

2010

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PLASTIC SHOPPING BAGS BAN BILL 2010

EXPLANATORY STATEMENT

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PLASTIC SHOPPING BAGS BAN BILL 2010

Outline

Plastic bags have an impact on the environment and society. Plastic bags have become a symbol of excessive consumption and reducing plastic bag use is an action that everyone can contribute to. Efforts to reduce plastic bags may also have additional benefits through raising community awareness of broader environmental and sustainability issues.

Plastic shopping bags come in a variety of forms that have differing impacts on the environment, depending upon their design, the source of the raw material and whether or not they break down in the environment.

The Bill aims to put in place arrangements to reduce the use of plastic bags made from polyethylene through restricting supply of plastic bags at the point of sale where the bag is provided to carry goods.

The Bill provides that it is an offence for a retailer to supply a plastic bag for the purposes of carrying goods bought, or to be bought, from the retailer. The offence is a strict liability offence. Two offences in the Bill are strict liability offences.

Clause 1 provides for the Name of Act as the *Plastic Shopping Bags Ban Act 2010*, which provides a clear indication of the purpose of the Act.

Clause 2 Commencement provides that the Act would commence on the day after its notification day as fixed by the Minister, and allowing for a four month transition period. This transition period is a critical period to allow businesses to adapt to the changed circumstances. During this period a communications strategy will be put in place to assist both business and consumers to make the transition.

Clause 3 provides for the dictionary to be part of the legislation.

Clause 4 explains that notes included in the Act are explanatory and are not in themselves part of the Act.

Clause 5 indicates that the Criminal Code applies to this Act and that penalty units in relation to the Act are defined in the *Legislation Act 2000*, s 133.

Clause 6 provides for a definition of a plastic bag. The following bag types are exempted from the ban:

- biodegradable bags;
- integral packaging (plastic bags in which goods are sealed prior to sale);
- barrier bags;
- non-plastic shopping bags

Clause 7 provides that it is an offence for a retailer to supply a plastic bag for the purposes of carrying goods bought, or to be bought, from the retailer. Clause 7 identifies the maximum penalty for the offence. The offense is to apply irrespective of whether or not a fee is charged for the plastic bag. The offence in this section is a strict liability offence.

Strict Liability Offences engage the rights to liberty and security of person and the presumption of innocence. Section 28 of the *Human Rights Act 2004* provides that human rights may be limited only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society. Further, that any limitation or restriction of human rights must pursue a legitimate objective and there must be a reasonable relationship of proportionality between the means employed and the objective sought to be realised.

A strict liability offence under section 23 of the Criminal Code 2002 means that there are no fault elements for the physical elements of the offence to which strict liability applies. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact.

Subclause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

Strict Liability offences arise in a regulatory context where there is public interest in ensuring that regulatory schemes are observed and which requires the sanction of criminal penalties.

Where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental or fault elements can justifiably be excluded. The limitation in this case is justified in a regulatory context. The provision is intended to ensure that retailers, that is shop owners, comply with the legislation. Retailers are a specific group of people who could be reasonably expect to know the requirements of the law in relation to their business. In addition, in introducing the law, there will be educational material and a communication campaign to ensure that shop owners and the general community is aware of the change.

Consideration was given to the level of the penalty as a strict liability offence and was determined as consistent with other, similar strict liability offences.

A maximum penalty of 50 penalty units is applicable to strict liability offences under the Act irrespective of whether or not a fee is charged for the plastic bag.

A maximum penalty of 50 penalty units applies to these offences in recognition of the importance of protecting the integrity and currency of assessment decisions as well as public confidence in the checking system.

Clause 8 provides for a regulation-making power. This is intended to provide for arrangements for compliance such as providing for the testing of bags against biodegradability standards and enforcement procedures.

Clause 9 provides for a review of the Act. This would ensure that the Act would remain contemporary with similar Acts in other jurisdictions, and with national developments. It would also allow for an assessment of the impact of the Act on the reduction in litter levels and impact on the environment. The Clause provides a timeframe of 6 months after the day the review is started for the Minister to present the review to the Legislative Assembly.

Clause 100 provides for transitional arrangements for a retailer to make alternative shopping bags available and display notices.

This clause establishes strict liability offences for the retailers (that is shop owners) who fail to comply with the legislation. A retailer will commit these offences if the retailer fails to make alternative shopping bags available and fails to prominently display notices containing the statement “The ACT Government will soon ban the supply of lightweight checkout style plastic shopping bags. Alternative shopping bags are available from this retail outlet”. A maximum penalty of 50 penalty units applies to these offences under the Act in recognition of the importance of protecting public confidence in the checking system. It is on this basis that the Government believes that the use of strict liability offences contained in this clause is relevant to the policy objectives of ensuring that regulatory schemes are observed by all retailers, The strict liability offence in this clause is reasonable within the specific context of the offence, and demonstrably justifiable in a free and democratic society.

Clause 101 provides for a change to the *Fair Trading (Consumer Affairs) Act 1973*, Dictionary, to add a new paragraph referring to the *Plastic Shopping Bags Ban Act 2010*.

The **Dictionary** provides for definitions of *biodegradable bag*, *barrier bag*, *plastic shopping bag*, and *a retailer*.