

NEW SOUTH WALES

DRAFT NON-GOVERNMENT BILL

To be introduced by: Mr J R Field, MLC

Waste Avoidance and Resource Recovery Amendment (Marine Plastics Reduction) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to provide for the phasing out of single-use plastics, products containing plastic microbeads and other harmful plastic products, so as to reduce the threat to the survival of marine animals and ecosystems caused by the amount of plastic flowing into the marine environment.

This is achieved by amending the *Waste Avoidance and Resource Recovery Act 2001* to require the Government to prepare plans and implement measures so as to meet the following targets:

- (a) a 90% reduction in the amount of plastic waste that enters the ocean by the end of 2040,
- (b) “zero pellet loss” in industrial processes, so that no plastic resin pellets used in industrial processes enter the marine environment, by the end of 2020,
- (c) all new washing machines manufactured or sold in the State being fitted with a lint filter that is capable of trapping any microplastics (including microfibres) by the end of 2023,
- (d) the manufacture and sale of all petroleum-based single-use plastics being prohibited by the end of 2023 (through a staggered process involving the elimination of specified types of plastic waste by the end of 2018, 2020 and then 2023).

This Bill also establishes a statutory office of Commissioner for the Marine Plastics Reduction Commission to exercise the functions of that Commission, one of which is to advise the Minister on the achievement of those targets.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58

Schedule 1 [1] inserts a new Part 5A (Marine plastics reduction), containing the following provisions:

- (a) **Proposed section 48A** lists the objects of the proposed Part, which include to recognise that marine plastics are a critical threat to the continued viability of marine ecosystems, to phase out single-use plastics and other products that have a harmful impact on the marine environment and to encourage more conscious consumption of resources in the community through public education.
- (b) **Proposed section 48B** inserts definitions used in the proposed Part.
- (c) **Proposed section 48C** requires the Government to prepare plans and implement measures that will ultimately reduce the amount of avoidable plastic waste that enters the ocean by 90% (from 2018 levels) by the end of 2040.
- (d) **Proposed section 48D** requires the Government to prepare plans and implement measures that will ultimately result in “zero pellet loss” in industrial processes (that is, no plastic resin pellets being used in industrial processes entering the marine environment) by the end of 2020.
- (e) **Proposed section 48E** requires the Government to prepare plans and implement measures so as to ensure that, by the end of 2023, all new washing machines manufactured or sold in the State are fitted with a lint filter that is capable of trapping any microplastics (including microfibrils) that are loosened during the laundering of synthetic fabrics.
- (f) **Proposed section 48F** requires the Government to prepare plans and implement measures so as to ensure that:
 - (i) each specified type of marine plastic waste listed in the table to the proposed section is prohibited from being manufactured or sold in the State before the year listed in relation to the type of waste, and
 - (ii) the manufacture and sale of all petroleum-based single-use plastics being prohibited by the end of 2023.
- (g) **Proposed section 48G:**
 - (i) makes it clear that the Government is required to prepare those plans and implement those measures only to the extent that the Government has the legal capacity to do so, and
 - (ii) requires that, in preparing and implementing them, the Government must have regard to the advice of the Marine Plastics Reduction Commission established by the proposed Act and to the objects of the proposed Part, and
 - (iii) requires the Minister to take all steps reasonably necessary to convene a meeting of responsible Ministers of the Commonwealth and other States and Territories for the purpose of achieving prohibitions on the manufacture or sale in this State of specific items, in accordance with the targets established by the proposed Act.
- (h) **Proposed section 48H** establishes a Marine Plastics Reduction Commission as a body corporate, the functions of which are exercisable by the person who holds the office of Commissioner.
- (i) **Proposed section 48I** creates a statutory office of Commissioner for the Marine Plastics Reduction Commission.
- (j) **Proposed section 48J** provides that the Commission is not subject to Ministerial control in respect of the preparation and contents of any advice or recommendation of the Commission, but in other respects is subject to the control and direction of the Minister.

- (k) **Proposed section 48K** provides that the general function of the Commission is to provide the Government with independent advice on the management of marine plastics pollution and lists further specific functions of the Commission.
- (l) **Proposed section 48L** requires the Commission to make an annual report to Parliament, which includes an evaluation of the progress of the Government in achieving the targets created by the proposed Part and a description of the Commission's activities during that year in relation to each of the Commission's functions.
- (m) **Proposed section 48M** establishes a Marine Plastics Reduction Advisory Council, with between 5 and 9 members appointed by the Minister, and specifies the functions of the Advisory Council, which include advising the Minister and the Commission on the planning, development, integration and implementation of government policies and programs concerning the achievement of the targets created by the proposed Part.
- (n) **Proposed section 48N** authorises the Commission to enter arrangements with any government agency or other body or person (including the engagement of consultants) for the provision of assistance to the Commission in connection with the exercise of its functions.
- (o) **Proposed section 48O** provides for the Commission to delegate any of its functions, other than the power of delegation, to a committee.

Schedule 1 [2] inserts:

- (a) a Schedule of provisions relating to the employment of the Commissioner for the Marine Plastics Reduction Commission, and
- (b) a Schedule of provisions relating to the membership and procedure of the Marine Plastics Reduction Advisory Council.

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**Waste Avoidance and Resource Recovery
Amendment (Marine Plastics Reduction) Bill
2018**

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**Waste Avoidance and Resource Recovery
Amendment (Marine Plastics Reduction) Bill
2018**

No , 2018

A Bill for

An Act to amend the *Waste Avoidance and Resource Recovery Act 2001* to phase out the use of single-use plastics, polystyrene packaging and products containing plastic microbeads so as to reduce the threat to the survival of marine animals and ecosystems caused by the amount of plastic flowing into the marine environment, and for other purposes.

The Legislature of New South Wales enacts,

1 Name of Act

This Act is the *Waste Avoidance and Resource Recovery Amendment (Marine Plastics Reduction) Act 2018*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Waste Avoidance and Resource Recovery Act 2001 No 58

[1] Part 5A

Insert after Part 5:

Part 5A Marine plastics reduction

Division 1 Preliminary

48A Objects of Part

The objects of this Part are as follows:

- (a) to recognise that marine plastic waste is a critical threat to the continued viability of marine ecosystems,
- (b) to phase out single-use plastics and other products that have a harmful impact on the marine environment,
- (c) to encourage more conscious consumption of resources in the community through public education,
- (d) to support research initiatives into marine plastic waste and its impact on the marine environment,
- (e) to promote producer responsibility to ensure better environmental and social outcomes through improved design,
- (f) to support a circular economy in which materials used in marine plastics are used, collected, recovered and re-used.

48B Definitions

In this Part:

Advisory Council means the Marine Plastics Reduction Advisory Council established under section 48M.

Commission means the Marine Plastics Reduction Commission established under section 48H.

Commissioner means the Commissioner for the Marine Plastics Reduction Commission appointed under section 48I.

marine plastic waste means items that are made of plastic, whether alone or in combination with other materials and whether or not the items are processed, recycled, re-used or recovered, and that are discharged or deposited into the marine environment in a volume, constituency or manner that causes an alteration in the marine environment and includes each of the following:

- (a) single-use plastic bags,
- (b) microbeads intentionally added to personal products or detergents during their manufacture,
- (c) single-use plastic cutlery,
- (d) plastic drinking straws,
- (e) disposable plastic cups, including disposable plastic coffee cups, and lids for those cups,
- (f) containers for food or beverages that are made from polystyrene,
- (g) packaging that is made from polystyrene or polyethylene.

marine plastics elimination targets means the obligations and targets specified in sections 48C–48F.

marine plastics pollution means pollution of the marine environment by marine plastic waste.

Division 2 Planning for elimination of marine plastics pollution

48C Government required to eliminate all marine plastics pollution by 2040

The Government is required to prepare plans and implement measures that will ultimately result in the amount of marine plastic waste that enters the marine environment being reduced by 90% (from 2018 levels) by the end of 2040.

48D Government required to achieve zero pellet loss in industrial processes by 2020

The Government is required to prepare plans and implement measures that will ultimately result in no plastic resin pellets used in industrial processes entering the marine environment by the end of 2020.

48E Government required to ensure all washing machines are fitted with lint filters by 2023

- (1) The Government is required to prepare plans and implement measures that will ultimately ensure that, by the end of 2023, all new washing machines manufactured or sold in the State are fitted with a lint filter that is capable of trapping any microplastics (including microfibres) that are loosened during the laundering of synthetic fabrics.
- (2) In this section:
microplastics means plastics smaller than 5 mm in size, and includes microbeads.

48F Government required to eliminate all single-use plastics by 2023

The Government is required to prepare plans and implement measures that will ultimately lead to a prohibition on the manufacture and sale of each type of plastic waste listed in the table to this section before the end of the year listed in relation to the item.

Type of plastic waste	Target date for banning
Single-use plastic bags	2018
Plastic straws	2018
Plastic drink stirrers	2018
Balloons containing plastic	2018
Plastic ring carriers for beverage containers (Hi-Cones)	2018
Confection sticks	2018
Cosmetics, personal hygiene products or household detergents containing microbeads	2018
Polystyrene food and beverage containers	2018
Polystyrene packaging	2020

Type of plastic waste	Target date for banning
Plastic cotton buds	2020
Plastic cutlery	2020
Plastic food containers	2020
Non-compostable cigarettes	2020
Non-recyclable and non-compostable beverage containers	2020
All petroleum-based single-use plastics	2023

48G Operation of requirements

- (1) The Government is required to prepare the plans and implement the measures necessary to meet the marine plastics elimination targets only in relation to measures that the Government has the legal capacity to implement.
- (2) In preparing and implementing those plans and measures, the Government must have regard to:
 - (a) the advice of the Commission, and
 - (b) the objects of this Part (as set out in section 48A).
- (3) The Minister is to take all steps reasonably necessary to convene a meeting of responsible Ministers of the Commonwealth and other States and Territories for the purpose of achieving prohibitions on the manufacture or sale in this State of washing machines, or specific items of marine plastic waste, in accordance with the marine plastics elimination targets.

Division 3 Establishment and functions of Marine Plastics Reduction Commission

48H Establishment of Marine Plastics Reduction Commission

- (1) There is established by this Act a Marine Plastics Reduction Commission. The Commission is a body corporate.
- (2) The functions of the Commission are exercisable by the Commissioner, and any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Commission.
- (3) Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Commission to exercise its functions.

Note. Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Commission makes use of) may be referred to as officers or employees, or members of staff, of the Commission. Section 47A of the *Constitution Act 1902* precludes the Commission from employing staff.

48I Commissioner

- (1) The Governor may appoint a Commissioner for the Marine Plastics Reduction Commission.
- (2) The Commissioner has the functions conferred or imposed on the Commissioner by or under this or any other Act.
- (3) Schedule 1 has effect with respect to the Commissioner.

48J Ministerial control and functions

The Commission is not subject to Ministerial control in respect of the preparation and contents of any advice or recommendation of the Commission, but in other respects is subject to the control and direction of the Minister.

48K Functions of Commission

- (1) The Commission has the general function of providing the Government with independent advice on the management of marine plastics pollution.
- (2) The Commission has the following specific functions:
 - (a) to recommend State-wide standards and mechanisms to reduce marine plastics pollution,
 - (b) to undertake audits of government and industry compliance with the marine plastics elimination targets, and recommend appropriate actions, including (but not limited to) marine plastic waste reduction plans,
 - (c) to coordinate the gathering of information on the sources and impact of marine plastics pollution,
 - (d) to undertake inquiries on marine plastics pollution as required by the Minister,
 - (e) to advise the Minister on matters relating to meeting the marine plastics elimination targets,
 - (f) to advise the Minister on the implementation of extended producer responsibility schemes (within the meaning of Part 4) in relation to any specific marine plastic waste, including a scheme for product stewardship so as to ensure better environmental and social outcomes through improved design,
 - (g) any other functions relating to the management of marine plastics that the Commission considers appropriate.
- (3) The Commission has any other functions that are conferred or imposed on it by or under this Act.

48L Annual reports of Commission to Parliament

- (1) The Commission is required to prepare, within the period of 4 months after 30 June in each year, a report of the Commission's operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.
- (2) A report by the Commission under this section must include:
 - (a) an evaluation of the progress of the Government in meeting the marine plastics elimination targets, and
 - (b) a description of the Commission's activities during that year in relation to each of the Commission's functions under section 48K.
- (3) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Part is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.
- (4) The Commission may include in a report a recommendation that the report be made public immediately.
- (5) If a report includes a recommendation by the Commission that the report be made public immediately, a Presiding Officer of a House of Parliament may

make it public whether or not that House is in session and whether or not the report has been laid before that House.

- (6) If such a report is made public by a Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.
- (7) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

48M Marine Plastics Reduction Advisory Council

- (1) There is established by this Act a Marine Plastics Reduction Advisory Council.
- (2) The Advisory Council is to consist of between 5 and 9 part-time members appointed by the Minister, who have the experience, skills and qualifications that the Minister considers necessary for them to make a contribution to the work of the Advisory Council.
- (3) The Minister is to consider any recommendations made by the Commissioner in relation to the appointment of members of the Advisory Council.
- (4) The Advisory Council has the following functions:
 - (a) to advise the Minister and the Commission on the planning, development, integration and implementation of government policies and programs concerning the achievement of the marine plastics elimination targets,
 - (b) to consult with community groups and government agencies on issues and policies concerning the elimination of marine plastic waste,
 - (c) to monitor and evaluate legislation and government policies and programs concerning the elimination of marine plastic waste,
 - (d) to collect, analyse and provide the Minister and the Commission with information on issues and policies concerning the reduction of marine plastic waste,
 - (e) any other functions that are conferred or imposed on it by or under this or any other Act.
- (5) Any advice given to the Minister or the Commission by the Advisory Council may be given either at the request of the Minister or the Commission (as the case may be) or without any such request.
- (6) The Advisory Council must work co-operatively with the Commission in exercising its functions.
- (7) Schedule 2 contains provisions relating to the membership and procedure of the Advisory Council.

48N Assistance to Commission

- (1) The Commission may enter arrangements with any government agency or other body or person (including the engagement of consultants) for the provision of assistance to the Commission in connection with the exercise of its functions.
- (2) The Commission may obtain advice from:
 - (a) the Marine Plastics Reduction Advisory Council, or
 - (b) any other advisory committee appointed by the Commission.

480 Delegation of Commission's functions

The Commission may delegate any of its functions, other than this power of delegation, to a committee of persons.

[2] Schedules 1 and 2

Insert before Schedule 3:

Schedule 1 Provisions relating to Commissioner for the Marine Plastics Reduction Commission

(Section 481)

1 Term of office of Commissioner

- (1) The Commissioner holds office for the term, not exceeding 5 years, specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person is not eligible to be appointed for more than 2 terms of office as Commissioner (whether or not consecutive terms).

2 Full-time office of Commissioner

The office of Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

3 Employment and remuneration

- (1) The employment of the Commissioner is (subject to this Schedule) to be governed by a contract of employment between the Commissioner and the Minister.
- (2) The following provisions of or made under the *Government Sector Employment Act 2013* relating to the employment of Public Service senior executives apply to the Commissioner (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister):
 - (a) provisions relating to the band in which an executive is to be employed,
 - (b) provisions relating to the contract of employment of an executive,
 - (c) provisions relating to the remuneration, employment benefits and allowances of an executive.

4 Vacancy in office of Commissioner

- (1) The office of Commissioner becomes vacant if the holder:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in

New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(g) is removed from office under clause 5.

(2) If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

5 Removal from office of Commissioner

The Governor may remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.

6 Commissioner not Public Service employee

The office of Commissioner is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to that office (except as provided by clause 3).

7 Acting Commissioner

(1) The Governor may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner (or during a vacancy in the office of the Commissioner) and a person, while so acting, has all the functions of the Commissioner.

(2) The Governor may, at any time, remove a person from the office of acting Commissioner.

(3) The acting Commissioner is entitled to be paid that remuneration (including travelling and subsistence allowances) that the Minister may from time to time determine.

Schedule 2 Provisions relating to membership and procedure of Marine Plastics Reduction Advisory Council

(Section 48M)

1 Definition

In this Schedule, *member* means a member of the Marine Plastics Reduction Advisory Council.

2 Chair and Deputy Chair of Advisory Council

(1) Of the members of the Advisory Council, 2 are (in and by their respective instruments of appointment or in and by other instruments executed by the Minister) to be appointed as Chair and Deputy Chair of the Advisory Council respectively.

(2) The Minister may remove a member from the office of Chair or Deputy Chair of the Advisory Council at any time.

(3) A person holding office as Chair or Deputy Chair of the Advisory Council vacates that office if the person:

(a) is removed from that office by the Minister, or

(b) resigns that office by instrument in writing addressed to the Minister, or

(c) ceases to be a member.

3 Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
 - (a) is, if available, to act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) The deputy of a member who is Chair or Deputy Chair of the Advisory Council does not (because of this clause) have the member's functions as Chair or Deputy Chair.
- (4) A person, while acting in the place of a member, is entitled to be paid any allowances that the Minister may from time to time determine in respect of the person.

4 Terms of office

Subject to this Schedule, a member holds office for the period (not exceeding 2 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

5 Allowances

A member is entitled to be paid any allowances that the Minister may from time to time determine in respect of the member.

6 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 6 of the *Government Sector Employment Act 2013*, or
 - (e) is absent from 4 consecutive meetings of the Advisory Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Advisory Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Advisory Council for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office at any time.

7 Filling of vacancy in office of member

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

8 Effect of certain other Acts

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.
- (2) If, by or under any Act, provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

9 General procedure

The procedure for the calling of meetings of the Advisory Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Advisory Council.

10 Quorum

The quorum for a meeting of the Advisory Council is a majority of the members for the time being.

11 Presiding member

- (1) The Chair of the Advisory Council or, in the absence of the Chair, the Deputy Chair of the Advisory Council or, in the absence of both, another member elected to chair the meeting by the members is to preside at a meeting of the Advisory Council.
- (2) The person presiding at any meeting of the Advisory Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Advisory Council at which a quorum is present is the decision of the Advisory Council.

13 First meeting

The Minister is to call the first meeting of the Advisory Council in the manner that the Minister thinks fit.