

# Single-use and Other Plastic Products (Waste Avoidance) Bill 2019

**Submission**

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## Summary of recommendations

The LGA welcomes the introduction of a legislative framework to ban single-use plastic products and makes the following recommendations on the draft Single-use and Other Plastic Products (Waste Avoidance) Bill 2019 and the accompanying Bill Explanatory Information:

1. That the draft bill be strengthened to ensure that the benefits of the proposed ban flow through to councils (as waste managers) and communities, in particular, the LGA asks that:
  - a. an 'objects' clause be included in the draft bill and the objects be expanded from those described in the Bill Explanatory Information (ie protection of ecosystems via litter reduction) to include reducing waste to landfill generally;
  - b. that the face of the Bill clearly states the scope of the ban (ie that the ban will apply to all single-use plastic (ie. fossil fuel derived) products of the types listed regardless of whether they are compostable or recyclable) to reduce the risk of "greenwashing" causing confusion and impacting enforcement activity;
2. That the State Government adopt and communicate a strong policy position around the acceptable alternatives to single-use plastic products and the action needed to support effective disposal of these products, in particular, the LGA asks that the State Government:
  - a. adopt the policy position that where single-use plastic products are used to consume food (which all of the currently proposed banned products are), the only acceptable alternatives to these products are reusable or (non-plastic) compostable products;
  - b. undertake a communications campaign to provide guidance to businesses and the community on what the acceptable alternatives to single-use plastics are and on how to effectively dispose of these products;
  - c. through the communications campaign (and where retailers favour single-use products), promote single-use plastic products being substituted with compostable alternatives;
  - d. through the communications campaign, promote effective disposal of food waste and compostable packaging together via green organics bins (and acknowledge that the proposed ban represents a "game-changing" opportunity to get food waste out of landfill and dramatically reduce waste to landfill and waste costs);
  - e. consider how green organics services can be increased in public places and what support can be provided to councils in this regard (in relation to both the bins and collection systems themselves and the educational aspects of diversion in public places) and that this be addressed in State Waste Strategy/Food Waste Strategy documents;
  - f. before any action is taken as a result of the review, consider the impact on South Australia's kerbside collected waste management system as a whole (especially in relation to cost); and

3. That the State Government clarify any proposed role for councils in administering the legislation, in particular, the LGA asks that:
  1. before the legislation is further progressed, the Environment Protection Authority make a clear statement around any expectations it has for a role for councils in enforcing the legislation; and
  2. it be acknowledged that the most appropriate method of ensuring secure and equitable access to plastic straws by people with a disability is through the health care sector (ie chemists, hospitals, GP clinics etc).

## Introduction

### About the LGA

The LGA is the voice of local government in South Australia, representing all 68 individual councils across the state. Our mission is to provide leadership to councils for the benefit of the South Australian community.

The LGA is recognised in the South Australian Local Government Act 1999 for the purpose of promoting and advancing the interests of local government and is recognised in 29 other South Australian Acts of Parliament.

The LGA provides leadership, support, representation and advocacy relevant to the needs of our member councils.

As a constituent member, the LGA also advocates on federal issues through the Australian Local Government Association.

This submission has been informed through consultation with our member councils.

### Local government's waste management role

Local government plays an important role in waste management in South Australia through providing municipal waste and resource recovery services, seeking to increase recycling and resource recovery rates and taking action to reduce waste disposed to landfill. Councils also play a part in supporting the State Government in educating the community on responsible waste management.

Local government, and by extension resident and business ratepayers, also make a significant investment in the management of waste and recycling. Councils have a key interest in waste reduction. The increased cost of providing waste management and recycling services has emerged as a significant challenge for the local government sector over the last 12-18 months, due to the China Sword Policy and increases to the State Government's solid waste levy.

In May 2018, an independent report commissioned by the LGA estimated that councils were facing increased costs of \$8.8 million per annum as a result of the implementation of the China National Sword Policy. It is likely that this amount would be even higher today as the flow on impacts of the policy are further compounded.

Separately, in July 2019, the State Government announced an unprecedented 40% increase in the solid waste levy which will cost councils an extra \$8.5 million in 2019/20. In total the solid waste levy will take \$42.5 million out of council budgets this year and put this into State Government funds. Councils are also facing additional costs by responding to increasing community expectations around ensuring the sustainability of waste management practices.

These increased cost pressures mean it is imperative that the cost to councils is taken into account in any further policy changes in the waste space.

## Local government's role in the policy development process

The LGA has welcomed the State Government reviews of Single-Use Plastics and the Container Deposit Scheme. The local government sector is proud of South Australia's record as both a leader in waste management and the State with the highest recycling rate in Australia. The LGA understands that these two reviews are central to the State Government's action on waste and recycling in South Australia. However, it must be remembered that this action is not occurring in a policy vacuum.

The Federal Government has been playing a more active role in waste policy in the last 18 months and in December 2018, Australia's Environment Ministers agreed to a new *2018 National Waste Policy: Less waste, more resources*. In November 2019, Australia's Environment Ministers released the National Waste Policy Action Plan. This document establishes targets and actions to implement the National Waste Policy, including banning the export of many waste materials.

The local government sector is responsible for many aspects of waste management and, for this reason, any changes to the policy settings and regulatory frameworks for waste will have substantial and lasting impacts for the sector. The waste management sector is currently undergoing a period of industry transition and, whilst the policy landscape that governs waste management is experiencing rapid change, the LGA is seeking to ensure that implications for the local government sector are understood in these discussions.

In order to ensure a strong voice in the two current State Government reviews, the LGA has:

- held an information session for council officers and elected members in February 2019;
- made a submission in response to the initial consultation paper "Single-use Plastics and the Container Deposit Scheme" in February 2019;
- participated in the Environment Protection Authority's Container Deposit Scheme Review Stakeholder Reference Group and Board Industry Summit; and
- participated in the Green Industries SA Single-use Plastics Stakeholder Taskforce (the LGA appreciates the opportunity to be involved in this important consultation mechanism).

Throughout this period of responding to the waste industry transition and changes to the policy landscape the LGA has sought to draw attention to the interactions between various aspects of waste management and the fact that, from an operational point of view, changes in one area will necessarily impact other areas. For example, the proposed waste export bans have the potential to dramatically change the economics of Material Recovery Facilities and the viability of the kerbside collected waste management system in general.

Before any actions are taken as a result of either State Government reviews, it is necessary to consider their impact on South Australia's waste management system, particularly the kerbside collected waste management system, as a whole.

## General approach to waste policy

As stated above, in December 2018, Environment Ministers agreed to the new National Waste Policy. The communique from the meeting states that “the Policy is based on ‘circular economy’ principles, recognising the economic and job opportunities in re-circulating valuable resources within the Australian economy”. The LGA agrees that Australia must move towards the establishment of a circular economy. The environmental imperatives for establishing a circular economy are well accepted and the National Waste Policy notes the global movement towards applying these principles.

The LGA’s submission to the review of the 2009 National Waste Policy stated that “the National Waste Policy should seek to apply circular economy principles to all stages of production and consumption.”

The LGA submission made the case that:

- the biggest opportunity to tackle Australia’s waste problem is at the front end of the process (at the point of decisions being made about design, manufacture, packaging, marketing and consumption) rather than at the back end (at the point of waste disposal); and
- the National Waste Policy should incentivise engaging with the circular economy from both angles – by both encouraging the production and consumption of circular-use products and by discouraging the production and consumption of linear-use products.

The State Government’s proposed action on single-use plastics will address both of these points. If restrictions are placed on the availability of single-use plastics, this will both encourage the production of circular-use products and discourage the further production and consumption of linear-use products.

# Strengthening of the Draft Bill

## Purpose of the legislation

The draft bill notes that it is a bill for “*an Act to restrict and prohibit the manufacture, production, distribution, sale and supply of certain single-use and other plastic products*”. The Bill could be strengthened by including a detailed ‘objects’ clause that provides guidance on the reason for the ban.

The Bill Explanatory Information suggests the following policy basis for the proposed ban:

“The overarching purpose of the legislation is to restrict the sale and supply of certain plastic products that are designed to be used once and discarded. Where use of the product is required, the legislation will influence substitution with alternative products that minimise the potential to **compromise the health of ecosystems, specifically marine ecosystems**, and that are either reusable, recyclable or compostable.” (emphasis added)

While the LGA welcomes the introduction of legislation to ban single-use plastic products (and supports the goal of protecting ecosystems), the LGA believes that the focus on the harm to ecosystems, and the consequent focus on products that are littered, is too narrow. This narrow focus brings with it a risk of substituting one landfill item with another. This legislation provides the State Government with the opportunity to reduce waste to landfill more generally.

As noted above, the proposed ban on single-use plastics has the potential to be a “game-changer” for sustainable waste management practices in South Australia. The proposed ban (if implemented in conjunction with a strong policy position on acceptable alternatives and effective disposal) has the potential to get food waste out of landfill and into green organics bins and (in this way) to dramatically reduce waste to landfill and waste costs. This would produce very significant economic and environmental benefits for South Australia and this opportunity must not be missed.

With the exception of the above note, currently the draft bill does not include an identified “objects” clause. The LGA recommends that an objects clause be included in the draft bill and that the objects be expanded from those described above (ie protection of ecosystems via litter reduction) to include reducing waste to landfill generally. Indeed, the naming of the bill (Waste Avoidance) suggests that its purpose is directed more towards avoiding the creation of waste than reducing instances of littering.

This is an important change because the objects clause is an opportunity to provide guidance to all administration, compliance and enforcement activity undertaken as to Parliament’s intention in passing the bill. The objects clause (and the content of the legislation generally) will also influence any communications activity surrounding the draft bill. As is expanded upon further below, the LGA’s view is that if the objects include reducing waste to landfill, this will influence the State Government approach to determining the acceptable alternatives to single-use plastics and the action taken to support effective disposal of these products.

## Scope of the ban

One of the most significant challenges in controlling the sale, distribution and use of single-use plastic products and any acceptable alternatives will be in being able to determine which materials a particular product is actually made from.

The ban, as currently proposed, will apply to all single-use plastic (ie. fossil fuel derived) products of the types listed regardless of whether they are (or are claimed to be) compostable or recyclable. However, at present, this is not made clear on the face of the draft bill itself (words to that effect do not appear in the draft bill). There is a significant risk that many banned products will remain in the marketplace because of the high level of confusion and “greenwashing” in marketing claims and because the products are claimed to be reusable, compostable or recyclable.

The LGA recognises that clause 6 of the bill creates an offence of selling, supplying or distributing a prohibited plastic product, and sub-clause (3) states that it is a defence to this offence if the person proves that they believed on reasonable grounds that the product was not a prohibited plastic product. The LGA submits there may be a benefit in clarifying in this clause that it is not a defence to a charge of this offence if the person believed that the product was compostable or recyclable (or possibly even biodegradable).

It is important to be clear about the scope of the ban. The LGA submits that the fact that the ban will apply to all single-use plastic products of the types listed regardless of whether they are (or are claimed to be) compostable or recyclable should be made clear in the draft bill itself. If this is not made clear as part of the offence provisions, then it should be made clear in an objects clause.

## The need for a strong policy position

To ensure the benefits of the proposed ban on single-use plastics flow through to councils (as waste managers) and communities, it is necessary for the State Government to adopt and communicate a strong policy position around the acceptable alternatives to single-use plastics and the action needed to support effective disposal of these products.

Where single-use plastic products are designed to be used to consume food (which all of the currently proposed banned products are), the only acceptable alternatives to single-use plastic products are reusable (ie “keep-cups”) or (non-plastic) compostable products. Where retailers continue to favour single-use products, the State Government should promote single-use plastics being substituted with compostable alternatives. This will allow one clear message to be provided to consumers that single-use products are to be disposed of through green organics bins.

### Acceptable alternatives

In South Australia, households send over 150,000 tonnes of food waste to landfill each year. If this food waste could be diverted into kerbside green organics bins, this would:

- Allow this valuable resource to be recycled into high-demand nutrient rich compost for use by South Australian farmers and other primary producers (a local circular economy);
- Save councils and communities up to \$20 million a year in waste costs (from 2020 councils and communities will be paying \$140 per tonne to send waste to landfill and almost half of all household waste sent to landfill in SA is food waste); and
- Avoid harmful greenhouse gas emissions being released into the environment from organic material being landfilled (an emissions reduction measure).

While councils have been seeking to educate consumers to dispose of food waste into their green organics bins for many years, there are a number of reasons why education campaigns may be more effective in 2020 than they have been in the past. These include:

- heightened community awareness as a result of the current waste and recycling “crisis”;
- from 1 January 2020 every metropolitan council now offers a fortnightly green organics services (which allows residents to dispose of food waste through their green organics bin) allowing for one consistent educational message across all of the Adelaide metropolitan area; and
- State Government action to ban single-use plastic items is attracting significant media and community interest and presents a “game-changing” opportunity to educate the community; and
- If takeaway products are no longer packaged in plastic and from now on are packaged in compostable packaging, consumers can dispose of all of their waste (food and packaging) in the one bin, the green organics bin. It will be easier than ever before to do the right thing.

This presents a significant opportunity for the State Government to take a leadership role and achieve effective diversion of food waste by the community from the landfill bin into the green bin.

This will only occur if the State Government adopts the policy position that where single-use plastics are used to consume food, the only acceptable alternatives are reusable or compostable products. This will allow a clear and impactful communications campaign to be run to provide guidance to businesses and the community on what the acceptable alternatives to single-use plastic products are and (more importantly) on how to effectively dispose of these products.

If the ban on single-use plastics proceeds but allows for the ongoing use of recyclable alternatives then the message to consumers about which bin to use will be muddled and this critical opportunity to divert food waste from landfill (and reduce waste costs) will be lost.

As stated above, any action taken on single-use plastics must consider the impacts on SA's waste management system as a whole. At a time when the commercial viability of our waste system (particularly our kerbside recycling system) is increasingly under threat, any potential to reduce waste costs for councils and communities, and ensure the ongoing viability of our system, must be taken up.

## Effective disposal

As stated above, the LGA believes that, to ensure the benefits of the proposed ban on single-use plastics flow through to councils (as waste managers) and communities, it is necessary for the State Government to adopt and communicate a strong policy position around the acceptable alternatives to single-use plastics and the action needed to support effective disposal of these products.

The only acceptable alternatives are reusable products and (non-plastic) compostable products that can be disposed of through green organics bins. This means there must be enough green organics bins available to ensure that they can be conveniently accessed by consumers.

Whilst there is a view that most takeaway food is not consumed in the home; this situation appears to be changing. With increasing innovation around food consumption and delivery (eg apps such as ubereats and menulog) it is likely that a significant proportion of takeaway food is consumed in the home and waste (the food and the packaging) can be disposed of through the household green organics bin.

However, the LGA acknowledges that a significant proportion of takeaway food is also consumed in public places. In some situations, this food is consumed in a "closed" environment, for example, an event or festival. Wherever this is the case green organics bins should be provided to enable consumers to dispose of their waste appropriately. Many councils provide green organics bins at their events and there is significant work being undertaken in the sector around how to make events more sustainable generally. These closed events are less of a problem.

However, the LGA understands that, at present, most councils do not provide green organics bins in public places (streets, parks etc.) because they become so contaminated with other materials that the contents must be landfilled anyway. Whilst this is a real and persistent problem, for the reasons outlined above, it is the right time to achieve cultural change in South Australia in this regard. The local government sector would like to work with the State Government on this issue.

Separately, we understand that the current State Government action on single-use plastics includes trialling a number of single-use plastic free precincts. These include the Parade (Norwood), Jetty Road Brighton Traders, Adelaide Central Markets and Surf Life Saving South Australia clubs. We further understand that some of these precincts are trialling public green bins and the local government sector will be very interested in the results of these trials.

The LGA asks that the State Government give significant consideration to how green organics services can be increased in public places and what support it can provide to councils to enable this to occur. This consideration should include both hard and soft infrastructure, in other words, both the bins and collection systems themselves and the educational aspects of achieving diversion in public places. The LGA notes that the State Government is soon to release an updated State Waste Strategy and Food Waste Strategy and looks forward to understanding how this issue is addressed in these documents.

## Role of local government specifically

The documents released for consultation flag two potential new roles for local government arising from the introduction of the legislation. These are:

- a potential role in enforcing the legislation (as many council officers are “Authorised Officers” under the *Environment Protection Act 1993*); and
- a possible role selling or supplying plastic straws to people who live with a disability under a potential exemption from the ban.

### Enforcement

The Bill Explanatory Information states that “enforcement of the legislation will be undertaken by Authorised Officers under the *Environment Protection Act 1993*”. As a result of its involvement in the Single-Use Plastics Stakeholder Taskforce, the LGA understands that the intention is that the Environment Protection Authority (EPA) would be the primary enforcement agency for the legislation.

However, it must be noted that many council officers are Authorised Officers under the *Environment Protection Act 1993* and that these officers will automatically receive the power to take enforcement action under the legislation once it is passed. Once council officers have this power, there is a risk that they will be expected or obliged to exercise it if a breach of the legislation occurs in their council area. The LGA asks that before the legislation is further progressed, the EPA make a clear statement around its expectations for the role of councils in this regard and any support that will be provided.

The LGA notes the recent *Productivity Commission Inquiry into Local Government Costs and Efficiency* (draft report dated 30 August 2019) and notes that the draft report acknowledges that the role and functions of local government have expanded significantly over time.

The draft report distinguishes between mandatory and non-mandatory functions of councils in this regard. The draft report notes that the majority of mandatory functions “do not arise from the Local Government Act itself, **but flow from other state legislation**” (emphasis added).

The LGA also notes that the Productivity Commission’s draft recommendations to the South Australian Government include (at recommendation iv.):

“Clarifying the respective responsibilities of the South Australian and local governments to remove unnecessary overlaps, or duplication and reduce uncertainty between governments.”

The LGA notes that the draft report also accepts that “cost shifting” from the State Government to local governments has occurred over time, but that in some circumstances the cost implications of various State Government actions may be more appropriately described as “cost sharing”.

The LGA recommendation that the EPA make a clear statement around its expectations for the role of councils and any support that will be provided is consistent with the Productivity Commission draft recommendations and will assist councils to determine whether there is a risk of cost shifting (or cost sharing) occurring as a result of this new legislative framework.

## Access to plastic straws

In relation to the possible role selling or supplying plastic straws to people who live with a disability, the LGA notes that it is represented on the Green Industries SA Single-Use Plastics Stakeholder Taskforce and that the need to ensure ongoing access to plastic straws has been a focus of the Taskforce.

The LGA notes that the options for ensuring ongoing access to plastic straws have been discussed and explored extensively by the Taskforce and that the views and interests of all relevant stakeholders have been considered and taken into account in development of the draft bill.

The LGA notes that it has been specifically requested to provide feedback on whether councils would be willing to undertake the role of selling or supplying plastic straws. The LGA response to this question is as follows:

1. the local government sector believes that the most appropriate method of ensuring secure and equitable access to plastic straws by people with a disability is through the health care sector (ie chemists, hospitals, GP clinics etc);
2. the local government sector is not opposed to being granted an exemption under the legislation that would allow councils to sell or supply plastic straws (potentially in accordance with existing obligations under Disability Access and Inclusion Plans); and
3. individual council decisions about whether to sell or supply plastic straws are ones that councils should be able to make in consultation with their communities once all relevant information is available (including information about any State Government support in this regard).

The LGA appreciates the opportunity to provide input into development of the draft bill.



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