

Legislation Review Program

**MINOR ASSESSMENT STATEMENT
(MAS)**

ON

PROPOSED NEW TASMANIAN LEGISLATION

PLASTIC SHOPPING BAG BAN ACT 2013



Dec 2012

EPA Division
Department of Primary Industries, Parks,
Water and Environment



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December 2012

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SUBMISSIONS AND ENQUIRIES

Written submissions are sought on this Minor Assessment Statement, particularly on any issues of concern regarding communications about the proposed ban, and on its implementation.

Please note that submissions may be published on the Division's website, and will not be treated as confidential unless they are specifically marked "confidential" and are capable of being classified as such in accordance with the *Right to Information Act 2010*.

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MINOR ASSESSMENT STATEMENT

1. Introduction

The purpose of this Minor Assessment Statement (MAS) is to explain the likely impacts of proposed Tasmanian legislation to ban retailers from supplying single-use, lightweight, high density polyethylene (HDPE), non-biodegradable plastic bags to shoppers, to carry goods bought from the retailer.

The MAS has been prepared by the EPA Division of the Department of Primary Industries, Parks, Water and Environment (DPIPWE). Its scope is in accordance with the requirements of the Legislation Review Program overseen by the Economic Reform Unit (ERU) of the Department of Treasury and Finance.

The ERU has advised the EPA Division that, in principle, the proposal is likely to have a negative impact on business, and that it supports the preparation of a MAS to assist in a program of consultation with industry and the community.

As the decision to prepare the legislation has already been made by the Tasmanian Government, the main focus of the MAS is on examining issues of concern to businesses and the community so that they can be addressed during the lead-in and transition stages of the proposed ban, rather than on examining alternatives to the ban. Nevertheless, as alternatives have previously been considered in detail at the national level, a summary of these has been included in Part 8.

2. Background

In January 2007, the Australian Government Environment Protection and Heritage Council (EPHC) released a Consultation Regulatory Impact Statement (CRIS) on plastic bags. The CRIS found that regulatory options for a phase-out of plastic bags had economic costs that significantly outweighed the perceived environmental benefits.

The subsequent 2008 EPHC Decision RIS provided an economic, social and environmental analysis of four options for phasing out the use of lightweight plastic bags. These options included:

- a ban;
- a litter strategy;
- a levy; and
- a mandatory retailer charge.

In April 2008, however, the EPHC resolved to not endorse uniform regulatory action at that time to ban or place a charge on plastic bags. The RIS also concluded that a litter strategy, although possibly economically beneficial and effective at removing plastic bags from the litter stream, would not contribute to a phase-out of plastic bag use.

Counter to the EPHC decision, the South Australia (SA), Australian Capital Territory (ACT) and Northern Territory (NT) Governments have all since passed legislation to prohibit retailers from supplying consumers with single-use, lightweight,

non-biodegradable plastic bags at the point of sale, for the purpose of carrying or transporting goods.

The SA State Government was the first to commit to the ban in May 2009; however, it took a little over two years from the decision until its final implementation. A six-month 'transition' period was provided for in the legislation.

The ACT Legislative Assembly was next to pass similar legislation to implement a ban on 7 December 2010. However, it took until 1 November 2011 for the full ban to take effect, with provision for a four-month "transition" period.

The NT Legislative Assembly also passed a ban which was implemented from 1 September 2011 which also included a four-month "transition" period.

In November 2010, the Tasmanian House of Assembly agreed to "*act in the best interests of Tasmania's marine and terrestrial environment and request that the Minister for Environment, Parks and Heritage introduce a ban on lightweight non-biodegradable plastic check-out bags*". The House also noted the former Minister's commitment to "*taking a proposal to implement a ban on plastic bags to Cabinet within the coming months*".

Following that agreement, in May 2012 the Tasmanian Government allocated funds to implement a ban over the next three State Budgets (2012-13, 2013-14 and 2014-15). The funding is to cover the development and implementation of the new primary legislation, as well as ongoing compliance. The EPA Division of the Department of Primary Industries, Parks, Water and Environment (DPIPWE) has lead responsibility for the implementation of the ban.

3. Objectives of the Proposed Legislation

The objectives of the proposed Tasmanian Legislation will support community aspirations for reducing unnecessary consumption of natural resources and for lessening the environmental impacts of plastic bag litter. They are consistent with the common objectives of the Resource Management and Planning System (RMPS) of Tasmania which are to:

- promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;
- provide for the fair, orderly and sustainable use and development of air, land and water;
- encourage public involvement in resource management and planning;
- facilitate economic development in accordance with the objectives set out in the above paragraphs; and
- promote the sharing of responsibility for resource management and planning between the different spheres of government, the community and industry in the State.

The proposed legislation aims to drive behavioural change through regulation and co-operation with the business and community sectors, rather than relying on indirect processes such as social and media pressures, with their uncertain outcomes. The stakeholder engagement process will seek to uncover practical measures for

ensuring that the legislation is developed and implemented in the most cost-effective manner.

The proposed legislation provides an opportunity for changing unsustainable consumption patterns (i.e. moving from a 'throw-away' society) and hence encouraging more sustainable lifestyles. It aims to stimulate new and more sustainable ways of living, working and producing – and for these to become the new habits of the Tasmanian community.

The main objectives of the proposed legislation will be to:

1. support community aspirations for environmental sustainability;
2. increase the use of reusable and recyclable shopping bags
3. help consumers make more informed choices and address concerns regarding over-consumption;
4. encourage the creation of innovative packaging solutions to replace lightweight plastic bags; and
5. minimise the impact of lightweight plastic bags on the Tasmanian environment by reducing the visual impacts of plastic bag litter, and minimising the potential for littered bags to enter waterways and the marine environment.

4. Nature of the Restriction on Competition

Scope of the Legislation

The proposed legislation will ban retailers from supplying single-use, lightweight plastic bags to consumers at the point of sale. Note that the ban will only apply for the purpose of carrying or transporting goods.

The lightweight plastic shopping bags provided by retail outlets are often referred to as 'single-use' in that once supplied, they are typically not taken back to a retail store by the consumer for re-filling. These bags are mainly made of high-density polyethylene (HDPE) less than 35 microns thick, and are used for carrying items such as groceries, takeaway containers, pharmacy items, bottle-shop items, other retail goods and loose (unpacked) items purchased at convenience and hardware stores. These bags are normally disposed of after only one use, and are also 'fit-for purpose' for single use only.

The proposed ban, however, will not apply to the retail supply of certain other bags including:

- bags made of plastics which meet the Australian Standard for biodegradability and compostability (currently Australian Standard AS 4736-2006) where they physically breakdown by the end of 12 weeks;
- heavier plastic retail bags (or boutique bags), typically made of low-density polyethylene (LDPE), used by clothing and department stores and are suitable for some re-use;

- ‘green’ bags, typically made of heavy polypropylene, designed for multiple use (approximately up to 100 times) and in some localities they can be recycled instead of becoming landfill at the end of their life;
- plastic ‘barrier’ bags of the type typically dispensed from a roll, that are without handles, and which are used to contain or wrap loose items such as frozen foods, prepared foods, flowers, laundry/dry cleaning, newspaper bags for home delivery, produce/bakery, loose fruit and vegetables.
- plastic bags that are an integral part of the packaging where the goods are sealed prior to sale (such as bread, ice, pasta, confectionary, cereal and frozen foods); and
- plastic bin liners (both commercial and domestic).

The supply of bags marked as ‘degradable’ will also be banned if they do not meet AS 4736-2006, as these bags generally only break down into smaller pieces over many years. They do not compost or degrade completely and still contribute to plastic pollution as litter or within landfills.

The campaign for sustainable behaviour change will aim to employ a wide arrange of tools, including policy instruments, infrastructure provision, and information provision; and adopting a targeted approach observing differences between subgroups.

Restrictions on market entry

The proposed legislation will restrict the entry of any new wholesale plastic bag manufacturers and distributors into the Tasmanian business sector, inasmuch as their businesses relate to the supply of lightweight shopping bags. It is considered likely, however, that new market entry opportunities will open up for businesses able to supply alternative shopping bags, which should help the sector to offset any negative impacts arising from market entry restrictions.

Restrictions on competitive conduct

As the proposed ban will apply to all retail outlets, it is envisaged that there will be no significant restrictions on competitive conduct.

Restrictions on product innovation

It is considered likely that the proposed ban, rather than placing restrictions on product innovation, will present opportunities for industry to develop and sell suitable alternative bags, such as biodegradable, or long-life recyclable bags.

Restrictions on the entry of goods and services

The focus of the proposed legislation is on the provision of lightweight plastic bags *for the purpose of* carrying goods from a retail premise. The proposed legislation will not specifically prevent lightweight plastic bags being brought into Tasmania nor their sale *per se*. Hence there will not be a specific restriction on the entry of goods to Tasmania, but rather just a restriction on how they can be used.

Administrative discretion that has been used to inhibit competition

The proposed legislation will not specify or otherwise allow for any administrative discretion that might inhibit competition, such as preferential purchasing

arrangements or financial assistance for a particular business or sector, nor will it set any technical specifications that are only available from a single supplier.

Nevertheless, because the legislation will define the type of bag that will be banned from retailers supplying to customers, it will implicitly recognise the existence of alternative options such as heavier-duty LDPE plastic bags, recycled PET bags and calico bags. This will drive retailers and consumers towards purchasing these alternatives, with a consequent financial benefit to their manufacturers, wholesalers and retailers.

Businesses which manufacture or supply a wide range of plastic bags should be able to adjust to the ban by adjusting their production and distribution processes away from lightweight plastic bags towards heavier-duty and re-usable alternatives.

Another offsetting factor is that major retailers such as Coles and Woolworths have for some time been making the move towards alternative bags, which will have allowed their bag suppliers time to adjust.

5. Impact on Business

The proposed legislation, expected to commence in early April 2013, will include a provision to allow retailers and businesses a significant 'transition' period of approximately 6 months before the ban officially takes full effect later in that year. The NT, ACT and SA State/Territory Governments also included a transition or 'phase-out' period when they introduced their ban, where retailers were required in varying degrees to:

- provide alternative shopping bags to customers;
- display notices detailing the upcoming ban;
- make arrangements with suppliers for the provision of the approved bags;
- phase-out stocks of lightweight plastic bags;
- prepare staff for the changes through training and education (of new laws); and
- re-configure packing and customer service areas (e.g. infrastructure changes to workplace design), if necessary.

Tasmania intends to encourage a co-operative approach between government, business and the community, and will seek to minimise regulatory compulsion.

For example, during the transition period Tasmanian retailers and businesses will have the option of supplying alternative bags to their customers, and this will be encouraged during the lead-in period for the ban. Retailers will also have the choice of whether they exhibit display counter notices detailing the legislative requirements of the upcoming ban to their clients, including where and how these notices are displayed at their place of business.

The EPA Division will supply Information Packages, including ban-specific advertising materials to retailers to assist in the transition process, which means that there should not be any direct financial impact related to advising customers of the ban.

Once the ban officially comes into effect, all retailers will be required to comply with the ban, and penalties will start to apply for non-compliance (potentially for

individuals and retailers). Compliance will be addressed through a phased-in approach following commencement of the ban.

Retailers should ensure that the suppliers of their alternative shopping bags can certify the environmental benefits claimed by the bags (i.e. biodegradable to AS 4736-2006) and that they are also compliant with the legislation. The principles outlined in the Australian Competition and Consumer Commission's publication *Green Marketing and the Australian Consumer Law* (2011) must not be contravened or retailers may be subject to fines.

In terms of specific retailer costs, the 2007 EPHC CRIS (p. 45) recognised that potential costs to business could result from staff training in the new arrangements, capital costs if new equipment has to be installed, and possibly increased theft of shopping baskets or trolleys.

The CRIS assumed for modelling purposes across the whole nation that industry would experience:

- A one-off cost to retailers of \$187 million, including \$65 million for staff training, \$120 million for increased theft, and \$1.7 million to modify equipment to cater for plastic bags substitutes.
- Ongoing annual costs to retailers of \$60 million, caused by increased transaction times and administration costs.
- No cost to retailers associated with instore education, promotion and administration of the ban.

The issue of trolley theft arose from the Irish experience following imposition of a plastic bag-related tax. In the Tasmanian context this is unlikely to be a problem because nearly all retail goods are, and will continue to be, handled and 'bagged' by the retailer before the customer leaves the store, which suggests that trolley theft should not increase as a result of the ban.

It is considered reasonable to assume Tasmanian retailers would pay a pro rata amount of the estimated national training and equipment modification costs given above. On the basis of population this could be in the order of \$1 million for training and \$30,000 for equipment. These costs will be offset to some degree by the fact that major Tasmanian supermarkets, which would likely account for the majority of plastic bag use, have already started using and providing replacement bags. Retailers will be able to charge customers for the supply of bags and customers will also have the choice to take along their own bags (including recycled alternatives) at no cost. It is important to note, however, that bag hygiene and maintenance will also be important for the health and safety of retail staff, and they will be able to decline or refuse to use unhygienic bags brought in by consumers, and to refuse to overfill bags which may cause an occupational health and safety risk. Ergonomic principles will apply to workplace design for staff, and this will be considered during the transition phase.

The definition of a 'retailer' in the legislation will also be quite broad to include any business selling a product, regardless of the size of that business. This will include a range from large scale businesses like supermarkets, to chains and franchises (e.g. hardware, newsagent and liquor stores), small corner stores and take-away shops, to online businesses within Tasmania, market and fair stalls, and road-side vendors and community events.

6. Potential Financial Impact on Consumers

It is reasonable to assume that the current cost of 'free' lightweight plastic shopping bags is typically passed on to consumers as part of their total shopping bill. The 2007 EPHC CRIS gave the cost of a lightweight plastic bag as \$0.03. This means that a shopper who buys 10 bags of groceries per week, for example, effectively pays about \$0.30 per week for their lightweight bags.

The CRIS also noted that the key financial impact of a ban on consumers relates to the cost of replacement bags.

One of the assumptions made in the CRIS in relation to the option of banning plastic bags was that a reusable bag would replace about 125 lightweight plastic bags. This suggests that a reusable bag has an effective 'value' of approximately \$3.75, if used to its maximum potential. This 'value' would seem to be more than the cost of a reusable bag, which typically ranges from about \$0.20 for a heavy-duty plastic bag to around \$2.00 for a calico, polypropylene or recycled PET bag.

Using the scenario described above, a shopper who needs to take 10 reusable bags to the supermarket each week once the ban commences will therefore have to spend up to \$20 'upfront', if they wish to avoid paying the direct cost of replacement bags whenever they visit the store. Used with care, heavy duty replacement bags should last about two years. Their cost will therefore be fully recovered, and there should be a slight financial benefit over time as the consumer accumulates savings from not using and paying for lightweight plastic bags. For example, two years' (104 weeks) use of alternative bags should save a shopper (104 x \$0.30) minus the \$20 replacement bag cost, or approximately \$11.

This conclusion does need to be viewed with caution, however, because it is not possible to specify exactly how, or whether retailers will choose to recoup bag costs. It is also important to note that many consumers are already using replacement bags, particularly in supermarkets, and therefore will not be financially disadvantaged by having to purchase reusable bags when the ban takes effect.

Nevertheless, the 2007 CRIS also noted that many consumers re-use lightweight plastic bags as bin liners, and assumed that purpose-made bin liners would replace one in seven plastic bags, at a cost of \$0.05 per bin liner. Therefore, a family currently using 10 lightweight plastic bags per week, or 500 bags per year, would need to buy approximately 70 bin liners per year, at a total cost of \$3.50. Similar to the replacement bag costs, potential bin liner costs should only be seen as indicative because of the element of consumer choice involved.

It is also recognised that consumers could reuse lightweight bags for others purposes as well, meaning it is difficult to accurately determine the magnitude of the likely financial impact.

7. Advantages of the Restriction on Competition

Certainty

The proposed ban will provide certainty in terms of which bags will be banned, and how the ban will be administered. This was noted in the Australian Government's Productivity Commission Waste Management Report No. 38 (2006), which explained that:

- a complete ban can provide certainty to retailers and consumers as there can be no ambiguity as to what constitutes a **banned** bag or not, as it is defined in the legislation and/or regulations;
- the parties that need to be targeted to make the requirements effective can be readily identified and held accountable;
- compliance can be readily monitored and enforced; and
- the community avoids the product's inappropriate disposal.

Potential new business opportunities

A complete ban may also result in a competitive new market of alternative bags with new entrants into the market seizing opportunities for increased market share.

Technological change and advances in the way we use raw materials also opens up the potential of switching our dependence from petrochemical feedstock towards relatively benign materials such as jute, hemp, or other natural fibres. Innovative and sustainable carrier bag solutions will provide benefits in terms of more sustainable extraction, harvesting, processing and/or manufacturing phases throughout a product's life cycle.

The ban will also promote opportunities for greater recycling and conservation through greater efficiency of use.

Environmentally aware consumers

Alternative options to the traditional single-use plastic bag have been in the market place for a number of years and the adoption of re-usable bags when purchasing goods is a concept which is being adopted by more and more of Tasmania's population.

Direct intervention in the retail supply of lightweight plastic bags will help to ensure product prices reflect all relevant costs, and, complemented by awareness raising campaigns, will help to consumers make more informed choices and address community concerns about over-consumption.

Environmental amenity

Plastic bag littering from take-away shops in particular can be a major contributor to litter in our streetscapes and tourist spots, so the ban will be likely to improve the visual amenity of these locations.

8. Disadvantages of the Restriction on Competition

Other than the impacts described in Parts 4 and 5 of this MAS, the main disadvantage of the proposed ban is the uncertainty surrounding its environmental cost-effectiveness. For example, Productivity Commission Waste Management Report No. 38 (page 34) noted that a more cost-effective approach to addressing the underlying issues of concern would be to target plastic-bag litter directly; i.e. use a 'pay-as-you-throw' fee approach. However, as the proposed legislation will tackle the 'supply-side' of the litter problem, it is considered that in time, this approach will yield more lasting benefits in terms of litter reduction, particularly as it will operate in conjunction with existing environmental programs and legislation that deal with litter.

9. Alternative Options

Option 1: Do nothing

This is the least preferred option because the Tasmanian House of Assembly has already resolved in November 2010 to support the introduction of a ban on lightweight non-biodegradable plastic check-out bags, and the Government has subsequently allocated funds to implement the ban over the next three State Budgets (2012-13, 2013-14 and 2014-15). The EPA Division of the Department of Primary Industries, Parks, Water and Environment (DPIPWE) has also allocated resources and commenced preliminary work on the implementation of the ban.

Option 2: Rely on the industry to self-regulate

This is not the preferred option due to the diversity and composition of the retail industry.

Although parts of the retail industry in Tasmania have made some noteworthy progress towards supplying their consumers with alternative shopping bags, this has mainly been represented by large scale businesses and not the small scale take-away shops which are a major supplier of the single-use bags that contribute to a considerable amount of the litter in our streetscapes and tourist spots.

There is also no one association which represents all retail outlets as a whole, which would make it difficult for the industry to self-regulate effectively.

Self-regulation may also make it difficult to monitor and regulate charges for alternative bags supplied at the point of sale by the retailer.

Option 3: The proposed legislation

This is the preferred option, as it is considered to provide the greatest benefit at least cost to the community.

As noted previously, the proposed legislation aims to stimulate new and more sustainable ways of living, working and producing – and for these to become the new habits of the Tasmanian community. It also aims to drive behavioural change through regulation, rather than relying on indirect processes such as social and media

pressures, with their uncertain outcomes, and it can also provide certainty to retailers and consumers.

It is favoured over other options such as landfill levies which can increase the incentive to illegally dump waste and can be seen as revenue raising fees rather than direct improvements to management of the landfill or best practice.

Also, the Productivity Commission's report favours regulation that reduces externalities to acceptable levels and better enforcement, rather than the use of levies.

10. Consultation Process

To date, the consultation process by the EPA Division (DPIPWE) in relation to the ban has included:

- Research and consultation with other jurisdictions (SA, ACT and NT) to determine their approaches, policies, procedures and legislation for the implementation of a ban;
- Preliminary discussions with relevant Tasmanian State Government Departments and Divisions, including Local Government;
- Preliminary meetings or discussions with industry stakeholders including waste management facilities, large scale businesses such as Coles, Woolworths and retail industry representatives;
- Previous consultation with relevant Commonwealth Government agencies including the provision of EPA Division comments on specific EPHC documentation related to this issue; and
- The provision of EPA Division comments on other relevant documents in the public arena.

Further to the above, appropriate stakeholder engagement will occur to support the implementation of the ban, during the lead up, the phase-in or transition period and following the commencement of the ban.

This will include the release of this MAS for stakeholder comment in late 2012, to assist in drafting of the legislation. The proposed ban will also be widely advertised in the business and public sectors from early 2013 through to late 2013 when the ban is expected to come into force.

11. Effect on Other Government Agencies (Proposed Legislation Only)

The proposed legislation will not directly impinge on or affect the area of responsibility of another government agency in terms of overlap, duplication or conflict. However, as part of the development and implementation phases of the ban, the EPA Division (DPIPWE) will be liaising and keeping informed a range of organisations within the State Government, Local Government and the Commonwealth Government which may include:

- Treasury and Finance
 - Economic Reform Unit (ERU)
- Premier and Cabinet
 - Community Development Division
 - Local Government Division
 - Office of Parliamentary Counsel (OPC)
 - Policy Division
- Economic Development, Tourism and the Arts
 - Business Point
 - BizTas
 - Events Management
 - Brand Tasmania
 - Industry Capability Network Tasmania (ICN)
 - Tourism Tasmania
- Justice
 - Consumer Affairs and Fair Trading
 - Workplace Standards; and
- Infrastructure, Energy and Resources
 - Office of Energy Planning and Conservation.



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