



Law Council  
OF AUSTRALIA

*Legal Practice Section*

14 November 2019

Committee Secretary  
Senate Standing Committees on Environment and Communications  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

By email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Sir/Madam

### **PRODUCT STEWARDSHIP AMENDMENT (PACKAGING AND PLASTICS) BILL 2019**

1. This submission has been prepared by the Australian Environment and Planning Law Group of the Law Council's Legal Practice Section (**the AEPLG**). The AEPLG welcomes the opportunity to comment on the *Product Stewardship Amendment (Packaging and Plastics) Bill 2019 (Bill)* which is to amend the *Product Stewardship Act 2011 (Cth)*.
2. The AEPLG understands that the Bill makes the Australian Packaging Covenant Organisation's 2025 National Packaging Targets mandatory and also emulates the European Union's directive that bans or otherwise restricts the most problematic of single-use plastics (**EU directive**).
3. The AEPLG supports an approach to waste regulation that will reduce single-use plastics in the environment and facilitate resource recovery, particularly in light of concerns about the effectiveness of the National Packaging Covenant to meet Australia's waste reduction and recycling targets going forward.

### **Summary of AEPLG recommendations**

4. The AEPLG makes the following recommendations:
  - Paragraph 40B(2)(f) of the Bill should be amended to phase out plastic-food containers and cups for beverages by 2025.
  - Sub-clause 40H(4) of the Bill should be amended to insert the following in relation to the information to be contained in the Minister's report:

*the progress made by scheme members towards the packaging and plastics targets during the reportable financial year.*
  - The following containers should be included as 'a prohibited plastic' in clause 40M of the Bill:
    - small plastic hotel toiletry bottles containing personal care products;

- small plastic (non-recyclable) cosmetic samples; and
- food and product packaging which combines cardboard with plastic.
- Sub-clause 40U(1) of the Bill should be amended to insert a specific regulation making power in respect of financial contributions from scheme members to be used for research and development as follows:

*the cost of research and development into alternative packaging to replace a specified covered plastic.*

## **Discussion**

### Packaging targets

5. The Bill adopts a number of reduction targets. The legislated targets are contained in sub-clause 40B(2) of the Bill and include the following (defined in the Bill as 'packaging and plastics targets'):
  - (a) all packaging used in Australia will be reusable, recyclable or compostable by 2025;
  - (b) 70 per cent of all packaging used in Australia will be recycled or composted by 2025;
  - (c) 70 per cent of all plastic packaging used in Australia will be recycled or composted by 2025;
  - (d) all packaging used in Australia will include, on average, 30 per cent recycled content by 2025; and
  - (e) problematic and unnecessary plastic packaging will be phased out through design, innovation and the introduction of alternatives.
6. The AEPLG supports the adoption of legislative targets but observes that in order to meet reduction targets, it is generally necessary to:
  - (a) specify the actions or measures to be implemented by key participants; and
  - (b) provide a mechanism for measuring progress towards the target so that actions or measures can be modified over time, if necessary, to achieve the target.
7. There is an obligation under sub-clauses 40H(1)-(2) of the Bill on scheme members to report actions taken to help achieve the target, comply with any Ministerial directions, and to comply with any scheme requirements as specified in regulations made under sub-clauses 40D(1)-(2). The Minister must also publish or make available this information under sub-clause 40H(4). However, the Bill does not provide a mechanism for measuring progress towards the target or require the Minister to publish information on whether there has been progress towards the target.
8. The AEPLG recommends that sub-clause 40H(4) is amended to insert an additional paragraph requiring the Minister to report on progress towards the targets. The AEPLG suggests the relevant provision could read as follows:

*the progress made by scheme members towards the packaging and plastics targets during the reportable financial year.*

### **Plastic food containers and cups for beverages**

9. For single-use plastic food containers and beverage cups, the Bill adopts a 25 per cent reduction from 2019 consumption levels by 2025. Public awareness campaigns may assist in promoting the use of non-plastic or multiple use alternatives (which are already available in the market) but there will be little incentive for retailers and consumers to move away from plastic if plastic is the cheaper option. The AEPLG is of the view that a 25 per cent reduction target by 2025 is not adequate and that plastic-food containers and cups for beverages should be phased out by this date. A phase-out target for these plastics is necessary given that they are often not recycled by Australian consumers – the rate of plastic packaging recycling over the last decade has not increased and has remained at around 30 per cent.
10. The AEPLG considers that to achieve the results intended by the Bill, decisions around materials used in product packaging must be shifted away from consumers and retailers to upstream manufacturers. Consumers will not use single-use plastic food containers and plastic beverage cups if these products are not available for purchase in the national market or supplied to them by Australian food retailers.

### **National container deposit scheme**

11. The Bill proposes a recycling target for beverage containers other than cups of 80 per cent by 2025. The AEPLG supports the adoption of recycling targets but, as observed above, the Bill does not provide a mechanism for measuring progress towards the target so that actions or measures can be modified over time, if necessary, to achieve the target.
12. The Committee supports a national deposit scheme to be implemented by 2021 for all enclosed beverage containers (whether plastic, glass or aluminium) that refunds at least 20 cents for each deposited container. The AEPLG also supports a requirement that caps and lids be attached to beverage containers as currently proposed by the Bill and which is consistent with the EU directive.
13. Sub-clause 40B(2) of the Bill includes the proposed national deposit scheme as one of the many 'packaging and plastics targets'. The regulation making power for 'a scheme return payment' is contained in sub-clause 40D(e) of the Bill which may be relied upon to introduce a national deposit scheme into law. The AEPLG observes, however, that the Bill does not set out the details of the proposed deposit scheme or specifically provide for the standardisation of existing state-based deposit schemes.

### **Prohibition of certain plastics (product bans)**

14. The AEPLG supports the ban of the following products as proposed by the Bill by the target dates:
  - (a) lightweight plastic carrier bags by 1 January 2021;
  - (b) microbeads by 1 January 2021;
  - (c) plastic six-pack rings by 1 January 2023;

- (d) plastic cotton buds, cutlery, plates, stirrers, straws and sticks for balloons by 1 January 2023;
  - (e) expanded polystyrene food and beverage containers by 1 January 2023; and
  - (f) oxo-degradable plastics by 1 January 2023.
15. In addition to the banning of plastic food containers and cups for beverages discussed above, the Committee requests that the Standing Committees consider inclusion of the following items in the list of plastic containers to be banned (subject to any relevant 'plastics exempt act' under clause 40N of the Bill):
- (a) small plastic hotel toiletry bottles containing personal care products;
  - (b) small plastic cosmetic samples (which are typically marketed in non-recyclable containers); and
  - (c) food and product wrapping which is made from both cardboard and plastic (which makes recycling difficult).

#### **Plastic packets and wrappers**

16. The Bill proposes financial contribution towards the cost of disposing of and cleaning up thin-film (flexible) plastic used to package food, as well as public awareness campaigns. The AEPLG understands that due to the nature of the plastic, thin-film plastic is not generally accepted in single stream recycling programs.
17. The AEPLG supports the use of financial or market incentives to reduce the impact food packaging has on the environment. This approach is consistent with the objects of the *Product Stewardship Act 2011* (Cth) (section 4) and the principles of ecological sustainable development set out in section 3A of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) which provides that 'improved valuation, pricing and incentive mechanisms should be promoted'. Seeking a financial contribution towards the cost of disposing of and cleaning up thin-film plastic may lead to innovations in product packaging.
18. However, to directly support research and development into alternative (non-plastic) forms of food packaging, the Committee recommends that regulations made under the Bill should permit financial contributions to be used for research and development purposes. This issue is discussed in more detail under the next heading.

#### **Financial contribution towards costs relating to certain plastics**

19. Sub-clause 40U(1) of the Bill provides that regulations may require one or more covered persons, or classes of covered persons, to make financial contribution of a specified amount towards one or more of the following:
- (a) the cost of specified measures that raise awareness of appropriate ways of disposing of a specified covered plastic;
  - (b) the cost that disposing of a specified covered plastic imposes on specified waste management services; and
  - (c) the cost related to cleaning up litter resulting from a specified covered plastic.

20. Financial contributions may be sought in respect of the following 'covered plastic' which are listed in sub-clause 40U(3) of the Bill: beverage containers, food containers, packaging made of flexible material that is intended to be used to pack food, balloons, sanitary products, wet wipes, filter tips for cigarettes, and any other class of things specified in the regulations.
21. As discussed above in the context of plastic packets and wrappers, the AEPLG recommends a regulation making power is included in the Bill in respect of financial contributions to be used for research and development. The AEPLG suggests that the text of the subclause to be added to sub-clause 40U(1) of the Bill could read as follows:
- the cost of research and development into alternative packaging to replace a specified covered plastic.*
22. Directing financial contributions towards research into alternative packaging would support the target of phasing out problematic and unnecessary plastic packaging through design and innovation as referred to in paragraph 40B(2)(e) of the Bill.

### Contact

23. The Law Council would welcome the opportunity to discuss this submission with the Committee Secretary. In the first instance, please contact AEPLG Chair, Robyn Glindemann, on [robyn.glindemann@lantegy.com.au](mailto:robyn.glindemann@lantegy.com.au)

Yours sincerely



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