prepare for the changes proposed through this reform.

Should amendments be required under option 3, the amendments could either increase, or reduce, the single-use plastic products considered as part of a regulatory ban. This may result in the final Regulation not giving full effect to the recommended changes to meet the objectives outlined in this RIS but would support the ACT Government to implement the Regulation in a more flexible manner.

The recommended approach, outlined in option 2, ensures the ACT has a best-practice, contemporary and effective regulatory system that supports a reduction in the consumption of problematic single-use plastics in the ACT.

The RIS has identified some community concerns in relation to the equitable access to some single-use plastics for vulnerable members of the community. The recommended option introduces safeguards to ensure potential impacts to vulnerable members of the community are adequately considered and appropriately managed. This approach is similar to interventions being adopted in other Australian jurisdictions and, as a result, responds to requests from peak bodies for a

harmonised and, where possible, consistent approach to phasing out single-use plastics across Australia.

In addition, the RIS has identified that cotton buds with plastic stems are required for essential medical, scientific and forensic processes and procedures as cotton buds with sticks made from alternatives have the risk of contaminating medical, scientific and/or forensic samples. This can result in unacceptable social, economic and human rights costs. The recommended option, which includes exemptions for medical, scientific and/or forensic purposes, reduces these costs associated with a complete regulatory ban on cotton buds with plastic sticks.

Setting the scene

What is single-use plastic?

The United Nations defines plastic as ‘a lightweight, hygienic and resistant material which can be moulded in a variety of ways and utilised in a wide range of applications’.^{xx}

Single-use plastic, often also referred to as disposable plastic, is commonly used for plastic packaging and includes items intended to be used only once before they are thrown away or recycled.^{xxi} By their nature, single-use plastic items are designed to be disposed of, often within minutes, following just one use. Their brief use, often combined with an inability to be recycled,^{xxii} makes these kinds of single-use plastic particularly costly and damaging to our environment.

Which single-use plastic products are being considered for this reform?

The proposed reform will regulate the sale and distribution of single-use plastic fruit and vegetable barrier bags, single-use plastic straws, cotton buds with plastic sticks, oxo-degradable plastic items and expanded polystyrene gelato tubs.



Figure 6: Fruit and vegetable barrier bags



Figure 7: Single-use plastic straws

Barrier bags

Barrier bags are thin plastic bags commonly used to transport fruit and vegetables, meat and deli items. Alternatives for meat and deli items are difficult to find and as a result, barrier bags included the second tranche of products to be regulated have been limited to fruit and vegetable barrier bags (Figure 6). These bags are used as a convenient way to keep items together. However, they are single-use items that result in plastic waste if they are not recycled through voluntary programs such as the RedCycle soft plastics collection, available at major supermarkets.

Domestic and international regulation of barrier bags

There has been less regulation of fruit and vegetable barrier bags in other jurisdictions (both internationally and domestically) compared with other single-use plastic items included in this second

tranche of reform. France^{xxiii} and Italy^{xxiv} are two international jurisdictions that have introduced prohibitions on the sale and supply of fruit and vegetable barrier bags in 2017 and 2018 respectively, while New Zealand has proposed introducing regulation to phase-out produce barrier bags by mid-2023.^{xxv} In Italy, there has been reported negative public response to the ban, which has mainly focused on the cost imposed by authorities on the alternative products offered, such as degradable and compostable alternatives.^{xxvi}

Domestically, a number of states and territories have taken action to prohibit the supply of single-use plastic bags; however, in all cases to date there have been exemptions provided for produce barrier bags.^{xxvii, xxviii} Western Australia has announced a proposed phase out of produce barrier bags, which is due to take effect by late 2022,^{xxix} South Australia has released a discussion paper proposing their ban no later than 1 March 2023, while the New South Wales Plastic Action Plan has committed to reviewing produce barrier bags in 2024 to determine if a phase out is appropriate.^{xxx}

In Australia, compostable barrier bags are able to be certified under the existing Australian Standards for commercial composting (AS4736)^{xxxi} and for home composting (AS5810).^{xxxii} These standards certify that the products are suitable for composting in conditions typically found in commercial facilities and home composting bins respectively. While Australian Standards are voluntary, compostable (in reference to barrier bags) is defined in s7(2) of the Act with specific reference to these standards.

Plastic straws

Plastic straws (Figure 7) are typically manufactured from polypropylene and are mostly used as drinking accessories. Approximately 3.5 billion straws are used in Australia per year, for only around 15 - 20 minutes before being disposed. As a large proportion of plastic straws are used in the consumption of takeaway beverages, they are at risk of being littered. According to the National Litter Index, in 2020-21 single-use plastics were 7% of litter and of this 17% was straws. Straws are also difficult to recycle as they commonly slip through recycling machinery. The main alternatives to plastic straws include single-use paper/cardboard and reusable bamboo, glass or metal straws.

The Straws Suck Campaign in the ACT^{xxxiii} reflects the particularly strong community support for action on straws, which have become symbolic of the single-use convenience given they are easily avoided, their prevalence in the litter stream and impact on wildlife.

However, it should be noted that while straws may be considered avoidable for most consumers, some individuals (e.g., people with disabilities, suffering from serious conditions such as motor neuron disease, and some elderly people), rely on straws to consume liquid foods. This may include soft and bendable straws to avoid injury, but also avoid the risk of choking due to fragmentation which can occur with some alternatives.

Due to this, plastic straws in this context are not considered to be problematic or unnecessary single-use plastics. Many jurisdictions that have regulated the use of straws provide certain exemptions to ensure regulation does not negatively impact on accessibility and inclusion.

The #SuckItAbleism campaign aims to raise awareness about the impact of banning single-use plastic straws on people with a disability. Through the public consultation process, disability advocates highlighted the importance of the ACT Government cultivating accessible and hospitable environments that champion inclusion while also reducing waste, and creating opportunities for disability and industry groups to work together to develop environmentally and disability friendly alternatives.

Domestic and international regulation of plastic straws

There has been significant global action prohibiting the sale and supply of single-use plastic straws in the last 24 months. In addition to the 2019 European Union (EU) directive on single-use plastics, which required the phase out of plastic straws by 2021 in member states, countries such as New Zealand^{xxxiv} and India,^{xxxv} as well as several US states,^{xxxvi, xxxvii} have committed to full or partial phase outs of plastic straws by July 2025 at the latest.

In Australia, the majority of states have committed to phasing out single-use plastic straws. South Australia^{xxxviii} and Queensland^{xxxix} legislation prohibiting the sale or supply of plastic straws came into effect in the first half of 2021, with exemptions for people who require them due to disability or a medical requirement. Western Australia has banned single-use plastic straws as of 1 January 2022,^{xl} while bans in New South Wales^{xli} and Victoria^{xlii} will come into effect from November 2022 and February 2023, respectively. While Tasmania and the Northern Territory have yet to announce plans to ban single-use plastics, local councils such as Hobart City Council^{xliii} and Darwin City Council^{xliiv} have passed by-laws to prohibit the use of single-use plastic straws on council property or at council events.



Figure 8: Cotton buds with plastic sticks

Figure 9: Oxo-degradable plastic bags

Cotton buds with plastic sticks

Cotton buds with plastic sticks (Figure 8) are a rod of plastic which has cotton wrapped around both ends. They are used for a variety of purposes, including domestically and in medical, scientific and/or forensic settings. Cotton buds, whether with plastic or non-plastic alternative sticks, are not recyclable and so inevitably end up in landfill.

Alternatives to cotton buds with plastic sticks are readily available, including cotton buds with paper and bamboo sticks. While these alternatives still end up in landfill after use, their environmental impact is lessened through the absence of plastic.

During the consultation period, it was identified that cotton buds with plastic sticks are required to be available for essential medical, scientific and forensic processes and procedures. The use of alternatives in these instances is not appropriate as it has the potential to compromise personnel safety or affect the integrity of medical and forensic processes. This may result in unreasonable social costs (e.g., false negative or false positive results for medical tests), as well as economic costs to government through challenges to court decisions based on potential contamination of evidence from alternatives. In addition to these social and economic costs, the potential for miscarriages of justice as a result of these scenarios also has unacceptable human rights impacts for individuals.

Further, it is considered that these products sit outside of the policy rationale for the proposed reform. This is because the disposal of cotton buds with plastic sticks used for these purposes are managed through controlled waste streams and do not end up in the litter stream or contaminating waste management streams. It is proposed that this reform will include an exemption for medical, scientific and forensic purposes to remove any doubt that the use of cotton buds with plastic sticks is permitted in these instances.

Domestic and international regulation of cotton buds with plastic sticks

Several international jurisdictions have taken regulatory action on cotton buds with plastic sticks within the last 24 months. Germany, France, the United Kingdom and the Netherlands have prohibited the sale of cotton buds with plastic sticks. This action is in line with Article 5 of the EU Single Use Plastic Directive^{xlv} which requires phasing out cotton buds with plastic sticks by 2021.

No Australian state or territory has yet prohibited the sale of cotton buds with plastic sticks, although several states have committed to taking action in the next 18 months. New South Wales^{xlvi} and Western Australia^{xlvii} have committed to phasing out the sale of cotton buds with plastic sticks by late 2022, while Victoria^{xlviii} has committed to a phase out by February 2023. The remaining states and territories have not yet committed to taking action against these items, although South Australia's *Single-use and Other Plastic Products (Waste Avoidance) Act 2020* lists cotton buds with plastic sticks as one of several additional plastic items for which a ban through regulation was under consideration.^{xlix}

In addition to legislative and regulatory action by governments, media reporting indicates some companies that manufacture and sell cotton buds have proactively begun to phase out the use of plastic sticks in their products in response to community and government sentiment.¹

Oxo-degradable plastics

Oxo-degradable plastics (Figure 9) are a class of plastic material and are usually soft film plastics such as polyethylene. These plastics contain additives to accelerate their fragmentation into smaller pieces when exposed to UV radiation or heat.

However, while oxo-degradable plastics degrade more quickly than conventional plastics in controlled conditions, they do not break down completely. Rather, they fragment into microplastics and have similar properties to conventional microplastics. In addition, achieving the optimal conditions for degradation of oxo-degradable plastic is difficult in most landfills and marine environments, meaning the plastic may remain intact for longer than expected and have a similar detrimental effect to conventional plastic products, especially on marine fauna.

This means that, while oxo-degradable plastics are often marketed as a more environmentally friendly alternative to conventional plastics, they may have similar environmental impacts in the medium term and may perversely lead to an increase in the amount of microplastics in the environment, especially in the marine environment. In addition, the marketing of oxo-degradable plastic items as an environmentally-friendly alternative may encourage littering if the public considers the products to have less of an environmental impact than conventional plastic products. The labelling and marketing of oxo-degradable products may also lead to consumer confusion and possible contamination of organic waste collection streams and composting systems.

Domestic and international regulation of oxo-degradable plastics

A phase out of oxo-degradable plastic products was included in the 2019 EU directive on single-use plastics,^{li} with several EU member states subsequently enacting legislation in 2021 to prohibit the supply or sale of products made from oxo-degradable plastic.^{lii, liii}

Domestically, a proposed phase out of oxo-degradable plastic products by December 2022 was included in the Australian Government's 2021 National Plastics Plan,^{liv} with several Australian states announcing timeframes for the phase out. South Australia has announced products made from oxo-degradable plastic will be banned from March 1, 2022,^{lv} while Western Australia^{lvi} and Victoria^{lvii} have committed to a phase out by late 2022 and February 2023 respectively. While oxo-degradable plastic was not included in the New South Wales *Plastic Reduction and Circular Economy Act 2021*, its potential inclusion via regulation will be reviewed in 2024.^{lviii}

As of 2017, approximately 150 companies and organisations have endorsed a total ban on oxo-degradable plastic products in light of its potentially negative environmental effects.^{lix}

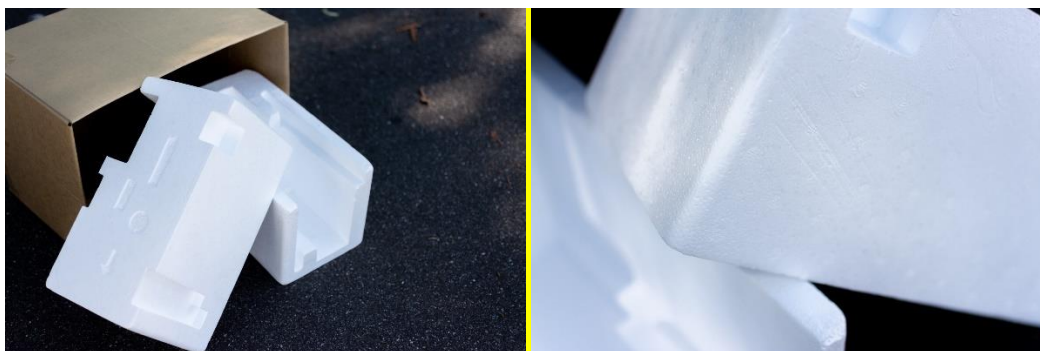


Figure 10: Expanded polystyrene (EPS)

Expanded polystyrene Gelato tubs

Expanded polystyrene, also referred to as EPS, is a lightweight foam plastic material that is used for a variety of purposes, including packaging, building insulation and safety equipment (Figure 10). However, expanded polystyrene is not bio-degradable; rather, it can become brittle when exposed to UV radiation, breaking down into smaller particles which can often find their way into the open and marine environments. These particles then harm or kill marine life and wildlife that mistake the expanded polystyrene for food.

While most expanded polystyrene is recyclable, it must be dry and free from any contaminants, including food. As such, expanded polystyrene used for food or drink packaging, or for transportation of food or drink, is generally unsuitable for recycling.

Expanded polystyrene takeaway food containers were banned in the first tranche of prohibited items under the Act. The proposed reforms considered in this RIS provide for the regulation of expanded polystyrene gelato tubs which were exempt from the first tranche of reforms as there were no suitable alternatives that could be identified. A 12-month exemption was granted for gelato tubs to enable industry to find suitable alternative solutions.

Domestic and international regulation of expanded polystyrene gelato tubs

Expanded polystyrene gelato tubs are not specifically mentioned in single-use plastic legislation in other jurisdictions. However, it is possible these products are covered by the broader category of

‘expanded polystyrene food or beverage containers’ prohibited in several EU member states, including France^{lx} and the Netherlands.^{lxi} New Zealand^{lxii} has proposed a phase out of expanded polystyrene food and beverage containers by mid-2023.

In Australia, a proposed phase out of expanded polystyrene food and beverage containers was included in the 2021 National Plastics Plan.^{lxiii} Queensland’s ban on expanded polystyrene take-away food containers and cups commenced on 1 September 2021, although there is an exemption for pre-packaged food and beverages.^{lxiv} Western Australia^{lxv} and South Australia have announced phase outs of expanded polystyrene food and beverage containers by late 2021 and March 2022 respectively, while Victoria^{lxvi} will follow suit from February 2023.

What is already happening in the ACT?

The ACT has some of the most ambitious waste management and resource recovery targets in Australia. This includes a target of achieving up to 90% of waste being diverted from landfill by 2025.^{lxvii}

Waste management strategy

The ACT Government’s approach to waste management and resource recovery is outlined in the ACT’s Waste Management Strategy.^{lxviii} Developed in consultation with the public, the Waste Management Strategy outlines a number of objectives, including working to reduce the amount of waste we produce here in the ACT, and a shift to waste being viewed as a resource, rather than rubbish for landfill.

The cornerstone to effective waste management is the waste management hierarchy (Figure 11), which classifies waste management strategies according to their order of importance and aims to extract the maximum practical benefits from products while generating the minimum amount of waste. It does this by:

- avoiding products becoming waste (reduce and reuse),
- finding an alternative use for waste (recycle and recover), and
- ensuring safe and appropriate disposal as a last resort.

The ACT’s waste management hierarchy is consistent with, and supports the principles of, a circular economy.

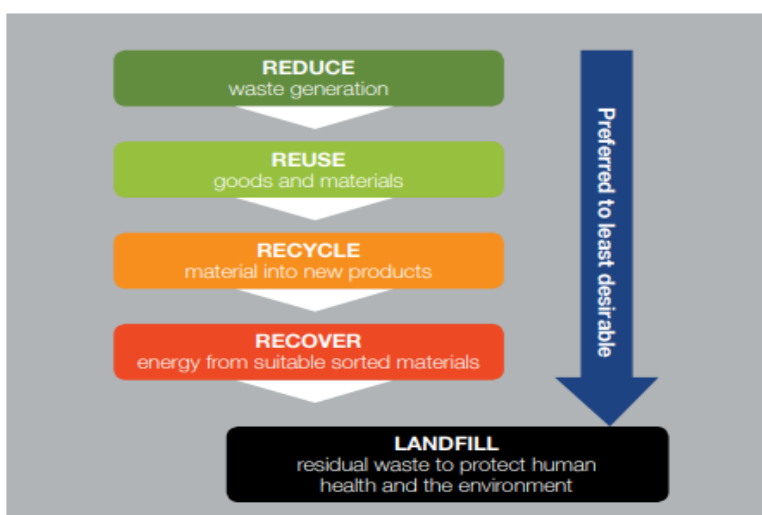


Figure 11: ACT Waste management hierarchy

Waste legislation

The ACT's Waste Management Strategy is currently supported by a number of laws including:

- *Plastic Reduction Act 2021*,
- *Waste Management and Resource Recovery Act 2016*, and
- *Litter Act 2004*.

The Minister for Transport and City Services is responsible for the administration of these three laws. Consolidating responsibilities for waste management, litter reduction and the city environment has positioned the ACT Government to holistically consider environmental, waste management and resource recovery objectives and to streamline the proposed regulatory and administrative approaches.

Food Organics and Garden Organics

The ACT Government acknowledges the relationship between alternatives to single-use plastic products such as certified compostable bags and an effective Food Organics and Garden Organics (FOGO) collection service.

The ACT Climate Change Strategy 2019 - 2025 has dedicated FOGO actions including:

- a household FOGO collection service from 2023, and
- a scheme for large producers of organic waste, such as hospitality and food retail businesses, to have separate organic waste collection by 2023.

A FOGO pilot service commenced in selected Belconnen suburbs of Canberra in November 2021. ACT Government acknowledges that compatibility will need to be ensured between alternatives to single-use plastics and any city-wide FOGO service. For example, one consideration is to allow the exemption of compostable barrier bags which are certified to meet the Australian Standards for commercial and home composting.

Climate Change Strategy 2019 – 2025

The ACT is a global leader on climate change action with some of the most ambitious emissions reduction targets in the world.

On 18 September 2019, the ACT Government achieved its 100% renewable electricity target. The ACT Climate Change Strategy outlines the next steps the community, business and Government will take to reduce emissions by 50% – 60% (below 1990 levels) by 2025 and establish a pathway for achieving net zero emissions by 2045.^{lxix} It includes actions to reduce emissions and to build resilience to climate change impacts, including for the transport, gas and waste sectors.

Given the significant carbon impact of making and discarding plastic, reducing the consumption of single-use plastics will help deliver the ACT Government's commitment to tackling climate change.

ACT Sustainable Procurement Policy

The ACT Government understands the importance of leading by example on phasing out single-use plastics and is committed to supporting Territory entities to incorporate social, economic and environmental sustainability into their operations. As procurement accounts for a significant

proportion of the Territory's budget, it is important for ACT Government procurements to be conducted with sustainable outcomes in mind.

The ACT's Government Procurement (Charter of Procurement Values) Direction 2020^{lxx} provides guidance for decision makers to ensure ACT Directorates, and other entities, are supporting a reduction in the consumption of single-use plastics and promoting innovative alternatives. This includes a commitment to support the transition to a circular economy that values resources by keeping products and materials in use for as long as possible. In addition, the ACT Government's acquisition and disposal activities will use opportunities to reduce waste and single-use plastics through recycling and reuse. This Direction is an important part of a holistic approach to reducing the consumption of single-use plastics in the ACT.

2018 National Waste Policy and 2019 National Waste Policy Action Plan

In 2018, all Australian Governments agreed to the National Waste Policy. The policy aims to promote a circular economy, making a shift away from 'take, make, use and dispose', to a more sustainable approach where the value of resources is maintained for as long as possible.

One of the key principles in the strategy is to avoid the creation of waste by prioritising waste avoidance and encouraging efficient use, reuse and repair.^{lxxi} Strategy 10 of the National Waste Policy specifically targets plastics and packaging and aims to '*reduce the impacts of plastic and packaging on the environment and oceans, reduce plastic pollution, and maximise benefit to the economy and society*'.^{lxxii}

Proposed reform

Three options have been considered as part of this RIS. The options are:

1. Do not introduce a Regulation at this time.
2. Progress the proposed Regulation.
3. Progress the proposed Regulation with amendments.

Amendments able to be considered as part of option 3 may include changes to the proposed regulation where a ban on a certain item is not practicable due to significant barriers or limited alternatives.

Option 1: Do not introduce a Regulation at this time

This option means that there will be no new Regulation under the Act to prohibit the sale and distribution of single-use fruit and vegetable barrier bags, single-use plastic straws, cotton buds with plastic sticks, oxo-degradable plastic items and expanded polystyrene gelato tubs in the ACT.

Under this option, the ACT Government could influence change through the introduction of voluntary and intermediate approaches to reduce the consumption of single-use plastic; for example, through education campaigns, voluntary industry commitments and ACT Government procurement processes.

The ACT Government plays an important role in educating the community and business to support a shift in consumer demand away from avoidable single-use plastics and toward more sustainable alternatives. The ACT Government uses a number of communications mediums and supporting resources to effect change. Examples include media campaigns, site-specific advertising (e.g., targeting hospitality and food retail), guidelines and supporting tools (e.g., the online

Recyclopaedia), and events with certain single-use plastic items banned from supply. In addition, the ACT Government demonstrates leadership through proactive sustainable procurement measures (e.g., through the ACT Sustainable Procurement Policy and by actively supporting innovative products).

While voluntary and intermediate approaches are an important part of taking action on single-use plastic products in the ACT, if option 1 is pursued the status quo will likely be retained. Not pursuing regulatory change means consumption of these products will remain at current levels and these products will remain represented in the litter stream. Under this option, there will continue to be a market failure. This means that the ACT Government:

- will need to rely on voluntary and intermediate approaches to support individuals and business to reduce their consumption of single-use plastics. Relying on these measures alone can have a limited scale of adoption and it can be difficult to measure outcomes;
- may have difficulty in meeting its targets for waste management, resource recovery and climate change; and
- may be subject to criticism for a lack of regulatory action, particularly given the clear commitment to phase out these items within 12 months of the commencement of the Act.

Option 2: Progress the Plastic Reduction Regulation

This option means that the proposed regulatory reform is supported, and a Regulation will be drafted to give effect to the changes. This is the recommended option.

If option 2 is pursued, a new Regulation will be created to introduce an immediate regulatory ban on the sale and distribution of single-use fruit and vegetable barrier bags, single-use plastic straws, cotton buds with plastic sticks, oxo-degradable plastic items and expanded polystyrene gelato tubs in the ACT.

An analysis of the impacts of this option are provided in further detail below. It is proposed that this approach is supported by an education and awareness program, with a focus on the importance of consumption avoidance and the proposed exemptions for people, businesses and organisations who require access to single-use plastic items.

The proposed Regulation will be developed in consultation with Parliamentary Counsel's Office and the Justice and Community Safety Directorate, to ensure consistency with the Guide to Framing Offences and human rights requirements.

Option 3: Agree to the proposed Regulation with amendments

This option means that support is given to the development of a Regulation, with amendments to the policy position outlined in this RIS. If option 3 is pursued, amendments could either increase, or reduce, the single-use plastic products considered as part of a regulatory ban.

Under s42 of the Act, in making the Regulation, the Executive must consider any written submissions received and the availability and utility of alternative products. Option 3 may be considered appropriate in circumstances where significant issues were raised during public consultation, or no viable alternative products are identified.

Depending on the proposed amendments, the final Regulation may not be able to give full effect to the recommended reform such that the objectives outlined in this RIS are completely met. However,

amendments which result in a reduced regulatory approach can still have a positive impact on consumer behaviour (e.g., reducing plastic use by raising awareness).

Recommended option

The public consultation has indicated there is high levels of support for action, including regulatory action, on single-use plastics in the ACT. There were high levels of support for action on single-use fruit and vegetable barrier bags, single-use plastic straws, cotton buds with plastic sticks and oxo-degradable plastic items; all of which are the subject of the proposed reform. The majority of individual survey respondents during the public consultation period indicated that they did not see any foreseeable issues with implementing a ban on plastic fruit and vegetable barrier bags (66%), cotton buds with plastic sticks (87%), or oxo-degradable plastics (81%).

Given the importance of reducing the consumption of these problematic single-use plastic products, adopting a regulatory approach which is supported by an effective community education campaign, is considered to be the most effective way to deliver the objectives outlined in this RIS. The analysis indicates that the proposed reform, when considered in conjunction with the proposed exemptions, will result in a range of environmental, social and economic benefits to the ACT.

The recommended option for Cabinet is to support the developed Regulation (option 1). Once made, the Regulation will be presented to the Legislative Assembly.

Regulatory impact

There will be some social and economic impacts from the implementation of the proposed Regulation. However, the benefit to the community, business and government as a result of reducing the consumption of single-use fruit and vegetable barrier bags, single-use plastic straws, cotton buds with plastic sticks, oxo-degradable plastic items and expanded polystyrene gelato tubs, outweighs the costs imposed from the proposed Regulation.

Qualitative impact assessment

This section presents the qualitative impact assessment of the benefits and constraints of different regulatory options for phasing out each of the targeted plastic products including single-use fruit and vegetable barrier bags, single-use straws, cotton buds with plastic sticks, oxo-degradable plastics and expanded polystyrene gelato tubs. It considers a range of options including regulatory bans, regulatory bans with exemptions (where relevant), mandatory phase outs and mandatory materials standards, and identifies a preferred option in each case. The likely benefits and costs of preferred options are then explored for impacted sectors including government, industry, business, community organisations and the general community.

Fruit and vegetable barrier bags

A description of fruit and vegetable barrier bags (Figure 6) is included in the section on ‘setting the scene’ above. Three options have been considered to regulate the sale, supply and distribution of fruit and vegetable barrier bags in the ACT. These include:

1. **Regulatory ban** – involves an immediate ban on the sale, supply and distribution of fruit and vegetable barrier bags, with an exemption for certified compostable plastic (preferred).
2. **Mandatory phase out** – involves a staged ban, that can be achieved by progressively expanding coverage or tightening product requirements for fruit and vegetable barrier bags.

3. **Mandatory materials standard** – involves mandating standards for material composition through a regulatory instrument for fruit and vegetable barrier bags.

Analysis of alternatives

Options:	Benefits and constrains
<p>1. Inclusion of fruit and vegetable barrier bags as prohibited, with an exemption for certified compostable plastic (preferred).</p>	<p>Benefits – A regulatory ban provides broad coverage across the economy or supply chain and provides a high level of certainty and competitive neutrality. A regulatory ban is relatively simple to introduce and enforce in the ACT, particularly given the number of businesses that supply barrier bags is limited to those that supply fresh fruit and vegetables.</p> <p>Banning these items will address a common single-use plastic item and will send a clear signal to industry.</p> <p>Addressing this item by including it within the existing legislative ban on single-use plastic products would be a consistent approach using existing regulatory mechanisms. A ban in the ACT will provide an example of alternatives in a small jurisdiction, and other jurisdictions will be able to learn from the ACT’s experience.</p> <p>Constraints – The public consultation survey highlighted a number of challenges for businesses, including changes to infrastructure (such as bag dispensers in supermarkets), food safety and the potential to increase food waste, and supply chain issues associated with COVID-19. Of the items covered by this second tranche, barrier bags presented the highest level of concern for businesses, with 44% of business respondents reporting that they were not confident in transitioning away from single-use barrier bags.</p> <p>A regulatory ban will have higher regulatory burden when compared to non-regulatory measures. This option will need to consider industry and consumer push-back and complacency. Generally, regulatory bans have the potential to have unintended consequences as they focus on the product to be banned rather than potential replacement products, which may result in worse impacts across the product lifecycle. Enforcement and monitoring to ensure compliance with the reform will be necessary and will have some cost to ACT Government. Training will be required to ensure officers are able to identify prohibited barrier bags and exempt certified compostable bags.</p> <p>In comparison to the other products proposed to be banned under this second tranche, the cost of transitioning to alternative options for plastic barrier bags is significant. The cost of utilising alternative options has been estimated at between \$1.8 - \$2.25 million a year out to 2040 for the Canberra community.</p> <p>The properties of certified compostable bags are also different, which means that the scales and weight allowances in supermarkets need to be adjusted; this will also impose a cost on business. These costs are likely to be passed on to consumers. These costs may be able to be offset by reduced consumption through the use of reusable bags.</p> <p>The capability of any future ACT composting facilities is not yet known. Both the capability and the capacity of a commercial composting facility to process compostable plastic will determine the environmental benefit to be gained from using compostable alternatives to conventional plastic.</p>

Options:	Benefits and constrains
2. A mandatory phase out	<p>Benefits – A mandatory phase out provides a transitional period to develop policy and implementation approaches where product alternatives are not readily available, significant inventory is held or adaptation is otherwise onerous for plastic manufacturers, distributors, sellers and users. Given there are identified alternatives and no local manufacturers identified in the ACT, this is not considered to be an important driver for this reform. This approach would benefit local distributors giving them more time to adapt.</p> <p>Constraints – Partial bans can have unintended consequences (e.g., the thickness limit for bags driving consumers to other single-use items, including thicker plastic bags that may have negative outcomes).</p> <p>This option does not fit as well with the existing legislation, which contains the ability to prohibit single-use plastic products.</p>
3. Mandatory materials standard	<p>Benefits – This approach reduces retailer and consumer confusion and helps to ensure plastic alternatives are safe for humans and environment. There is the potential for this approach to be incorporated into a regulatory ban or mandatory phase out by including specific standards (e.g., compostable or biodegradable requirements) for exempted products.</p> <p>Constraints – This approach may have limited market availability or affordability (at the time of introduction). Prescriptive standards may deter product innovation. Option 1 (including fruit and vegetable barrier bags as prohibited under the Act) would include an exemption for compostable bags certified under the existing Australian Standards for commercial composting (AS4736) and for home composting (AS5810). As there are existing Australian Standards for both commercial and home composting, it is considered unnecessary to also introduce a mandatory materials standard.</p> <p>This option does not fit as well with the existing legislation, which contains the ability to prohibit single-use plastic products.</p>

Cost benefit analysis of a regulatory ban for barrier bags (option 1)

Sector	Costs	Benefits
Government	<ul style="list-style-type: none"> • Prepare Regulation and amendments to national mutual recognition laws. • Develop and roll out initial education campaigns. • Undertake compliance and enforcement activities. • Possible costs involved with the development of future composting facilities that have the capability and capacity to 	<ul style="list-style-type: none"> • Demonstrates action and leadership by ACT Government. • Expected to result in a reduction in litter for collection. • Reduces the impact to the environment and human health from exposure to single-use plastic items.

Sector	Costs	Benefits
Industry	<p>process compostable plastic alternatives.</p> <ul style="list-style-type: none"> • No local manufacturers identified. • Wholesalers primarily convert to readily available single-use alternatives to meet large scale demand, plus potential product extension to reusable options. • Limited availability of compostable alternatives may lead to competitive distortions. • Potential contamination of existing soft plastic recycling schemes such as RedCycle. 	<ul style="list-style-type: none"> • A regulatory ban provides a direct and uniform measure that minimises unintended impacts. • Supports rapid scaling up of alternatives. This can encourage rapid implementation of new products or models, bringing immediate scale to potential solutions. This has the potential to benefit industry development, which is a key recommendation of the Waste Feasibility Study.^{lxxiii}
Business	<ul style="list-style-type: none"> • Short-term operational cost as businesses transition to the new arrangements (e.g., training of staff to explain new regulations to customers; research and procurement of alternative products). These costs are expected to be minimal given the extensive consultation with businesses since 2019. • The increased weight of certified compostable bags means businesses may need to make changes to scales and weight allowance which will impose additional costs on supermarkets. • Some costs to business as readily available certified compostable alternatives are more expensive. This cost can be minimised by encouraging customers to use reusable barrier bags. 	<ul style="list-style-type: none"> • Provides certainty in regard to changing community expectations. • Wide-spread uptake of reusable alternatives has potential to reduce procurement costs.
Community organisations	<ul style="list-style-type: none"> • There is the potential for increased costs associated with alternatives to impact on community organisations (e.g., organisations that provide 	<ul style="list-style-type: none"> • There will be decreased burden on community organisations that contribute to environmental clean-ups as a result of

Sector	Costs	Benefits
	<p>support to vulnerable people, including the homeless).</p> <ul style="list-style-type: none"> The social cost-benefit analysis identified that the cost of adopting alternatives to single-use plastic products will likely be passed onto consumers. 	<p>decreased single-use plastic litter.</p>
Community	<ul style="list-style-type: none"> Some cost increase can be expected given compostable alternatives are more expensive and the social cost-benefit analysis identified that the cost of adopting alternatives to single-use plastic products will likely be passed onto consumers. Short-term cost associated with uptake of reusable items (if desired); however, the scale of this uptake is unknown. Behaviour change will be required in regard to composting barrier bags or the requirement for shoppers to supply their own barrier bags. 	<ul style="list-style-type: none"> While utilisation of compostable bags may still result in some waste entering the environment, there is expected to be some improved environmental amenity as a result of reduced plastic pollution and litter. The social cost-benefit analysis identified a net positive benefit for the environment as a result of phasing out single-use plastic products. A regulatory ban demonstrates that ACT Government has considered and actioned community feedback received through the 2019 and 2021 consultation periods. Action on this product may increase community engagement around problematic single-use plastic in general.

Plastic straws

A description of plastic straws (Figure 7) is included in the section on ‘setting the scene’ above. Four options have been considered to regulate the sale and distribution of plastic straws in the ACT. These include:

1. **Regulatory ban** – involves an immediate ban on the sale, supply and distribution of single-use plastic straws.
2. **Regulatory ban (with exemptions)** – involves a regulatory ban as outlined in option 1, with exemptions for people who require access to single-use plastic straws (e.g., people with medical conditions, including the elderly or people with a disability) (preferred).
3. **Mandatory phase out** – involves a staged ban, that can be achieved by progressively expanding coverage or tightening product requirements for single-use plastic straws.
4. **Mandatory materials standard** – involves mandating standards for material composition through a regulatory instrument for plastic straws. While it is possible for recommendations on preferred material standards to be voluntary (e.g., voluntary codes of practice, plastic free policies, event management guidelines), this option considers the impact of introducing material standards through a regulatory mechanism.

Analysis of alternatives

Options:	Benefits and constrains
1. Inclusion of single-use plastic straws as prohibited.	<p>Benefits – A regulatory ban provides broad coverage across the economy or supply chain and provides a high level of certainty and competitive neutrality. A regulatory ban is relatively simple to introduce and enforce in the ACT, particularly given its limited size and limited supply chain influence.</p> <p>Plastic straws are a high-profile product and are significantly represented in the litter stream. As such, a regulatory ban can help raise community awareness of the issues associated with problematic single-use plastics. A regulatory ban on single-use plastic straws is supported by the community and business and can be well supported by other voluntary measures (e.g., education).</p> <p>Constraints – A regulatory ban will have higher regulatory burden when compared to non-regulatory measures. Single-use plastic straws are an important accessibility tool for people with medical needs and people with disabilities. A blanket regulatory ban has the potential for human rights impacts and unintended social and economic consequences.</p> <p>Further, enforcement and monitoring to ensure compliance with the proposed reform will be necessary and will have some cost to ACT Government.</p>
2. Inclusion of single-use plastic straws as prohibited, with exemptions for supply to people who require	<p>Benefits – In addition to the benefits outlined in option 1, a regulatory ban with exemptions for people who require access to single-use plastic straws provides safeguards to protect against impacts to human rights. This option will need to be supported by a comprehensive education campaign that highlights the importance of plastic straws for some people in the community (e.g., people with disabilities). This campaign will highlight issues with accessibility and address the stigma that can be associated with the use of a regulated product.</p>

Options:	Benefits and constrains
<p>them due to a disability or medical requirement (preferred).</p>	<p>Constraints – A regulatory ban with exemptions will have higher regulatory burden when compared to non-regulatory measures, and will have more complicated compliance and enforcement requirements when compared to option 1. Careful consideration will need to be given to how exemptions are designed and implemented in the ACT to avoid implementation issues, including the potential for discrimination against people who require access to single-use plastic straws. South Australia and Queensland have included exemptions in their single-use plastic bans for people who rely on items such as straws for disability or medical needs. Under these exemptions in South Australia, businesses can choose to supply single-use plastic items on request (but cannot have them freely available). Conversely in Queensland, individuals are encouraged to bring their own straws if they require them. In both states wholesalers and distributors may stock and sell these items for health and disability requirements only.</p> <p>Government will also need to develop and deliver a comprehensive education campaign which will increase the cost to government of pursuing this option.</p>
<p>3. A mandatory phase out of single-use plastic straws.</p>	<p>Benefits – A mandatory phase out provides a transitional period to develop policy and implementation approaches where product alternatives are not readily available, significant inventory is held or adaptation is otherwise onerous for plastic manufacturers, distributors, sellers and users. Given there are identified alternatives and no local manufacturers identified in the ACT, this is not considered to be an important driver for regulating single-use plastic straws. In addition, delaying the ban on plastic straws until this second tranche of plastic products has already signaled a transitional period.</p> <p>Constraints – Partial bans can have unintended consequences (e.g., the thickness limit for bags driving consumers to other single-use items, including thicker plastic bags that may have negative outcomes). This option has the same potential impacts as option 1 for people who require access to single-use plastic straws (e.g., people with a disability).</p>
<p>4. Mandatory materials standard for straws</p>	<p>Benefits – This approach reduces retailer and consumer confusion and helps to ensure plastic alternatives are safe to humans and environment. There is the potential for this approach to be incorporated into a regulatory ban or mandatory phase out by including specific standards (e.g., compostable or biodegradable requirements) for exempted products.</p> <p>Constraints – This approach may have limited market availability or affordability (at the time of introduction). Prescriptive standards may deter product innovation, which will be an important part of developing environmentally and accessibility friendly alternatives to single-use plastic straws.</p>

Cost benefit analysis of a regulatory ban with exemptions (option 2) for plastic straws

Sector	Costs	Benefits
Government	<ul style="list-style-type: none"> • Prepare regulation, including proposed exemptions, and amendments to national mutual recognition laws. • Undertake consultation with advocacy groups (e.g., disability groups) and business to ensure there is adequate provision of single-use plastic straws, without significant social and economic impacts, for people who need them. • Develop and roll out initial education campaigns with a focus on the importance of straws for people who need them. • Establish or improve baseline data on consumption and littering. • Undertake compliance and enforcement activities. This may be complicated by the proposed exemptions for people who require access to single-use plastic straws. 	<ul style="list-style-type: none"> • Demonstrates action and leadership by ACT Government on a high-profile issue. • Expected to result in a reduction in litter for collection. • Reduced pressure on waste management and resource recovery systems as consumption and disposal of problematic single-use plastics will be reduced. • Application of appropriate safeguards will protect the human rights of people who require access to single-use plastic straws.
Industry	<ul style="list-style-type: none"> • No local manufacturers identified. • Wholesalers will have to continue to supply single-use plastic straws and convert to readily available single-use alternatives to meet large scale demand, plus potential product extension to reusable options. • Avoidance and substitution with reusable options reduces overall demand. Uptake is unknown but potentially high given public interest. 	<ul style="list-style-type: none"> • A regulatory ban provides a direct and uniform measure that minimises unintended impacts and competitive distortion. • It supports rapid scaling up of alternatives. This can encourage rapid implementation of new products or models, bringing immediate scale to potential solutions. This has the potential to benefit industry development; which is a key recommendation of the ACT's Waste Feasibility Study.^{lxxiv} • May drive innovation for single-use alternative straws that are

Sector	Costs	Benefits
Business	<ul style="list-style-type: none"> • Short-term operational cost as businesses transition to the new arrangements (e.g., training of staff to explain new regulations to customers; research and procurement of alternative products). These costs are expected to be minimal given the extensive consultation with businesses since 2019. • There are readily available alternatives to plastic straws, with no or minor increase in costs. • There may be an economic and operational impact should businesses choose to provide a range of alternatives and single-use plastic straws on request. • In the longer-term, ensuring that alternative single-use plastic straws are suitable for people with special requirements may not result in the lowest cost alternative, potentially increasing retail prices. 	<p>environmentally and accessibility friendly.</p> <ul style="list-style-type: none"> • Avoidance of plastic straws is likely to reduce procurement costs. • A regulatory ban provides certainty for hospitality in regard to changing community expectations. • Businesses with a clear and communicated strategy for reducing single-use products and that readily provide environmentally and accessibility friendly alternative straws, may experience an increase in patronage from customers who are environmentally conscious and/or have a disability.
Community organisations	<ul style="list-style-type: none"> • There is the potential for increased costs associated with alternatives, and reduced access to single-use plastic straws, to impact on community organisations (e.g., organisations that provide support to vulnerable people, including those with disabilities). • The social cost-benefit analysis identified that the cost of adopting alternatives to single-use plastic products will likely be passed onto consumers. 	<ul style="list-style-type: none"> • Plastic straws are easily avoided by the majority of the population, and this is likely to reduce procurement costs for community organisations. • There will be decreased burden on community organisations that contribute to environmental clean-ups as a result of reductions in single-use plastic litter.

Sector	Costs	Benefits
Community	<ul style="list-style-type: none"> • Negligible cost increase, given the proposed products represent a small proportion of the cost of sales. • Short-term cost associated with uptake of reusable items (if desired); however, the scale of this uptake is unknown. 	<ul style="list-style-type: none"> • Improved environmental amenity as a result of reduced plastic pollution and litter. • A regulatory ban demonstrates that ACT Government has considered and actioned community feedback received through the consultation period.
Individuals	<ul style="list-style-type: none"> • Potential for impacts to individuals who require access to single-use plastic straws (e.g., people with a medical condition, people with disabilities). This includes economic impacts associated with having to purchase a product that was previously available for free. • Potential additional administrative burden to people who require access to single-use plastic straws who may need to source and carry their own straws when away from home to ensure access to suitable straws. • Suitable single-use plastic straws may become more expensive and/or less available at retail, especially if retailers opt not to stock suitable alternative straws for people with specific needs. 	<ul style="list-style-type: none"> • The exemption provisions will aim to limit the impact of the proposed reform to the greatest extent possible. • Exemptions and associated education campaign may increase community understanding of the importance of single-use plastic products for people with medical conditions and disabilities.

Cotton buds with plastic sticks

A description of cotton buds with plastic sticks (Figure 8) is included in the section on ‘setting the scene’ above. Four options have been considered to regulate the sale, supply and distribution of cotton buds with plastic sticks in the ACT. These include:

1. **Regulatory ban** – involves an immediate ban on the sale, supply and distribution of cotton buds with plastic sticks.
2. **Regulatory ban with exemption** – involves an immediate ban on the sale, supply and distribution of cotton buds with plastic sticks, with an exemption for medical, scientific and/or forensic purposes (preferred).
3. **Mandatory phase out** – involves a staged ban that can be achieved by progressively expanding coverage or tightening product requirements for cotton buds with plastic sticks.
4. **Mandatory materials standard** – involves mandating standards for material composition through a regulatory instrument for cotton buds with plastic sticks.

Analysis of alternatives

Options:	Benefits and constrains
1. Inclusion of cotton buds with plastic sticks as prohibited	<p>Benefits – A regulatory ban provides broad coverage across the economy or supply chain and provides a high level of certainty and competitive neutrality. A regulatory ban is relatively simple to introduce and enforce in the ACT, particularly given its limited size and limited supply chain influence.</p> <p>Addressing this item by including it within the existing legislative ban on single-use plastic products would be a consistent approach using existing regulatory mechanisms. Cotton buds with non-plastic (paper, bamboo or sugar cane) sticks are readily available as alternatives.</p> <hr/> <p>Constraints – A regulatory ban will have higher regulatory burden when compared to non-regulatory measures. This option will need to consider industry and consumer push-back and complacency. Enforcement and monitoring to ensure compliance with the reform will be necessary and will have some cost to ACT Government. Cotton buds with non-plastic sticks may be more expensive, and this cost is likely to be passed on to the consumer (noting voluntary action by some manufacturers may have already resulted in slightly higher costs).</p> <p>Consultation has indicated that cotton buds with sticks made from non-plastic alternatives have the risk of contaminating medical, scientific and/or forensic samples. This can result in unacceptable social, economic and human rights costs. As a result, a complete ban is not preferred.</p>
2. Inclusion of cotton buds with plastic sticks as prohibited, with an exemption for medical,	<p>Benefits – In addition to the benefits outlined in option 1, an exemption for the use of cotton buds with plastic sticks for essential medical, scientific and/or forensic purposes provides safeguards against any unintended social, economic and human rights impacts associated with the proposed reform as a result of the risk of contaminated samples.</p> <p>Constraints – A regulatory ban will have higher regulatory burden when compared to non-regulatory measures. This option will need to consider</p>

Options:	Benefits and constrains
scientific and/or forensic purposes (preferred).	<p>industry and consumer push-back and complacency. Enforcement and monitoring to ensure compliance with the reform will be necessary and will have some cost to ACT Government.</p> <p>Cotton buds with non-plastic sticks may be more expensive, and this cost is likely to be passed on to the consumer (noting voluntary action by some manufacturers may have already resulted in slightly higher costs).</p>
3. A mandatory phase out	<p>Benefits – A mandatory phase out provides a transitional period to develop policy and implementation approaches where product alternatives are not readily available, significant inventory is held or adaptation is otherwise onerous for plastic manufacturers, distributors, sellers and users.</p> <p>Constraints – Partial bans can have unintended consequences (e.g., the thickness limit for bags driving consumers to other single-use items, including thicker plastic bags that may have negative outcomes).</p> <p>This option does not fit as well with the existing Act, which contains the ability to prohibit single-use plastic products.</p>
4. Mandatory materials standard	<p>Benefits – This approach reduces retailer and consumer confusion and helps to ensure plastic alternatives are safe to humans and environment. There is the potential for this approach to be incorporated into a regulatory ban or mandatory phase out by including specific standards (e.g., compostable or biodegradable requirements) for exempted products. Given the identified alternatives and no local manufacturers identified in the ACT, this is not considered to be an important driver for this reform.</p> <p>Constraints – This option does not fit as well with the existing Act, which contains the ability to prohibit single-use plastic products.</p>

Cost benefit analysis of a regulatory ban with exemptions (option 2) for cotton buds with plastic sticks

Sector	Costs	Benefits
Government	<ul style="list-style-type: none"> • Prepare regulation and amendments to national mutual recognition laws. • Develop and roll out initial education campaigns. • Undertake compliance and enforcement activities. 	<ul style="list-style-type: none"> • Demonstrates action and leadership by ACT Government. • Expected to result in a reduction in litter for collection. • Reduced pressure on waste management and resource recovery systems as consumption and disposal of problematic single-use plastics will be reduced. • An exemption for the use of cotton buds with plastic sticks maintains the integrity of

Sector	Costs	Benefits
		<p>essential medical, scientific and forensic procedures (when compared to alternatives currently available). The proposed exemption reduces the social, economic and human rights impacts associated with regulating cotton buds with plastic sticks for medical, scientific or forensic purposes.</p>
Industry	<ul style="list-style-type: none"> • No local manufacturers identified. • Wholesalers primarily convert to readily available single-use alternatives to meet large scale demand, plus potential product extension to reusable options. • Avoidance and substitution with alternative options reduces overall demand. Uptake is unknown but potentially high given public interest. 	<ul style="list-style-type: none"> • A regulatory ban provides a direct and uniform measure that minimises unintended impacts and competitive distortion. • Supports rapid scaling up of alternatives. This can encourage rapid implementation of new products or models, bringing immediate scale to potential solutions. This has the potential to benefit industry development, which is a key recommendation of the Waste Feasibility Study.^{lxxv}
Business	<ul style="list-style-type: none"> • Short-term operational cost as businesses transition to the new arrangements (e.g., training of staff to explain new regulations to customers; research and procurement of alternative products). These costs are expected to be minimal given the extensive consultation with businesses since 2019, and because substituting the item is relatively simple, having already been done in many cases. • Given action by some manufacturers, some retailers may have already transitioned to alternatives. 	<ul style="list-style-type: none"> • Provides certainty in regard to changing community expectations. • Alternatives are readily available, thereby reducing some of the costs involved in transitioning to new arrangements.
Community organisations	<ul style="list-style-type: none"> • There is the potential for increased costs associated with alternatives to impact on 	<ul style="list-style-type: none"> • There will be decreased burden on community organisations that contribute to environmental

Sector	Costs	Benefits
	<p>community organisations (e.g., organisations that provide support to vulnerable people, including those with disabilities).</p> <ul style="list-style-type: none"> The social cost-benefit analysis identified that the cost of adopting alternatives to single-use plastic products is expected to be passed onto consumers. Although as a number of businesses have already voluntarily transitioned to alternatives and this cost may already be borne by the community. 	<p>clean-ups as a result of decreased single-use plastic litter.</p>
Community	<ul style="list-style-type: none"> The social cost-benefit analysis identified that the cost of adopting alternatives to single-use plastic products is expected to be passed onto consumers. 	<ul style="list-style-type: none"> Improved environmental amenity as a result of reduced plastic pollution and litter. The social cost-benefit analysis identified a net positive benefit for the environment as a result of phasing out single-use plastic products. A regulatory ban demonstrates that ACT Government has considered and actioned community feedback received through the consultation period. The community would have confidence that the integrity of essential medical, scientific or forensic procedures would be maintained.

Oxo-degradable plastics

A description of oxo-degradable plastics (Figure 9) is included in the section on ‘setting the scene’ above. Three options have been considered to regulate the sale, supply and distribution of oxo-degradable plastics in the ACT. These include:

1. **Regulatory ban** – involves an immediate ban on the sale, supply and distribution of oxo-degradable plastics (preferred).
2. **Mandatory phase out** – involves a staged ban, that can be achieved by progressively expanding coverage or tightening product requirements for oxo-degradable plastics.
3. **Mandatory materials standard** – involves mandating standards for material composition through a regulatory instrument for oxo-degradable plastics.

Analysis of alternatives

Options:	Benefits and constrains
<p>1. Inclusion of oxo-degradable plastics as prohibited (preferred).</p>	<p>Benefits – A regulatory ban provides broad coverage across the economy or supply chain and provides a high level of certainty and competitive neutrality. A regulatory ban is relatively simple to introduce and enforce in the ACT, particularly given its limited size and limited supply chain influence.</p> <p>Addressing these items by including them within the existing legislative ban on single-use plastic products would be a consistent approach using existing regulatory mechanisms. Non-degradable plastics (for use in non-regulated items) or certified compostable plastics are readily available as alternatives.</p> <p>Constraints – A regulatory ban will have higher regulatory burden when compared to non-regulatory measures. This option will need to consider industry and consumer push-back and complacency. Enforcement and monitoring to ensure compliance with the reform will be necessary and will have some cost to ACT Government.</p> <p>Oxo-degradable plastics are not a type of product, but rather a type of material used in different products. This will make it harder for industry and businesses to identify and avoid regulated items, and for ACT Government to identify non-compliance with a ban.</p>
<p>2. A mandatory phase out.</p>	<p>Benefits – A mandatory phase out provides a transitional period to develop policy and implementation approaches where product alternatives are not readily available, significant inventory is held or adaptation is otherwise onerous for plastic manufacturers, distributors, sellers and users.</p> <p>Constraints – Partial bans can have unintended consequences (e.g., the thickness limit for bags driving consumers to other single-use items, including thicker plastic bags that may have negative outcomes).</p> <p>This option does not fit as well with the existing Act, which contains the ability to prohibit single-use plastic products.</p>

3. Mandatory materials standard

Benefits – This approach reduces retailer and consumer confusion and helps to ensure plastic alternatives are safe to humans and environment. There is the potential for this approach to be incorporated into a regulatory ban or mandatory phase out by including specific standards (e.g., compostable or biodegradable requirements) for exempted products. Given the identified alternatives and no local manufacturers identified in the ACT, this is not considered to be an important driver for this reform.

Constraints – This option does not fit as well with the existing Act, which contains the ability to prohibit single-use plastic products. It is unclear if material standards (as an alternative to a regulatory ban of this product) would further reduce the environmental impacts of oxo-degradable plastic products; primarily, their degradation into microplastics.

Cost benefit analysis of a regulatory ban (option 1) for oxo-degradable plastics

Sector	Costs	Benefits
Government	<ul style="list-style-type: none"> • Prepare regulation and amendments to national mutual recognition laws. • Develop and roll out initial education campaigns. • Undertake compliance and enforcement activities. This may be more difficult given oxo-degradable plastic may occur in several plastic products and may not be quickly or easily identifiable. 	<ul style="list-style-type: none"> • Demonstrates action and leadership by ACT Government. • Expected to result in a reduction in litter for collection. • Expected to result in a reduction in microplastics in the environment. • Reduced pressure on waste management and resource recovery systems as consumption and disposal of problematic single-use plastics will be reduced.
Industry	<ul style="list-style-type: none"> • No local manufacturers identified. • Wholesalers primarily convert to readily available single-use alternatives to meet large scale demand, plus potential product extension to reusable options. • Avoidance and substitution with reusable options reduces overall demand. Uptake is unknown but potentially high given public interest. • Identifying products containing these materials may be difficult. 	<ul style="list-style-type: none"> • A regulatory ban provides a direct and uniform measure that minimises unintended impacts and competitive distortion. • Supports rapid scaling up of alternatives. This can encourage rapid implementation of new products or models, bringing immediate scale to potential solutions. This has the potential to benefit industry development, a key recommendation of the Waste Feasibility Study.^{lxxvi}

Sector	Costs	Benefits
Business	<ul style="list-style-type: none"> • Short-term operational cost as businesses transition to the new arrangements (e.g., training of staff to explain new regulations to customers; research and procurement of alternative products). These costs are expected to be minimal given the extensive consultation with businesses since 2019. • Identifying and avoiding products containing these materials may be difficult, particularly where labelling is not clear. 	<ul style="list-style-type: none"> • Provides certainty in regard to changing community expectations. • Progressive businesses, with a clear and communicated strategy for reducing single-use products and who do not revert to readily available and non-regulated single-use plastic alternatives, may experience an increase in patronage from environmentally conscious consumers.
Community organisations	<ul style="list-style-type: none"> • The social cost-benefit analysis identified that the cost of adopting alternatives to single-use plastic products will likely be passed onto consumers. • Oxo-degradable plastics are typically more expensive than plastics that do not degrade, so significant cost increases are not expected. 	<ul style="list-style-type: none"> • There will be decreased burden on community organisations that contribute to environmental clean-ups as a result of decreased single-use plastic litter.
Community	<ul style="list-style-type: none"> • The social cost-benefit analysis identified that the cost of adopting alternatives to single-use plastic products will likely be passed onto consumers. • Oxo-degradable plastics are typically more expensive than plastics that do not degrade, so significant cost increases are not expected. In some cases, alternative are expected to be less expensive (e.g., dog dropping bags). 	<ul style="list-style-type: none"> • Improved environmental amenity as a result of reduced plastic pollution and litter. • The social cost-benefit analysis identified a net positive benefit for the environment as a result of phasing out single-use plastic products. • A regulatory ban demonstrates that ACT Government has considered and actioned feedback through the consultation period. • The ban may also reduce “greenwashing” and reduce consumer confusion associated with unclear labeling of products.

Expanded polystyrene gelato tubs

A description of expanded polystyrene gelato tubs is included in the section on ‘setting the scene’ above (Figure 10).

The Act banned expanded polystyrene food and drink containers. A 12-month exemption was previously granted for expanded polystyrene gelato tubs to allow businesses time to identify suitable alternatives, however under the reform these items are now proposed to be regulated.

Three options have been considered to regulate the sale, supply and distribution of expanded polystyrene gelato tubs in the ACT. These include:

1. **Regulatory ban** – involves an immediate ban on the sale, supply and distribution of expanded polystyrene gelato tubs (preferred).
2. **Mandatory phase out** – involves a staged ban, that can be achieved by progressively expanding coverage or tightening product requirements for expanded polystyrene gelato tubs.
3. **Mandatory materials standard** – involves mandating standards for material composition through a regulatory instrument for expanded polystyrene gelato tubs.

Analysis of alternatives

Options:	Benefits and constrains
1. Inclusion of expanded polystyrene gelato tubs as prohibited (preferred).	<p>Benefits – A regulatory ban provides broad coverage across the economy or supply chain and provides a high level of certainty and competitive neutrality. A regulatory ban is relatively simple to introduce and enforce in the ACT, particularly given its limited size and limited supply chain influence.</p> <p>Addressing this item by including it within the existing legislative ban on single-use plastic products would be a consistent approach using existing regulatory mechanisms. Non-degradable plastics, including reusable plastic items, are readily available as alternatives.</p> <p>Constraints – A regulatory ban will have higher regulatory burden when compared to non-regulatory measures. This option will need to consider industry and consumer push-back and complacency. Enforcement and monitoring to ensure compliance with the reform will be necessary and will have some cost to ACT Government.</p>
2. A mandatory phase out	<p>Benefits – A mandatory phase out provides a transitional period to develop policy and implementation approaches where product alternatives are not readily available, significant inventory is held or adaptation is otherwise onerous for plastic manufacturers, distributors, sellers and users. A 12-month exemption has previously been applied to gelato tubs from the commencement of the Act.</p> <p>Constraints – Partial bans can have unintended consequences (e.g., the thickness limit for bags driving consumers to other single-use items, including thicker plastic bags that may have negative outcomes).</p> <p>This option does not fit as well with the existing Act, which contains the ability to prohibit single-use plastic products.</p>

Options:	Benefits and constrains
3. Mandatory materials standard	<p>Benefits – This approach reduces retailer and consumer confusion and helps to ensure plastic alternatives are safe to humans and environment. There is the potential for this approach to be incorporated into a regulatory ban or mandatory phase out by including specific standards (e.g., compostable or biodegradable requirements) for exempted products. Given the identified alternatives and no local manufacturers identified in the ACT, this is not considered to be an important driver for this reform.</p> <p>Constraints – This option does not fit as well with the existing Act, which contains the ability to prohibit single-use plastic products.</p>

Cost benefit analysis of a regulatory ban (option 1) for expanded polystyrene gelato tubs

Sector	Costs	Benefits
Government	<ul style="list-style-type: none"> • Prepare regulation and amendments to national mutual recognition laws. • Develop and roll out initial education campaigns. • Undertake compliance and enforcement activities. 	<ul style="list-style-type: none"> • Demonstrates action and leadership by ACT Government. • Aligns community expectations with existing bans of polystyrene in the Act. • Expected to result in a reduction in litter for collection. • Reduced pressure on waste management and resource recovery systems as consumption and disposal of problematic single-use plastics will be reduced.
Industry	<ul style="list-style-type: none"> • It is unclear whether suitable alternative products with the correct thermal properties exist at a scalable level. Current existing alternatives such as paperboard are not considered suitable. • There is potential for reusable items to be become available in response to a ban, however, potential for uptake is unknown. 	<ul style="list-style-type: none"> • A regulatory ban provides a direct and uniform measure that minimises unintended impacts and competitive distortion. • Supports rapid scaling up of alternatives. This can encourage rapid implementation of new products or models, bringing immediate scale to potential solutions. This has the potential to benefit industry development, a key recommendation of the Waste Feasibility Study.^{lxxvii}
Business	<ul style="list-style-type: none"> • Short-term operational cost as businesses transition to the new arrangements (e.g., training of 	<ul style="list-style-type: none"> • Provides certainty in regard to changing community expectations.

Sector	Costs	Benefits
	<p>staff to explain new regulations to customers; research and procurement of alternative products).</p> <ul style="list-style-type: none"> • Reusable, non-degradable plastic alternatives are likely to be more expensive than expanded polystyrene gelato tubs, potentially adding to procurement costs. • Customers and businesses may encounter logistical challenges where a failure to bring a reusable item for insulation will reduce the likelihood of casual purchases. 	<ul style="list-style-type: none"> • Progressive businesses, with a clear and communicated strategy for reducing single-use products and who do not revert to readily available single-use plastic alternatives, may experience an increase in patronage from environmentally conscious consumers.
Community organisations	<ul style="list-style-type: none"> • The social cost-benefit analysis identified that the cost of adopting alternatives to single-use plastic products will likely be passed onto consumers. 	<ul style="list-style-type: none"> • There will be decreased burden on community organisations that contribute to environmental clean-ups as a result of decreased single-use plastic litter.
Community	<ul style="list-style-type: none"> • The social cost-benefit analysis identified that the cost of adopting alternatives to single-use plastic products will likely be passed onto consumers. 	<ul style="list-style-type: none"> • Improved environmental amenity as a result of reduced plastic pollution and litter. • The social cost-benefit analysis identified a net positive benefit for the environment as a result of phasing out single-use plastic products. • A regulatory ban demonstrates that ACT Government has considered and actioned feedback through the consultation period.

Qualitative impact assessment summary

The discussion above suggests that introducing a regulatory ban (with exemptions for people who need single-use plastic straws, certified compostable barrier bags and cotton buds with plastic sticks required for medical, scientific and/or forensic purposes) at the same time for each of the targeted items would be the most effective approach to regulate the sale, supply and distribution of single-use plastic fruit and vegetable barrier bags, single-use plastic straws, cotton buds with plastic sticks, oxo-degradable plastics and expanded polystyrene gelato tubs in the ACT. This is because it provides a direct and uniform measure that minimises unintended impacts and competitive distortion, while achieving the policy objectives of reducing the impact of these products in the ACT.

A regulatory ban will have a significant operational impact on businesses in the short-term and will require monitoring and enforcement from ACT Government, as well as education and engagement, to minimise non-compliance. Businesses along the supply chain, from wholesale distributors onwards, will need to source, supply, distribute and sell compliant products. Given the availability of alternatives for these products, coupled with reusable options and avoidance strategies, the cost-of-living impact to the community is expected to be limited.

There will need to be some exemptions for the use of single-use plastic straws in some settings (e.g., to improve accessibility for people with disability). The details of these requirements have been discussed with relevant stakeholders to ensure there is no impact to safety or human rights. There will also need to be exemptions for cotton buds with plastic sticks for medical, scientific and forensic purposes, to avoid any unintended social, economic or human rights costs, as identified above. Section 17 of the Act provides for these exemptions to be granted by disallowable instrument at the discretion of the Minister, either on application or by their own initiative.

Importantly, there are a wide range of readily available alternatives for each of these single-use plastic products, many of which are currently being implemented by businesses. These products can also be replaced by reusable items (e.g., metal, glass or silicone straws or mesh barrier bags). In addition, in many circumstances, these items are unnecessary and are easily avoided. The impact on the ACT economy of transitioning to these other options is evaluated in the quantitative assessment below.

Quantitative impact assessment

The ACT Government commissioned an independent cost-benefit analysis (CBA) of the second tranche of single-use plastic bans to support the preparation of this RIS.^{lxxviii}

The CBA quantifies the impacts, costs and benefits of the proposed prohibition of plastic non-compostable fruit and vegetable bags (barrier bags), single-use plastic straws, cotton buds with plastic sticks, oxo-degradable plastic bags and expanded polystyrene gelato tubs between 2023 and 2040. The development of the CBA considered exemptions for medical, scientific, forensic and care purposes where relevant (e.g., in relation to single-use plastic straws and cotton buds with plastic sticks).

Based on the CBA, without regulation, the consumption of these items is expected to rise over time in the ACT in line with population growth (Figure 12). The rise in use of single-use plastic items in line with population growth would be expected to have a proportional increase in single-use plastic litter that ends up in the environment and waste streams.

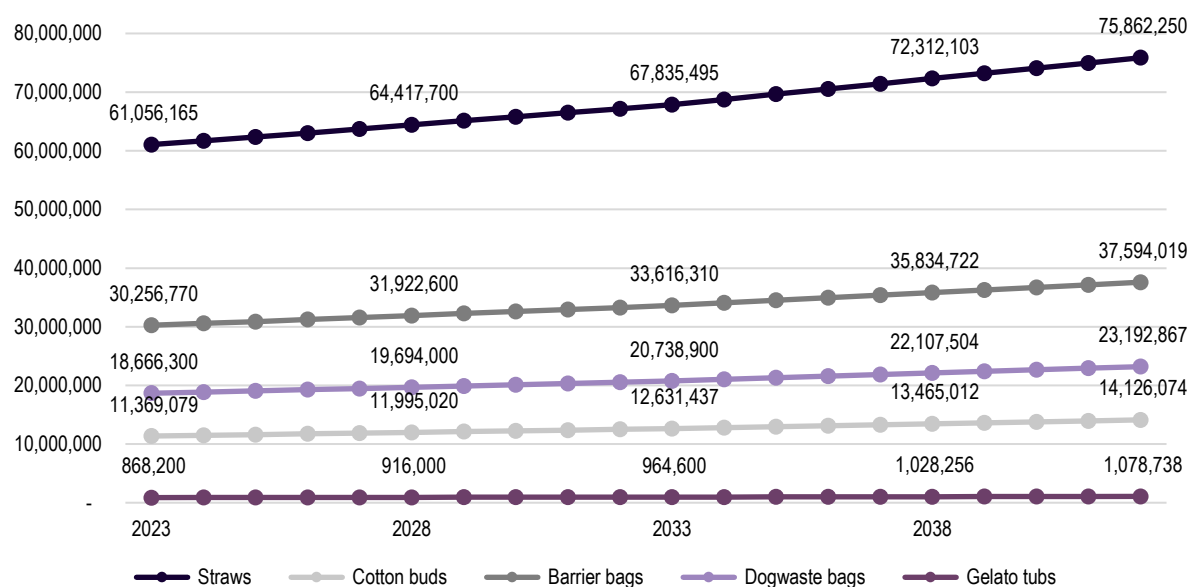


Figure 12 Estimated single-use plastic item consumption in the ACT, 2023-2040.^{lxxix}

Impacts modelled and net impacts

Four primary economic impacts of the uptake of single-use plastic alternatives between 2023 and 2040 were modelled in the CBA. These impacts were:

- change in waste to landfill,
- change in litter and social cost of plastic,
- per item cost of alternatives, and
- additional ACT Government administration costs.

The latter impact is a fixed cost, while the remainder were analysed as per-unit costings according to the single-use plastic item in question. The discount rate for costs and benefits of interventions associated with energy efficiency was set at 7% as per the Office of Best Practice Regulation (OBPR) guidelines, with sensitivity testing from 3% – 10%.

The total net cost of a ban on these five plastic items for the duration of the Regulation (at a 7% discount rate) was determined to be \$16,185,625 (central estimate), implying a cost overall to the ACT population. It should be noted, however, that it is not possible to capture and quantify all impacts or benefits that may occur over time, as some are complex and difficult to monetise such as changing community sentiments.

There is assumed to be a substantial up-front administrative cost associated with raising community awareness and creating and implementing the legislation (Figure 13) estimated to be in the order of \$400,000. This is accounted for as a once off expenditure.

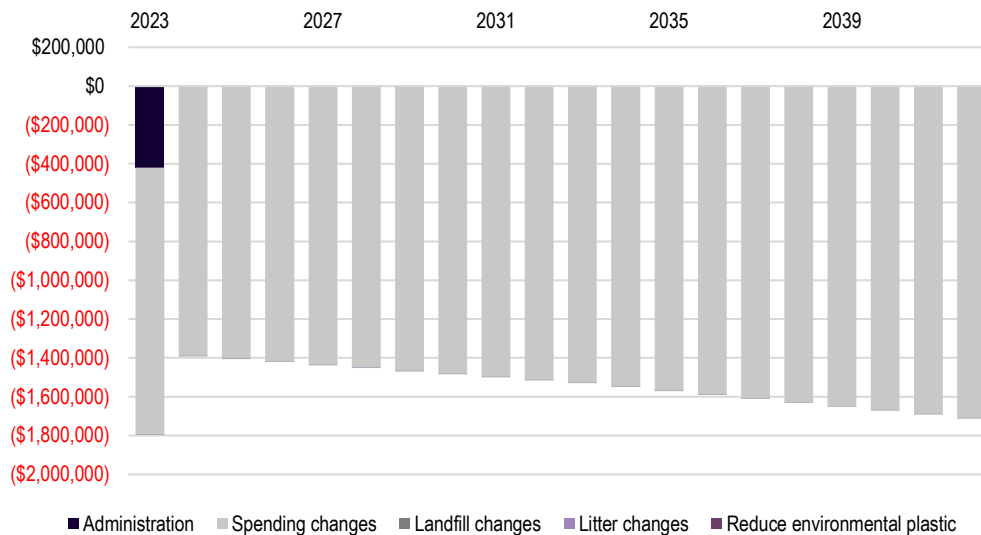


Figure 13 Time profile of impacts under the proposed prohibition of selected single-use plastic items.^{xxxx}

Impacts by type and over time

The cost of the proposed regulation to the ACT population varies from item to item. Alternatives to certain items, such as oxo-degradable plastic bags and gelato tubs, will likely cost less than the current single-use plastic items utilised (Figure 14). On this basis, the implementation of the Regulation will have a positive impact on costs to the community, which helps offset the overall cost of implementing the reform.

However, alternatives to barrier bags are identified as having the highest cost out of the items identified under the proposed Regulation. Estimates of cost impacts from barrier bags range from \$1.8 - \$2.25 million per year out to 2040 increasing over time. This represents a net present value of approximately \$20 million to 2040.

While the proposed reform will result in costs to the ACT population, it is expected that less plastic waste will enter the environment as a result of the reform. Costs associated with willingness to pay for clean-up activities vary, and the social costs of plastic litter varies depending on the waste management infrastructure and waste stream processes. For example, international surveys suggest that up to 26% of cotton bud users flush these products down the toilet, resulting in many of these items entering the environment. Regulating these items would dramatically reduce this occurrence in the ACT. However, while there will be a reduction in plastic entering the environment, there will be a slight increase in plastic diverted to landfill by weight which is associated with the increased density of compostable items.

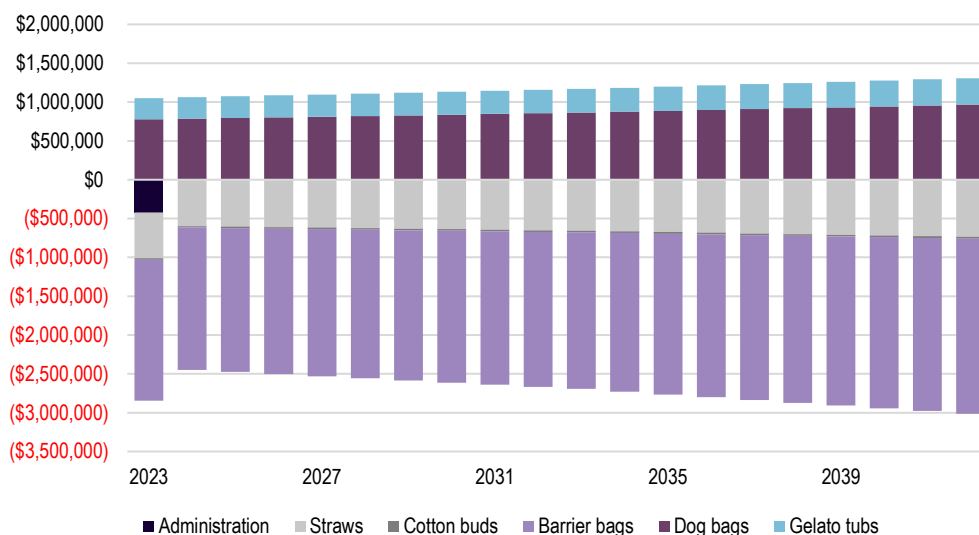


Figure 14 Total impact of single-use plastic prohibition by item type over the duration of the regulation.^{lxxxii}

Net present value for each single-use plastic item are as follows (contrasting with a ‘no-change’ present value of \$0 and a benefit-cost ratio of 0) is shown in Table 1.

Table 1: Net value for each single-use plastic item

	Straws	Cotton buds	Barrier bags	Dog bags	Gelato tubs
Net present value	-\$6,815,451	-\$217,881	-\$20,873,668	\$8,944,849	\$3,169,050
Benefit-cost ratio	0.0004	0.0002	0.0009	Not defined	Not defined

Source: ACIL Allen, 2022, *Single-use plastics regulation (Tranche 2) Cost-benefit analysis*

Note: All impacts are net positive for dog bags and gelato tubs. Accordingly, the benefit-cost ratio is not defined.

Sensitivity analysis

To address uncertainty around how net impacts are affected by various factors, sensitivity analysis was conducted on the CBA. While the CBA modelling assumed that the lowest-cost alternatives to each single-use item were chosen, sensitivity testing also explored variation to the price difference between the prohibited item and low-cost alternatives, as well as options for high-cost alternatives.

The net impacts of variation in price differences between the prohibited item and the lowest-cost alternative showed only moderate effects when price differences were 30% less or 30% more, as some alternatives represent cost savings while others represent cost increases.

In contrast, using the highest-cost alternative for each item (e.g., sugarcane straws replacing plastic straws, plastic food containers replacing expanded polystyrene gelato cups) resulted in a net cost of \$62,643,752 (an increase of \$46,458,127 from the low-cost alternative model). Although it is unlikely that high-cost alternatives will always be selected by consumers, this result demonstrates the importance of providing affordable alternatives to banned single-use plastic items.

The CBA accounted for 3% of straws and 3% of cotton buds to be used for exempted purposes (forensic, medical or scientific use). Sensitivity testing analysed an increase of exempted usage of each item from 3% to 10%, respectively. This had relatively small effects on the overall impact of the

Regulation, but is likely to have significant unmonetised benefits to the users in exempt circumstances.

Finally, sensitivity testing assessed the effect of bring-your-own (BYO)/reusable item scenarios on the CBA outcomes. BYO options were only assessed for three single-use plastic items (straws, cotton buds and barrier bags), given that there is a cost associated with replacing these items with alternatives. As alternatives for dog dropping bags and gelato tubs are cheaper than their single-use plastic counterparts, there is no net benefit associated with BYO for these items. For the assessed items, BYO alternatives were found to deliver highly positive outcomes, with net benefits for usage as outlined in Table 2.

Table 2: Sensitivity test – BYO replacement of single-use items

Single-use item	1 per cent BYO	25 per cent BYO
Straws	\$67,818	\$1,695,441
Cotton buds	\$2,179	\$54,480
Barrier bags	\$208,924	\$5,223,111

Source: ACIL Allen, 2022, *Single-use plastics regulation (Tranche 2) Cost-benefit analysis*

Encouraging BYO and reusable alternatives in the ACT community will have added financial benefit for single-use plastic regulation.

Offences for non-compliance with the proposed regulatory ban

This reform is an expansion of an existing ban on single-use plastic items and is underpinned by the Act. The Act establishes a range of offences, and the ACT Government has established a comprehensive enforcement and compliance framework for the offences detailed in the Act. In addition, an infringement framework has been developed to support the issuance of monetary penalties.

The Act establishes a number of offences related to the supply and distribution of prohibited plastic products as well as offences relating to false representation about prohibited plastic products. The supply of prohibited plastic items is a strict liability offence under the Act.

The Act also establishes powers for Authorised officers related to the seizure of prohibited items, the ability to require the provision of name and address and entry to premises. The Act provides for offences related to failure to comply with a direction to give name and address, as well as offences related to not disposing of prohibited items when requested. These are also strict liability offences.

However, the ACT Government's approach is to first educate and engage with local businesses, rather than taking compliance action.

Human rights analysis

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

This includes ensuring any amendments result in a law that is proportionate (as per s28 of the HR Act) – that is, that it limits rights in the least restrictive way possible to achieve the 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 provision under s8 of the HR Act.

The Plastic Reduction Bill 2020 engaged with a number of human rights which were examined as part of the RIS prepared for the first tranche of single-use plastic reform. The associated policy development was supported by engagement with the ACT Justice and Community Safety Directorate, Human Rights and Social Policy Unit, and the ACT Human Rights Commission via the Human Rights Team and Commissioner for Discrimination, Health Services, and Disability and Community Services.

This second tranche of proposed reform seeks to expand the regulation of prohibited items under the Act. The matters considered relevant from a human rights perspective have been considered through the development of this RIS and are discussed in the following sections.

Recognition and equality before the law

The proposed reform has been identified as engaging s8 of the HR Act, which provides a right to recognition and equality before the law, specifically s8(3) which provides protection against discrimination on any grounds. This is relevant for the proposed reform as there is potential that introducing a ban on plastic straws could result in discrimination against people with a disability seeking access to single-use plastics.

The proposed reforms will include a specific exemption for the use of single-use plastic straws where required for medical reasons or for access for people with a disability.

Right to life

The proposed reform has been identified as engaging s9 of the HR Act, which provides for the right to life. This right requires government to take appropriate measures to safeguard life to protect its citizens and consider their right to life when making decisions that may affect an individuals' life expectancy.

Advice received through the public consultation process on the Plastic Reduction Bill 2020, included submissions from two disability advocacy groups which highlighted that current alternatives to single-use plastic straws are considered to be unusable, high risk and dangerous for people living with disabilities, particularly those with high support needs. During the consultation period for the current reform, disability advocacy representatives recommend that if a model was to be adopted, the South Australian model should be adopted with further considerations including that plastic straws must be available upon request with no requirement that the customer provides evidence of their disability. They also recommended that legislative reforms should be accompanied by an educational campaign to remind businesses of their pre-existing duties not to discriminate against people with disabilities.

Risks associated with single-use alternatives include significant injury risks, choking hazards, a potential increase in fatal allergic reactions, issues with being able to position alternatives, and issues with sterilization and harmful bacteria, which can cause serious illness, particularly for individuals that are already immunocompromised. For these reasons, banning and/or limiting access to single-use plastic straws has the potential to impact on people who require access to single-use plastic straws (e.g., people with disabilities).

Under Part 5 of the Act, the Minister has the ability to introduce exemptions upon application or of their own initiative. The exemption can apply to a person or a plastic product. The ability for the

Minister to grant exemptions ensures that people who require single-use plastic products (e.g., straws) will still have access to the products they need.

The proposed reform will include exemptions for people who require access to single-use plastic straws to safeguard against impacts to human rights. As such, the proposed reform will not regulate the use of these products by the people who need them.

For these reasons the proposed changes are not expected to impact this right and are considered to be reasonable and proportionate.

Right to privacy

The proposed reform has been identified as engaging s12(a) of the HR Act, which provides a right to not have one's privacy interfered with, particularly regarding any potential requirement to disclose private information (e.g., medical information). This is relevant to the proposed reform in relation to access to single-use plastic straws by individuals for medical reasons, or to support access by people with a disability.

There will be no requirement under the proposed reform for individuals to demonstrate they have a medical requirement or disability to gain access to single-use plastics.

For these reasons, the proposed changes are not expected to impact this right and are considered to be reasonable and proportionate.

Right to not have reputation unlawfully attacked

The proposed reform has been identified as engaging s12(b) of the HR Act which provides a right to not have one's reputation unlawfully attacked. This right may be engaged through the ability for an Authorised person to request the personal information, including the name, birthdate and home address, of an individual if they are suspected of selling or distributing regulated single-use plastic products in the ACT.

Given the importance of being able to accurately identify individuals in order to support investigations, requiring individuals to provide this information is considered to ultimately support this right (i.e., there will be a reduced likelihood that individuals will be incorrectly identified as being subject to an investigation). In addition, the power for Authorised people to obtain information also 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.

Given the serious nature of the illegal sale and/or distribution of these regulated products, these provisions are considered to be reasonable and proportionate.

Right to be presumed innocent until proven guilty

Strict liability offences 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 strict liability approach to offences and associated penalties is outlined in the Act.

The Regulation will expand the items subject to the strict liability offences under the Act which regulate the sale, supply and/or distribution of prohibited single-use products in the ACT. These

provisions will affect industry, business, community organisations and individuals who sell, supply and/or distribute these regulated products in the ACT.

While the proposed reform expands the scope of the offences, the implementation of compliance and enforcement activities will continue to be subject to the existing compliance and enforcement frameworks, and will not further expand the degree to which the right is affected.

Rights in criminal proceedings

The reform has been identified as engaging s22(2)(i) of the HR Act which provides rights in criminal proceedings, particularly the right not to be compelled to testify against oneself or confess guilt. The purpose of these provisions is to assist authorised officers in their function as truth-seekers and their ability to undertake full and proper investigations.

The restriction on the right against self-incrimination 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 Act providing that an authorised officer must satisfy the reasonable belief test in exercising powers, and that a person must be warned that failure to comply is an offence.

The proposed reform does not expand or alter the manner in which the Act engages with rights in criminal proceedings.

Consistency with legislative scrutiny principles

The proposed regulation is consistent with the legislative scrutiny principles considered by the Standing Committee on Justice and Community Safety on the basis that the proposed regulation:

- is in general accordance with the objects of the Act;
- does not unduly trespass on rights previously established by law, including consideration of rights prescribed by the HR Act; and
- does not make rights, liberties and/or obligations unduly dependent on non-reviewable decisions.

The proposed Regulation engages with a number of human rights as discussed in the human rights analysis component of this RIS. To reduce the extent to which the proposed Regulation will impinge these rights, exemptions for medical, scientific or health requirements have been provided for. While the reform will introduce additional strict liability offences, the offences are intended to deter people from failing to comply with the Act and are considered necessary to achieve the objectives of the reform.

Summary

Human rights have been considered in developing this RIS and any limits to rights have been developed in the least restrictive way possible, while achieving the objectives of this RIS and the legislation.

When considered as a complete package, which includes the ability for the Minister to grant exemptions for people who require access to single-use plastic products, the impacts on people's rights, as a result of the reform, is considered reasonable and proportionate to the objectives of the legislation and the risks and outcomes for the community.

Preferred option

The recommended option is option 2, which supports the development of a Plastic Reduction Regulation to be considered by Cabinet and made by the Minister for Transport and City Services. Once made, the Regulation will be tabled in the Legislative Assembly.

Implementation and evaluation

The ACT Government has developed a detailed business case to efficiently and effectively implement the reform. The implementation and evaluation activities are outlined in further detail below. Many of these activities will occur concurrently to ensure the reform is successful and based on the best available information and data.

Implementation

Facilitate national legislation amendments for mutual recognition

The ACT Government will continue to work closely with other Australian jurisdictions to progress a permanent exemption to national legislation for mutual recognition; this is an established process for when states and territory actions place potential restrictions on cross-border trade.

This process was successfully completed for the ACT Container Deposit Scheme and plastic bag ban. Initial consultation with other Australian jurisdictions who are considering similar legislative approaches to reduce plastic consumption have been positive and the ACT Government has confidence in its ability to work through the process for the required amendments.

Plastic free events

The ACT Government is committed to leading by example and has already declared a number of events as plastic free. Through the delivery of plastic free events, the ACT Government will inspire and empower local businesses to become early adopters of avoidance and, where avoidance is not possible, plastic alternatives that support broader policy goals for recycling and waste reduction.

Education campaigns

The regulation will be supported by a comprehensive public education campaign targeted at educating consumers, and local business, about the reform. Education campaigns will be implemented ahead of the regulation taking effect. This will ensure affected stakeholders, including affected businesses, are able to make informed decisions and implement required changes. Given the importance of consumption avoidance, education campaigns will target changes in consumer behaviour.

Baseline data and monitoring

Data on the consumption and littering of the targeted single-use plastic products is limited. This is not unique to the ACT and this occurs because these streams are a relatively small fraction of overall waste generation and have typically been disposed in either public place bins, commercial premises or as litter in the environment. In each case, there is limited available data on composition and volume which was clearly identified by the social cost-benefit analysis undertaken for the Plastics Reduction Bill 2020.

The ACT Government will continue to explore opportunities to improve understanding of the impact of these items as litter and in the waste and recycling streams.

Compliance and enforcement

Compliance and enforcement will be undertaken in line with the provisions of the *Plastic Reduction Act 2021*. An infringement notice framework has been established by the *Magistrates Court (Plastic Reduction Infringement Notices) Regulation 2021*.

Evaluation

Assurance framework

To ensure the delivery of the regulation is smooth it will be underpinned by a strong assurance framework that will ensure that the objectives of the regulation are delivered in an efficient and effective way, in line with best practice standards and community expectations. There are two elements of the framework:

- *Performance assurance*: will focus on the efficient delivery of the Regulation.
- *Outcomes assurance*: will focus on the effectiveness of the Regulation (i.e. its ability to reduce the consumption of problematic and unnecessary single-use plastics).

Performance assurance

Performance assurance focuses on the efficient delivery of the Regulation. There are a number of approaches to measure procedural assurance, including:

- Periodic evaluation of processes and systems,
- Provision of transitional and five-yearly reviews,
- Reporting mechanisms to provide confidence and transparency to the community, and
- Ongoing monitoring and continuous improvement mechanisms.

Outcomes assurance

Outcomes assurance will focus on the effectiveness of the Regulation. Outcomes assurance may consider whether the objectives of the Regulation are being achieved and whether the anticipated environmental, social and economic outcomes of the Regulation, including changes to consumer behaviour and a reduction in plastic pollution and litter, are being achieved.

Outcomes assurance will be informed by best practice standards and underpinned by clear and measurable targets. Achieving this will require the ACT to maintain access to good data and information.

Transitional arrangements

The proposed reform is an extended application of the existing Act through the establishment of a Regulation to regulate additional single-use plastic products. The proposed reform does not have retrospective effect.

The regulated community, including industry and businesses, are aware of the items proposed for regulation and the ACT Government will continue to provide support to comply with the proposed ban through education campaigns.

For these reasons no transitional arrangements are necessary.

Evaluation and conclusion

It is recommended that the proposed changes to prohibit the sale and distribution of single-use plastic fruit and vegetable barrier bags, single-use plastic straws, cotton buds with plastic sticks, oxo-degradable plastic items and expanded polystyrene gelato tubs in the ACT be introduced through the proposed Regulation. This approach will ensure the ACT has a best-practice, contemporary and effective regulatory system that supports a reduction in the consumption of problematic single-use plastics in the ACT.

The recommended approach ensures the ACT Government proactively addresses the impacts associated with problematic single-use plastics in the ACT, while ensuring there are appropriate safeguards to adequately consider and appropriately manage the impacts to vulnerable members of the community. The proposed approach is similar to approaches being adopted in other Australian jurisdictions and, as such, responds to requests from peak bodies for a harmonised and, where possible, consistent approach to phasing out single-use plastics across Australia.

The recommended option is to support the proposed Regulation (option 2).

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