

**environmental defender's office**
new south wales

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Dear Ms Gilbey,

Regulatory Impact Statement - Investigation of Options to Reduce the Environmental Impact of Plastic Bags

The Environmental Defender's Office of NSW (EDO) is a community legal centre specialising in public interest environmental law. The EDO welcomes the opportunity to provide comment on the Environmental Protection and Heritage Council's (EPHC) *Regulatory Impact Statement - Investigation of Options to Reduce the Environmental Impact of Plastic Bags* (RIS).

The EPHC's stated aim in formulating the RIS is to reduce the environmental impact of plastic bags on the Australian environment. The EDO welcomes this objective, as plastic bags have a significant and negative impact on the natural and urban environments, and pose a considerable threat to marine wildlife. A combination of regulatory and non-regulatory initiatives is needed to effectively combat this problem.

Action by the Commonwealth and the state governments to combat the impact of plastic bags is undoubtedly required. Even with reduction since 2002, around 3.92 billion HDPE singlet carry-bags are provided to consumers per year. **[1]** This figure may in fact increase again following the expiration of the ARA Code. The environmental impacts of plastic bags are well known. These impacts, which include pollution and harm to fauna, have been adequately encapsulated in the RIS. Of particular concern is the impact on marine mammals that ingest or are entangled in plastic bags.

The EDO believes that in tackling the problem, the EPHC should take into account demand management principles and ecologically sustainable development (ESD). A timely approach to addressing the impacts of plastic bags is consistent with the requirements of ESD which all governments in Australia are committed to achieving. **[2]** In keeping with ESD principles, governments across Australia have a duty to tackle the plastic bag problem to ensure the conservation of Australia's biodiversity now and into the future.

A range of measures are required to address the source of the problem, including a charge on bags as part of a phase-out commitment. Supplementary measures that address the symptoms rather than the cause, such as anti-littering measures, should be continued during the phase-out.

Our comments relate to each of the options discussed in the RIS, and additional measures.

1. Options A-D: Education and anti-littering measures

The EDO considers anti-littering and education measures to be supplementary as they do not address the source of the problem. They should be used to assist in implementing a phase out, but are not solutions in and of themselves.

In this context, the EDO is supportive of on-going education and anti-litter programs aimed at minimising the impact of plastic bag litter and preventing future littering, as part of a suite of tools used to implement a phase-out. As the RIS notes, local and state governments spend \$200 million annually on litter campaigns. This is complemented by community programs such as Clean Up Australia. The EDO supports these initiatives, and submits that anti-litter programs should continue to receive adequate government funding. Such programs should be combined with community education and litter awareness programs. The EDO endorses the five-pronged approach to community and retailer education canvassed in the RIS. An effective education campaign would involve:

- o Promoting the use of reusable bag alternatives;
- o Promoting marine and land-based anti-littering awareness;
- o Encouraging appropriate waste disposal behaviour;
- o Targeting youth and community awareness through competitions and other initiatives; and
- o Facilitating the sharing of community and regionally specific ideas through national workshops and forums. **[3]**

It is also necessary to have a regulatory deterrent to underpin the community education and anti-littering programs. State littering laws already provide fines for littering, which includes plastic bags. However, as the RIS indicates, the monetary penalties imposed in Australia are significantly lower than those imposed in other countries. For example, fines in Singapore equate to 500 percent of the average Australian litter fine. **[4]** The EDO believes that penalties should be tightened to ensure maximum deterrence. Furthermore, the RIS notes that plastic bags form only a four percent of total litter and there is a high level of inadvertent littering which makes it difficult to identify individuals who can be issued with infringement notices. In spite of this, the EDO believes that robust anti-littering legislation will have a positive effect on litter generally.

2. Option E: Advance Disposal Fee

Although it is consistent with the polluter-pays principle that those who generate pollution should be liable for the life-cycle costs of that pollution, an advance disposal fee would be problematic. This is due to the constitutional constraints imposed by section 90 of the Australian Constitution that prevent the states from imposing excises and/or taxes. Therefore, any advance disposal fee imposed by the states would have to be strictly consistent with the disposal costs. Furthermore, as the RIS identifies, such a fee may send the wrong message to the public that plastic bags are now acceptable because they are paying for their disposal and end management. As a result, the EDO rejects this option.

3. Option F: No Further Government Action

The EDO rejects this option. The environmental impacts of plastic bags can no longer be ignored. Government action, employing a variety of measures, is needed to mitigate and/or eliminate this problem. This is consistent with ESD.

4. Option G-I: Voluntary Industry Measures

Whilst the EDO is supportive of industry initiatives to self-regulate the production and sale of plastic bags, this should not be the primary means of regulation. Furthermore, the large retailers have proposed different options (N and O) presumably in lieu of options G-I. Finally, the RIS indicates that the environmental benefits would be minimal when compared to other options as significant numbers of plastic bags will continue to enter the litter stream. **[5]** As a result, we reject options G to I.

5. Options J-K: A charge on plastic bags/government levy

The EDO supports a charge (Option J) imposed by retailers as the appropriate regulatory option in the interim period prior to a complete phase out by 2012 (see below). This will provide incentive to consumers to curb their indiscriminate use of plastic bags and will lead to a significant reduction of plastic bags that enter the litter stream. **[6]**

A key component of ecologically sustainable development relevant to plastic bags is the *Polluter Pays Principle*. The principle stipulates that those who generate pollution should bear the full life cycle costs of that pollution. The imposition of a charge on consumers has the potential to assist in achieving

this by factoring the significant externalities of plastic bag use into the price. The RIS indicates that each plastic bag released into the environment translates to a cost of \$1.00 per bag. [7] Attempts to recoup this amount will assist in ameliorating this impact and providing a disincentive to consumers to purchase plastic bags, which in turn boosts the use of 'green-friendly' alternatives. This will only be realised if the charge imposed on consumers is then dedicated towards programs that attempt to reduce the environmental impacts of plastic bag use. Such hypothecation can only occur with the cooperation of the Federal Government.

Under the EPHC proposal, the retailers will be entitled to keep the charge. It is of course desirable that revenue gained should be hypothecated for environmental purposes. However, due to the constitutional constraints noted above, this is not possible without Federal Government intervention. The ideal situation would of course be a federally-imposed levy (Option K). Levies collected could then be put into a fund and the monies hypothecated for combating the environmental impacts of plastic bags.

However, it is important to note that a charge should be imposed as part of a broader strategy to phase-out plastic bags, and not as the sole solution. A charge alone may not achieve a continued decrease in plastic bag use, as has been the case in Ireland, where bag use has begun to increase again as consumers have become accustomed to the charge and absorb the extra cost). For this reason, a charge should be gradually increased to effectively form part of a broader phase-out strategy.

6. Options L-M: ban on plastic bags by 2009.

There are currently certain obstacles in relation to implementing a total ban of plastic bags generally (Option L), or a ban restricted to light-weight plastic bags (Option M), by 2009. Consistent legislation will need to be drafted and the Federal Government would need to be involved as they have regulatory power over retailers that are incorporated. The Federal Government has indicated it is unwilling to be involved in such a process. Sufficient time is required to achieve government and industry cooperation, draft necessary regulatory controls, and consult fully on any limited exceptions to the eventual ban (such as for "green bags" or bags required for food hygiene). The continued phase-out of plastic bags must also be preceded by adequate community education campaigns and feasible long-term alternatives. Any alternatives must be thoroughly assessed to ensure they are environmentally sound and will not lead to the creation of a new litter problem. The EDO believes that the appropriate timeframe should be for the **phase-out of plastic bags by 2012**.

A ban on lightweight plastic bags could be established in a NEPM, by state and territory legislation, or by a combination of Commonwealth, state and territory legislation. The Commonwealth could legislate regarding the relevant activities of constitutional corporations regarding distribution of lightweight plastic bags. Again, while this could assist coverage of ban legislation, this option is problematic in light of the absence of political will at a Federal level. Similarly, Federal cooperation would be required for an amendment to the UPM NEPM option. In this context, the options for effectively implementing a state-based ban are limited in the absence of federal cooperation.

The benefit of uniform state and territory-based legislation introduced in all jurisdictions is that it applies to all players and overcomes any arguments based on upholding freedom of interstate trade (as required by section 92 of the *Constitution*). The *Mutual Recognition Act 1992* (Cth) should not prevent States from placing bans on the supply of lightweight plastic bags provided the object of the ban is to prevent, minimise or regulate environmental pollution. The disadvantage of this option is that uniform agreements often achieve a lowest common denominator baseline for regulation rather than best practice. Also, uniform legislation in the past has involved the Commonwealth in a coordinating legislative role. The EDO urges the Federal Government to participate in further discussions to ensure that Australia is on track for a complete phase-out of plastic bags by 2012.

As noted above, a suite of measures is needed to address the issue - and combinations of measures were not comprehensively considered in the RIS. In this context, the EDO would support a ban on light weight plastic bags, coupled with a charge on alternatives, as the first step towards a more comprehensive phase out (as suggested by the Total Environment Centre).

7. Options N-O: ANRA proposals

These options are put forward by the large retailers to essentially expand upon the voluntary initiatives in Options G-I. The proposals involve commitments by the large retailers to reduce plastic bag use by certain amounts in conjunction with education programs and the introduction of biodegradable bags. The EDO has concerns with this approach. Firstly, these options will not apply to retailers with an annual turnover below \$5 million, effectively eliminating significant sources of plastic bag litter. Secondly, a voluntary option is not likely to be embraced by industry. As the RIS indicates, "it is difficult to imagine that many retailers would voluntarily accept the burden of ongoing, ever-increasing targets." [8] Finally, the environmental benefits of these options are questionable. In particular, the proposal to replace plastic bags with single-use, biodegradable bags, without a qualitative study into the environmental impacts of these replacement bags, may result in the replacement of one litter source with another. As a consequence, the EDO rejects these options.

8. Additional measures

Threat Abatement Planning

In 2003, the Threatened Species Scientific Committee recommended that 'Injury and fatality to vertebrate marine life caused by ingestion of, or entanglement in, harmful marine debris' be listed as a Key Threatening Process under the *Environment Protection and Biodiversity Conservation Act 1999* ('EPBC Act'). This was subsequently listed by the Federal Government. "Harmful marine debris" includes plastic bags as they are indeed a significant source of this threat. A Threat Abatement Plan is in the process of being drafted. The EDO believes that an effective and appropriately funded Plan has the potential to significantly limit the effect of marine debris on marine life. The Plan should also outline specific initiatives that attempt to curb the impact of plastic bags. Of some concern is that the plan has been in preparatory mode since 2003. The EDO calls for the timely release of this plan to ensure that the benefits of the plan's initiatives are realised as quickly as possible.

Summary

The EDO is disappointed at the lack of federal initiative. The current Federal Government's position essentially thwarts any attempts to deal with plastic bags in a consistent manner across Australia, and is inconsistent with an Australian commitment to achieving ESD. In this current environment, the EDO therefore supports a ban on light weight plastic bags, combined with a charge imposed by retailers on alternatives as the preferred option, given the legal difficulties of imposing a levy in the absence of federal support. This should be the first step as part of a long-term plan to phase out plastic bag use by 2012 (with some limited exemptions). The success of a charge in curtailing plastic bag use should be monitored at regular intervals. Rigid monitoring should also check to ensure compliance. In addition, education and anti-litter campaigns should continue to be supported with adequate funding and robust legislative support.

For further information, please contact Robert Ghanem on 02 9262 6989.

Yours Faithfully,

Environmental Defender's Office

Rachel Walmsley
Policy Director

References

1. Estimate from 2005: EPHC, Regulatory Impact Statement (RIS) 'Investigation of options to reduce the environmental impacts of plastic bags' January 2007 at 16.
2. See the *National Strategy for Ecologically Sustainable Development 1992*.
3. *Ibid* at 49.
4. *Ibid* at 48.
5. Approx 6.9 billion: EPHC, Regulatory Impact Statement (RIS) 'Investigation of options to reduce the environmental impacts of plastic bags' January 2007 at 17.
6. *Ibid* at 66. The RIS indicates that this option will lead to a reduction of plastic bag use by 300.6 million by 2016.
7. EPHC, Regulatory Impact Statement (RIS) 'Investigation of options to reduce the environmental impacts of plastic bags' January 2007 at 58.
8. *Ibid* at 82.

Warning: include() [function.include]: http:// wrapper is disabled in the server configuration by allow_url_include=0 in
/home/edoorg/public_html/edonsw/site/policy/plastic_bags070226.php on line 117

Warning: include(http://www.edo.org.au/edonsw/site/policy/sub_bottom.shtm) [function.include]: failed to open stream: no suitable wrapper could be found in
/home/edoorg/public_html/edonsw/site/policy/plastic_bags070226.php on line 117

Warning: include() [function.include]: Failed opening 'http://www.edo.org.au/edonsw/site/policy/sub_bottom.shtm' for inclusion
(include_path='.:usr/lib/php:usr/local/lib/php') in /home/edoorg/public_html/edonsw/site/policy/plastic_bags070226.php on line 117