

**Product Stewardship Amendment
(Packaging and Certain Plastics) Bill
2019**

Exposure Draft

(Senator Whish-Wilson)

A Bill for an Act to amend the *Product Stewardship Act 2011*, and for related purposes

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OPC drafter to complete	
1. Does this Bill need a message? (See H of R Practice, sixth ed, pp. 423-427, and OGC advice.) If yes: <ul style="list-style-type: none"> • List relevant clauses/items— • Prepare message advice (see Drafting Direction 4.9) • Give a copy of the message advice to the Legislation area. 	No
2. Does this Bill need a notice? (See H of R Standing Order 178 and Drafting Direction 3.2.) If no list relevant clauses/items—	Yes
3. Is there any constitutional reason why this Bill should not be introduced in the Senate? (See Constitution sections 53 and 55 and Drafting Direction 3.2.)	No

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A Bill for an Act to amend the *Product Stewardship Act 2011*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Product Stewardship Amendment (Packaging and Certain Plastics) Act 2019*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of	The day after the end of the period of 6	

Schedule 1—Amendments

Product Stewardship Act 2011

1 Section 6

Insert:

container includes (without limitation) any cup, drinkware, pack, carton, box, tin, packet, bag, pouch, tube or other container.

engage in conduct includes omitting to perform an act.

labelled plastic: see subsection ^40R(1).

packaging includes:

- (a) a container, wrapper, confining band or other thing in which a good is packed, or 2 or more goods are packed; and
- (b) anything around which a good is wound or wrapped, or 2 or more goods are wound or wrapped; and
- (c) a container that is designed to contain a liquid for human consumption (whether for the purposes of transporting or storing the liquid, or for the use or consumption of the liquid).

packaging and plastics scheme: see subsection ^40B(1).

packaging and plastics scheme member: see section ^40C.

packaging and plastics targets: see subsection ^40B(2).

packaging requirements means regulations made for the purposes of subsection ^40D(1).

packaging return payment: see subsection ^40D(4).

plastics exempt act: see section ^40N.

prohibited plastic: see section ^40M.

1 **2 After Part 4**

2 Insert:

3 **Part 4A—Mandatory product stewardship—**
4 **packaging and certain plastics**

5 **Division 1—Guide to this Part**

6 **^40A Guide to this Part**

7 This Part provides for the mandatory product stewardship of
8 packaging and certain plastics.

9 Division 2 of this Part establishes the packaging and plastics
10 scheme and specifies the packaging and plastics scheme members
11 of the scheme.

12 The scheme is directed towards achieving the packaging and
13 plastics targets by:

- 14 (a) establishing packaging requirements in relation to
15 packaging (see Division 3); and
16 (b) monitoring packaging and plastics scheme members (see
17 sections ^40H and ^40J); and
18 (c) directing a packaging and plastics scheme member to
19 take, or not to take, certain actions (see sections ^40K
20 and ^40L).

21 The scheme also:

- 22 (a) prohibits certain plastics (Division 5); and
23 (b) requires the packaging of labelled plastics to include
24 certain matters (Division 6).

1 **Division 2—Establishment and membership of the**
2 **packaging and plastics scheme**

3 **^40B Packaging and plastics scheme**

4 (1) This Part establishes a scheme (the *packaging and plastics*
5 *scheme*):

6 (a) that is directed towards achieving the packaging and plastics
7 targets by doing the following:

8 (i) establishing packaging requirements in relation to
9 packaging (see Division 3);

10 (ii) monitoring packaging and plastics scheme members
11 (see sections ^40H and ^40J);

12 (iii) directing a packaging and plastics scheme member to
13 take, or not to take, certain actions (see sections ^40K
14 and ^40L); and

15 (b) that prohibits certain plastics (Division 5); and

16 (c) that requires the packaging of labelled plastics to include
17 certain matters (Division 6).

18 (2) The *packaging and plastics targets* are the following targets:

19 (a) all packaging used in Australia will be reusable, recyclable or
20 compostable by 2025;

21 (b) 70% of Australia's packaging will be recycled or composted
22 by 2025;

23 (c) 70% of Australia's plastic packaging will be recycled or
24 composted by 2025;

25 (d) all packaging used in Australia will include, on average, 30%
26 recycled content by 2025;

27 (e) problematic and unnecessary plastic packaging will be
28 phased out through design, innovation or the introduction of
29 alternatives;

30 (f) in relation to single-use food containers and beverage cups
31 made of plastic:

- 1 (i) by 2025, the consumption of such containers and cups
2 will have been reduced by 25% from the level of
3 consumption that existed in 2019; and
4 (ii) beginning on 1 January 2025, 70% of such containers
5 and cups used in a calendar year will be recycled in that
6 year;
- 7 (g) in relation to beverage containers:
8 (i) beginning on 1 January 2025, 90% of such containers
9 used in a calendar year will be recycled in that year; and
10 (ii) beginning on 1 January 2025, any plastic caps or lids for
11 such containers must remain attached to the container
12 during its use as a beverage container; and
13 (iii) the creation of a national deposit scheme for such
14 containers by 1 January 2021 that refunds at least 20
15 cents for each deposited container;
- 16 (h) in relation to packaging made in the form of thin-film plastic:
17 (i) by 2025, the consumption of such packaging will have
18 been reduced by 25% from the level of consumption
19 that existed in 2019; and
20 (ii) beginning on 1 January 2025, 70% of such packaging
21 used in a calendar year will be recycled in that year;
- 22 (i) in relation to filters tips (within the meaning of the *Tobacco*
23 *Plain Packaging Act 2011*) containing plastic—by 2025, the
24 consumption of such filters tips will have been reduced by
25 50% from the level of consumption that existed in 2019;
- 26 (j) any other target prescribed in the regulations for the purposes
27 of this paragraph.

28 **^40C Membership of the packaging and plastics scheme**

29 A person is a *packaging and plastics scheme member* of the
30 packaging and plastics scheme if:

- 31 (a) the person is:
32 (i) a constitutional corporation; or
33 (ii) a body corporate that is incorporated in a Territory; and
34 (b) the person manufactures, imports, distributes or uses
35 packaging for commercial purposes.

Division 3—Packaging requirements**^40D Packaging requirements**

- (1) The regulations may require a person to take, or not to take, specified action in relation to packaging.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection in relation to packaging may do any or all of the following:
- (a) prohibit (either absolutely or subject to conditions), limit, restrict or otherwise affect the manufacture, import, export, distribution or use of packaging;
 - (b) prohibit (either absolutely or subject to conditions), limit or restrict substances from being contained in packaging;
 - (c) require packaging to be labelled or marked in accordance with the regulations;
 - (d) specify requirements in relation to communicating information, in accordance with the regulations, in connection with distributing, reusing, recycling, recovering, treating or disposing of packaging;
 - (e) require a person to make a packaging return payment in relation to packaging (see subsection (4));
 - (f) specify other requirements in relation to reusing, recycling, recovering, treating or disposing of packaging;
 - (g) require a person to keep records relating to a product in that class in accordance with the regulations;
 - (h) require a person to give the Minister specified information relating to packaging in accordance with the regulations;
 - (i) provide for the Minister to exempt a specified person from a requirement specified in regulations made for the purposes of that subsection.
- (3) The paragraphs of subsection (2) do not limit each other.

Meaning of packaging return payment

- (4) A ***packaging return payment*** is a payment, of an amount specified in the regulations in relation to packaging, that a person is required

1 to make to another person if the other person returns the packaging
2 for reuse, recycling, recovery, treatment or disposal.

3 *Packaging return payment not taxation*

4 (5) Regulations made for the purposes of subsection (1) that require a
5 person to make a packaging return payment must not amount to
6 taxation.

7 **^40E Matters the Minister must be satisfied of before packaging**
8 **requirements are made**

9 Before the Governor-General makes regulations that prescribe
10 packaging requirements, the Minister must:

- 11 (a) be satisfied that the requirements will further the objects of
12 this Act (see section 4); and
13 (b) be satisfied that the requirements are directed towards
14 achieving the packaging and plastics targets; and
15 (c) have done the following:
16 (i) published a draft of the requirements and invited
17 packaging and plastics scheme members to make
18 submissions on the draft;
19 (ii) considered any submissions that are received within the
20 time limit specified by the Minister when the Minister
21 published the draft.

22 **^40F Packaging requirements—constitutional connection**

- 23 (1) One or more of the following must apply in relation to packaging
24 requirements in relation to packaging:
25 (a) the requirements are expressed only to apply in relation to
26 action taken, or not taken, by a constitutional corporation;
27 (b) the requirements are expressed only to apply in relation to the
28 taking of action in the course of constitutional trade or
29 commerce;
30 (c) the requirements are expressed only to apply in relation to an
31 action taken, or not taken, in a Territory.

- 1 (2) The packaging requirements in relation to packaging must specify
2 whether they are made in accordance with paragraph (1)(a),(b) or
3 (c).

4 **^40G Compliance with packaging requirements**

- 5 (1) A person contravenes this subsection if:
6 (a) the person is subject to a packaging requirement; and
7 (b) the person engages in conduct; and
8 (c) the conduct contravenes the requirement.

9 *Fault-based offence*

- 10 (2) A person commits an offence if the person contravenes
11 subsection (1). The physical elements of the offence are set out in
12 that subsection.

13 Penalty: 100 penalty units.

14 *Strict liability*

- 15 (3) A person commits an offence of strict liability if the person
16 contravenes subsection (1).

17 Penalty: 20 penalty units.

18 *Civil liability provision*

- 19 (4) A person is liable to a civil penalty if the person contravenes
20 subsection (1).

21 Civil penalty:

- 22 (a) if the person is a body corporate—1,000 penalty units; and
23 (b) if the person is not a body corporate—200 penalty units.

1 **Division 4—Monitoring of, and issuing directions to,**
2 **packaging and plastics scheme members**

3 **^40H Report from certain packaging and plastics scheme members**

4 (1) A packaging and plastics scheme member must provide a written
5 report in accordance with subsection (2) to the Minister if the
6 member has had a reportable financial year.

7 Civil penalty: 200 penalty units.

8 (2) The report must:

9 (a) be in the approved form; and

10 (b) be provided within 2 months after the end of the reportable
11 financial year to which the report relates; and

12 (c) set out:

13 (i) the actions taken, or not taken, by the member to help
14 achieve the packaging and plastics targets during the
15 reportable financial year; and

16 (ii) the actions the member will take to help achieve those
17 targets; and

18 (d) include information about the actions taken, or not taken, by
19 the member in compliance with any packaging requirements;
20 and

21 (e) include any matters specified in regulations made for the
22 purposes of this paragraph.

23 *Reportable financial year*

24 (3) A financial year is a **reportable financial year** for a packaging and
25 plastics scheme member if the member had an annual turnover of
26 \$5 million or more in the previous financial year.

27 *Publishing reports*

28 (4) The Minister may, in such manner as the Minister thinks
29 appropriate, cause to be published or made available the report
30 provided to the Minister under subsection (1).

Annual turnover

- 1
- 2 (5) For the purposes of this section, the **annual turnover** of a
- 3 packaging and plastics scheme member, during a financial year, is
- 4 the sum of the values of all the supplies that the member, and any
- 5 body corporate related to the member, have made, or are likely to
- 6 make, during that period, other than the following supplies:
- 7 (a) supplies made from any of those bodies corporate (including
- 8 the member) to any other of those bodies corporate;
- 9 (b) supplies that are input taxed;
- 10 (c) supplies that are not for consideration (and are not taxable
- 11 supplies under section 72-5 of the *A New Tax System (Goods*
- 12 *and Services Tax) Act 1999*);
- 13 (d) supplies that are not made in connection with an enterprise
- 14 that the member carries on.
- 15 (6) Expressions used in subsection (5) that are also used in the *A New*
- 16 *Tax System (Goods and Services Tax) Act 1999* have the same
- 17 meaning in that subsection as they have in that Act.
- 18 (7) The question whether 2 bodies corporate are related to each other
- 19 is to be determined for the purposes of this section in the same way
- 20 as for the purposes of the *Corporations Act 2001*.

21 **^40J Requests for information from packaging and plastics scheme**

22 **members**

- 23 (1) The Minister may, in writing, request a packaging and plastics
- 24 scheme member to give the Minister information relating to the
- 25 actions taken, or not taken, by the member towards achieving the
- 26 packaging and plastics targets within a period specified in the
- 27 request.
- 28 (2) If a packaging and plastics scheme member receives a request from
- 29 the Minister under subsection (1), the member must provide the
- 30 information requested within the period specified in the request.

31 Civil penalty: 50 penalty units.

1 **^40K Minister may give directions to packaging and plastics scheme**
2 **members**

3 (1) This section applies if:

4 (a) the Minister has received:

5 (i) a report from a packaging and plastics scheme member
6 under section ^40H; or

7 (ii) information from such a member as requested by the
8 Minister under section ^40J; and

9 (b) the Minister is reasonably satisfied, on the basis of the report
10 or information, that the actions taken, or not taken, by the
11 member are not sufficient in helping to achieve the packaging
12 and plastics targets.

13 (2) The Minister may, in writing, direct the member to take, or not to
14 take actions, specified in the direction.

15 (3) A direction under subsection (2) is not a legislative instrument.

16 *Notifying packaging and plastics scheme member of proposed*
17 *direction*

18 (4) Before giving a direction, the Minister must give the member
19 written notice that the Minister is proposing to give the member the
20 direction.

21 (5) The notice to the member must:

22 (a) set out the reasons the Minister is proposing to give the
23 direction; and

24 (b) invite the member to respond, in writing, to the notice within
25 a period specified in the notice.

26 (6) The Minister must consider any response given to the Minister
27 within the specified period.

28 (7) A notice under subsection (4) is not a legislative instrument.

1 **^40L Packaging and plastics scheme member must comply with**
2 **directions**

- 3 (1) A packaging and plastics scheme member who is given a direction
4 under subsection ^40K(2) must comply with the direction.

5 *Fault-based offence*

- 6 (2) A packaging and plastics scheme member commits an offence if:
7 (a) the member is given a direction under subsection ^40K(2);
8 and
9 (b) the member engages in conduct; and
10 (c) the conduct contravenes the direction.

11 Penalty: 300 penalty units.

12 *Civil penalty provision*

- 13 (3) A packaging and plastics scheme member is liable to a civil
14 penalty if the member contravenes subsection (1).

15 Civil penalty: 1000 penalty units.

16 **Division 5—Prohibition of certain plastics**

17 **^40M Prohibited plastics**

- 18 (1) On and after 1 January 2021, a product made of, or that contains,
19 plastic is a ***prohibited plastic*** if the product:
20 (a) is a lightweight carrier bag; or
21 (b) consists of microbeads;
- 22 (2) On and after 1 January 2025, a product made of, or that contains,
23 plastic is a ***prohibited plastic*** if:
24 (a) the product is manufactured to be principally used by a
25 person only once before being disposed of; and
26 (b) the product:
27 (i) is a set of connected rings to hold things;
28 (ii) is a straw or stirrer made from non-compostable plastic;

- 1 (iii) is cutlery or a kitchen utensil made from non-
2 compostable plastic;
3 (iv) is a plate, bowl or other dish made from non-
4 compostable plastic;
5 (v) is a cotton bud;
6 (vi) is a stick for balloons; or
7 (vii) is a product specified in regulations for the purposes of
8 this subparagraph.
- 9 (3) On and after 1 January 2025, a product is a *prohibited plastic* if the
10 product is:
11 (a) a food or beverage container made of, or that contains,
12 polystyrene; or
13 (b) made of, or that contains, oxo-degradable plastic.
- 14 (4) Regulations may exempt a product from being a prohibited plastic.

15 **^40N Plastics exempt act**

- 16 (1) The regulations may provide that a specific act in relation to a
17 prohibited plastic is a *plastics exempt act* (including by providing
18 that an act is a *plastics exempt act* if specified conditions are met).
- 19 (2) Before the Governor-General makes regulations that provide that a
20 specified act in relation to a prohibited plastic is a plastics exempt
21 act, the Minister must be satisfied of one or more of the following
22 in relation to the act:
23 (a) the act is necessary to satisfy food safety requirements;
24 (b) the act is necessary to ensure the access needs of one or more
25 specified persons, or classes of person, are being met;
26 (c) the act relates to medical purposes, therapeutic purposes or
27 other purposes relating to health;
28 (d) the act relates to providing or ensuring the security or
29 personal safety of one or more specified persons, or classes
30 of person.

31 **^40P Prohibited plastics—constitutional corporations**

- 32 (1) A person contravenes this subsection if:
-

-
- 1 (a) the person is a constitutional corporation; and
2 (b) the person manufactures, imports, distributes or uses a
3 prohibited plastic for commercial purposes; and
4 (c) the manufacture, importation, distribution or use of the
5 prohibited plastic occurs:
6 (i) on or after 1 January 2021 for prohibited plastics under
7 subsection ^40M(1); or
8 (ii) on or after 1 January 2025 for prohibited plastics under
9 subsection ^40M(2) or subsection ^40M(3); and
10 (d) the manufacture, importation, distribution or use is not a
11 plastics exempt act.

12 *Fault-based offence*

- 13 (2) A person commits an offence if the person contravenes
14 subsection (1). The physical elements of the offence are set out in
15 that subsection.

16 Penalty: 100 penalty units.

17 *Strict liability*

- 18 (3) A person commits an offence of strict liability if the person
19 contravenes subsection (1).

20 Penalty: 20 penalty units.

21 *Civil liability provision*

- 22 (4) A person is liable to a civil penalty if the person contravenes
23 subsection (1).

24 Civil penalty: 1,000 penalty units.

25 **^40Q Prohibited plastics—persons other than constitutional**
26 **corporations**

- 27 (1) A person contravenes this subsection if:
28 (a) the person manufactures, imports, distributes or uses a
29 prohibited plastic; and

- 1 (b) the manufacture, importation, distribution or use of the
2 prohibited plastic was:
3 (i) in the course of, or for the purposes of, constitutional
4 trade and commerce; or
5 (ii) in a Territory for commercial purposes; or
6 (iii) on behalf of a constitutional corporation for commercial
7 purposes; or
8 (iv) for the purposes of supplying goods to a constitutional
9 corporation; and
10 (c) the manufacture, importation, distribution or use of the
11 prohibited plastic occurs on or after 1 January 2025; and
12 (d) the manufacture, importation, distribution or use is not a
13 plastics exempt act.

14 *Fault-based offence*

- 15 (2) A person commits an offence if the person contravenes
16 subsection (1). The physical elements of the offence are set out in
17 that subsection.

18 Penalty: 100 penalty units.

19 *Strict liability*

- 20 (3) A person commits an offence of strict liability if the person
21 contravenes subsection (1).

22 Penalty: 20 penalty units.

23 *Civil liability provision*

- 24 (4) A person is liable to a civil penalty if the person contravenes
25 subsection (1).

26 Civil penalty:

- 27 (a) if the person is a body corporate—1,000 penalty units; and
28 (b) if the person is not a body corporate—200 penalty units.

Division 6—Packaging of labelled plastics**^40R Packaging of labelled plastics**

- (1) This section applies in relation to a product (the *labelled plastic*) that is made of, or contains, plastic if:
- (a) the product is a balloon; or
 - (b) the product is a sanitary product; or
 - (c) the product is specified in regulations made for the purposes of this paragraph.
- (2) On and after 1 January 2021, the packaging of the labelled plastic must state, in a prominent location on the packaging:
- (a) that the product is harmful to the environment if the product is released or incorrectly disposed of; and
 - (b) any other matter specified in regulations made for the purposes of this paragraph.

^40S Packaging of labelled plastics—constitutional corporations

- (1) A person contravenes this subsection if:
- (a) the person is a constitutional corporation; and
 - (b) the person distributes a labelled plastic for commercial purposes; and
 - (c) the distribution of the labelled plastic occurs on or after 1 January 2021; and
 - (d) the packaging of the labelled plastic does not comply with subsection ^40R(2).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: 100 penalty units.

1 *Strict liability*

2 (3) A person commits an offence of strict liability if the person
3 contravenes subsection (1).

4 Penalty: 20 penalty units.

5 *Civil liability provision*

6 (4) A person is liable to a civil penalty if the person contravenes
7 subsection (1).

8 Civil penalty:

- 9 (a) if the person is a body corporate—1,000 penalty units; and
10 (b) if the person is not a body corporate—200 penalty units.

11 **3 At the end of paragraph 51(1)(a)**

12 Add:

- 13 ; or (iii) subsection ^40G(1) (contravention of packaging
14 requirement); or
15 (iv) subsection ^40H(1) (report from certain packaging and
16 plastics scheme members); or
17 (v) subsection ^40J(2) (packaging and plastics scheme
18 member must provide information requested by the
19 Minister); or
20 (vi) subsection ^40L(1) (packaging and plastics scheme
21 member must comply with directions); or
22 (vii) subsection ^40P(1) (prohibited plastics—constitutional
23 corporations); or
24 (viii) subsection ^40Q(1) (prohibited plastics—persons other
25 than constitutional corporations); or
26 (ix) subsection ^40S(1) (packaging of labelled plastics—
27 constitutional corporations); or
28 (x) subsection ^40T(1) (packaging of labelled plastics—
29 persons other than constitutional corporations); and