



Government Response
to
Unfantastic Plastic –
the 2018 Review of the *Plastic*
Shopping Bags Ban Act 2010

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Introduction

The issue of single-use plastic has grown in awareness in the community since the introduction of the ban on lightweight bags in 2011 in the ACT. On 27 August 2018 the Minister for City Services became responsible for the administration of the *Plastic Shopping Bags Ban Act 2010* (the Act), in addition to his responsibilities for the *Litter Act 2004* and the *Waste Management and Resource Recovery Act 2016*, among other waste-related legislation.

In the context of a fast-evolving national government and industry agenda on the reduction of single-use plastic, opportunities exist to create synergies and efficiencies with existing efforts to phase out problematic and unnecessary plastics, including working across jurisdictions and advocating for a nationally consistent approach.

A recent review of the Act provides an opportunity to consider how single use plastic, including plastic bags, are managed in the ACT and how it can be improved.

About the Plastic Bags Ban

The *Plastic Shopping Bags Ban Act 2010* (the Act) came into force in the ACT on 1 November 2011 and bans the supply by retailers of single-use polyethylene plastic shopping bags that are less than 35 microns in thickness.

The ACT was the third jurisdiction in Australia to implement a ban. Other jurisdictions have followed suit and New South Wales currently remains the only jurisdiction without a ban in place or planned.

Reviews of the Act – 2012 and 2014

Two previous reviews of the Act were undertaken in November 2012 and April 2014, and sought to evaluate the ban's effectiveness in changing consumer behaviours and attitudes, reducing plastic bag generation and reducing the presence of plastic bags in the litter stream.

These reviews have struggled to comprehensively evaluate the impact of the ban, due to a lack of reliable data to perform a robust evaluation, a lack of clarity on what 'success' looks like, and a lack of defined objectives in the legislation itself.

Review of the Act - 2018

A 2018 review, *Unfantastic Plastic – Review of the ACT Shopping Bag Ban* (the Review) was commissioned by Minister for Climate Change and Sustainability. This review was undertaken by the Commissioner for Sustainability and the Environment, Professor Kate Auty. The Review drew on technical analysis undertaken by the Australian National University earlier in 2018¹ and investigated the efficacy of the ban, made recommendations

¹ A Macintosh, A Simpson and T Neeman (ANU), 2018: *Regulating Plastic Shopping Bags in the Australian Capital Territory: Plastic Shopping Bags Ban Act 2010 Options Analysis*, Canberra.

on whether improvements could be made to improve overall environmental outcomes, and sought to analyse options where possible through triple bottom line and cost-benefit analysis.

Similar to previous reviews, the 2018 Review has struggled with a lack of data, lack of clarity around the rationale for the ban and a lack of defined objectives within the Act.

The 2018 Review was tabled in the Legislative Assembly on 20 September 2018.

Review recommendations

The 2018 Review established four key recommendations for government consideration:

- a. Recommendation 1: Introduce a mandatory plastic bag disclosure regime
- b. Recommendation 2: Introduce minimum plastic bag pricing
- c. Recommendation 3: Improve government's governance on plastic bag regulation
- d. Recommendation 4: Research synergies for compostable plastic and the proposed household organic collection scheme.

Assessment of recommendations

Recommendation 1 – Introduce a mandatory plastic bag disclosure regime

The Review calls for better data on plastic bag consumption, to be obtained from retailers via a mandatory plastic bag disclosure scheme.

While there is a strong case for better information to support future decision-making on single-use plastics, the ACT Government recognises that requiring this information to be tracked and disclosed represents a potential regulatory burden on the estimated 1,195 retail businesses in the ACT likely to use plastic bags, of which 94% (1,120) fit the ABS threshold of a 'small business' (i.e. under 20 employees). An alternative approach could be to only seek data from larger businesses (e.g. the remaining 6%; 75 medium or large ACT-based retail businesses). However, this approach would dilute the quality of the data collected.

Modelling was undertaken to better understand the regulatory burden a mandatory plastic bag disclosure regime would have on businesses. It was found that this change would be likely to disproportionately impact smaller retailers, for whom reporting costs may be material.

As it is currently written the *Plastic Shopping Bags Ban Act 2010* does not enable the Government to compel retailers to provide this information, nor enforce retailer compliance with this measure. While the ACT Government supports better information gathering to allow for better decision-making on single use plastic bags, we recognise that this regulatory measure is unlikely to bring any net benefits in terms of reducing plastic bag consumption but will impose a burden on many small businesses who should be consulted first. It is also

not clear yet whether a disclosure regime, and associated regulatory burden, is warranted given the Government's response to Recommendation 2.

Government response to Recommendation 1: Not Agreed. Noting that the ACT Government has commenced a separate process to consider future approaches to a range of single-use plastics including bags.

Recommendation 2 – Introduce minimum plastic bag pricing

Recommendation 2 seeks to ensure a minimum price is charged for plastic bags, based on bag mass and designed to prompt behavioural change through a 'nudge' rather than by a material change in the economic incentives faced by consumers. Practically, this could take the form of a minimum price (charged by and retained by retailers) or a levy (charged by retailers and returned to the Government).

Evidence suggests that the recommended model does not have community support. A 'willingness to pay' survey undertaken for the 2018 Review found that there is a low willingness to pay for further reducing plastic bag use, with imposing a levy and increasing the minimum thickness requirements being the least popular (13% and 11% respectively).

There is also a lack of evidence to justify a minimum pricing model. The Commissioner's report notes that there is insufficient information available on the price elasticities of different bag types. This has made assessment of this recommendation particularly challenging. However, technical analysis of Recommendation 2 indicates that there is a lack of clear understanding of whether a proportionately small minimum price or levy, as outlined above, would have the desired effect on changing consumer behaviour and reducing the impacts of plastic bags on the environment. For example, if the price is too low, consumers will not be incentivised to reduce plastic bag waste. If it is too high, an unnecessary burden may be placed on vulnerable individuals and households.

The indicative levy rate in the 2018 Review of 2 cents per gram could increase average annual household expenditure on bags by \$63 in 2018-19, or \$1.20 per week. However, this assessment is based upon an illustrative price and highly uncertain assumptions about consumer behaviour around plastic bag use (elasticities of demand), so a higher price may be required to adjust plastic bag practices. A minimum price/levy on plastic bags would also be regressive as it would have a relatively greater impact on low income households.

A retailer-retained minimum price *may* lead to a reduction in plastic bags, however no information or revenue would be provided to Government to support plastic bag reduction focused activities. By comparison, a levy would have the benefit of providing funds for environmental/waste management activities back to Government. However, the use of a levy as a policy reform comes with uncertainty regarding impacts, legal implementation, system requirements and administration costs. The Act as currently drafted does not allow a

levy to be collected. If the ban on lightweight plastic bags was withdrawn in favour of a cost per gram model, this could see lightweight and single use plastic bags return to the market and be perversely favoured over reusable bags because heavier plastic bags would be more expensive. The option of a plastic bag ban on heavier reusable bags might be considered when environmentally friendly alternatives are available as per Recommendation 4.

Government response to Recommendation 2: Not Agreed. Noting that the ACT Government has commenced a separate process to consider future approaches to a range of single-use plastics including bags.

Recommendation 3 - Improve governance on plastic bag regulation

When the review was undertaken, responsibility for various elements of the plastic bags ban was spread over multiple areas of the ACT Government. As per Administrative Arrangements 2018 (No 1)(NI2018-482), the Act moved to the Minister for City Services on 27 August 2018. The benefit of the new arrangement is that with the responsibility for plastic bags, the *Litter Act 2004* and the *Waste Management and Resource Recovery Act 2016*, sitting under the same Minister, there is opportunity to better consider both environmental and waste management objectives as part of the plastic bags ban.

One area that the review did not explore is retailer compliance and enforcement of the ban. At the same time, the Government has heard anecdotal evidence suggesting some retailers are distributing lightweight single-use plastic shopping bags in contravention of the ban. Better enforcement of existing regulation is identified as a key consideration when evaluating best-practice regulation². The Government notes there may be scope to improve policy outcomes by examining enforcement for the rules already in place, as well as reviewing education and awareness activities aligned with the Act to ensure they remain fit-for-purpose. In the context of the Government's consultation on phasing out a broader range of single use plastics, there may be a further opportunity to review the relatively narrow scope of the current plastic bags ban Act.

Government response to Recommendation 3: Accepted.

Recommendation 4 - Research synergies for compostable plastic and FOGO

As it is currently written, the ACT's bags ban makes an exception for bags that are commercially compostable as defined by Australian Standard AS 4736-2006 (*Biodegradable plastics – Biodegradable plastics suitable for composting and other microbial treatment*). These bags degrade under very specific composting/microbial conditions, however this does not include home composting.

² Australian Government, 2014: The Australian Government Guide to Regulation, Department of the Prime Minister and Cabinet, Canberra.

Compostable plastic is a very useful product, however it should not be viewed as a catch-all solution. For example, encouraging compostable bags does not challenge the single-use throwaway culture. In addition, it may not address (and could actually encourage) litter if consumers assume that compostable bags can be disposed of in the natural environment.

Additionally, the inputs required to create compostable bags can be greater than single-use plastic bags from a lifecycle perspective. Compostable bags are currently difficult to distinguish from their plastic analogues and may require sorting at any commercial composting facility.

Finally, where compostable bags are disposed of in landfill, they will degrade under anaerobic conditions, producing methane – a potent greenhouse gas.

There may only be limited situations (e.g. lining food caddies if food scraps are collected into the future and taken to a commercial facility for composting or anaerobic digestion) where compostable bags are an appropriate solution. The Government will explore this recommendation further in the context of future planning for the proposed food and garden organics (FOGO) household collection service.

Government response to Recommendation 4: Accepted.