



14 October 2015

Ms Christine McDonald  
Committee Secretary  
Senate Standing Committees on Environment and Communications  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

By email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Ms McDonald,

**Threat of Marine Plastic Pollution in Australia**

The Law Council of Australia welcomes the opportunity to provide comments on the threat of marine plastic pollution (MPP) in Australia.

The Committee would welcome the opportunity to discuss the submission further.

Yours sincerely,

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**CHIEF EXECUTIVE OFFICER**

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## LAW COUNCIL OF AUSTRALIA

### Submission to the Senate Standing Committees on Environment and Communications

The Law Council of Australia welcomes the opportunity to provide comments on the threat of marine plastic pollution (MPP) in Australia.

The Law Council of Australia is the peak national representative body of the Australian legal profession, representing some 60,000 legal practitioners nationwide.

The comments following were provided by members of the Australian Environment and Planning Law Group in the Law Council's Legal Practice Section.

The current legal framework for responding to threats posed by MPP is a complex one, comprised of different legislative arrangements in each state and territory as well as Commonwealth law. The *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) is the most relevant Commonwealth legislation for mitigating marine debris,<sup>1</sup> of which MPP is a subset. Under the Act, marine debris has been identified as a key threatening process (KTP) for a number of threatened and endangered species.<sup>2</sup> The 2009 Threat Abatement Plan for the Impacts of Marine Debris on Vertebrate Marine Life (the TAP),<sup>3</sup> sets out a comprehensive list of action items, and combined with the findings of the recent TAP Review Report<sup>4</sup> (the TAP Review) these documents provide a helpful departure point for the discussion about how to mitigate the threats of MPP.

The focus of the KTP<sup>5</sup> is on ingestion and entanglement of marine debris, which is relevant for macroplastic pollution more so than for microplastic pollution. The TAP discusses implementing measures with four main objectives:

- contributing to the long-term prevention of the incidence of harmful marine debris;
- removing existing harmful marine debris from the marine environment;

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<sup>1</sup> Australian Government, Department of the Environment, [Marine Debris – What is Australia Doing?](#)

<sup>2</sup> Subsection 183(1) of the EPBC Act provides for the Minister to establish by legislative instrument published in the Gazette a list of key threatening processes. Under 188(3) a process is a key threatening process if it threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community. Subsection 188(4) defines the criteria for identifying a key threatening process.

<sup>3</sup> Department of the Environment, [Threat Abatement Plan for the Impacts of Marine Debris on Vertebrate Marine Life Review 2009–2014](#), May 2009

<sup>4</sup> Ibid.

<sup>5</sup> Marine debris resulting from the legal disposal of garbage at sea is excluded from the key threatening process. Under the *International Convention for the Prevention of Pollution from Ships*, overboard disposal of food, paper, glass, metal and crockery (but not plastics) is permitted from vessels more than 12 nautical miles from land. For more information, see the Australian Maritime Safety Authority's [MARPOL](#) pages.

- mitigating the impacts of harmful marine debris on marine species and ecological communities; and
- monitoring the quantities, origins and impacts of marine debris and assessing the effectiveness of management arrangements over time for the strategic reduction of debris.

The TAP uses the term “harmful marine debris” with “harmful” being an adjective that applies to all plastic marine debris.

The Department of the Environment commissioned an independent review of the plan’s effectiveness, in accordance with [s 279\(2\)](#) of the EPBC Act, which is now complete (the TAP Review). The TAP provided for an evaluation before the end of the five-year plan implementation period. As stated in the TAP, achievement of the plan’s objectives was to be measured against the following criteria:

- a general decline in the presence and extent of harmful marine debris in Australia’s marine environment; and
- a general decline in the number of marine vertebrates dying and being injured as a result of ingestion and/or entanglement in harmful marine debris.

Of particular concern is the review’s conclusion that:

*[d]espite progress, particularly in clean-up efforts, it is not possible to state that these criteria have been met during the life of the plan. Considering plastic consumption continues to increase globally, it is likely that the threat of marine debris has increased.’<sup>6</sup>*

The Law Council is of the view that the 2009 TAP content focused on marine debris, and the findings of the TAP Review 2009–14, provide a foundation for considering the next steps to be taken in relation to tackling the threats posed by marine plastic pollution.

A revised TAP, taking into account the findings of the TAP Review, would lead to a strengthening and refocusing of the original action items.

TAP Action 1.4 is that:

*State and territory governments to investigate how Australia’s obligations under MARPOL (i.e. to provide adequate waste reception facilities for ship waste) is encompassed in domestic legislation and policies.*

The Law Council notes that all state and territory governments have implemented legislation complementary to MARPOL Annex V except for Western Australia.

The Law Council recommends that the Australian Government urge Western Australia to pass legislation implementing MARPOL Annex V.

TAP Action 3.4 is that:

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<sup>6</sup> Department of the Environment, [Threat Abatement Plan for the impacts of marine debris on vertebrate marine life Review 2009–2014](#), 32.

*DEWHA to identify measures to promote the uptake and application of biodegradable and oxodegradable plastic in marine-based industries and environments where it is found to be effective.*

The Law Council observes that this recommended action regarding the identification of measures to promote the uptake and application of biodegradable and oxodegradable plastic is limited to marine-based industries and environments where it is found to be effective. However, the TAP Review has considered plastic used beyond marine-based industries, such as plastic bags, which appears to indicate a concern with this source of MPP and the wider issue of land-based sources of MPP.

The TAP Review notes that two Australian Standards provide support for state, territory and local governments to pursue regulatory action to limit the use of non-biodegradable, single-use plastic bags.<sup>7</sup> Such legislation is in place in South Australia, the Northern Territory, the Australian Capital Territory and Tasmania, but has not yet been introduced in the remaining states.

The TAP review mentions the *City of Fremantle Plastic Bag Local Law* which had been disallowed in 2013, and remade in 2015. Unfortunately, the Legislative Council of Western Australia approved a motion on 13 October 2015 to again disallow the Fremantle local law.<sup>8</sup> It would be preferable for non-biodegradable single-use plastic bags to be limited in a uniform way across Australia.

The Law Council recommends that the Australian Government Minister for the Environment, the Hon Greg Hunt MP, lead a national initiative to phase-out the use of non-biodegradable, single-use plastic bags across Australia, with a national legislative scheme building on current best practice legislation.

The TAP review has noted that investigation of ingestion of plastics by marine turtles indicates that changing the design of consumer items which constitute the largest portion of debris, might reduce the ingestion rates of turtles.

The TAP review also included as Action 3.3 that the Environment Department support research on the nature of degradation pathways of synthetic debris in the marine environment. This is the only action item that touches on the issues posed by the growing prevalence of microplastics in Australia's marine and coastal environment.

Microplastics can enter the marine environment directly from waste water containing plastic beads used in cosmetics and fibres from synthetic fleeces,<sup>9</sup> loosened during laundering.<sup>10</sup> Microplastics, because of their small size, travel on ocean currents, sink through the layers of ocean, and are consumed by large numbers of organisms. Microplastics pose a significant threat across the marine environment. California is reported to be the first state in the United States to enact legislation banning the use of

<sup>7</sup> Ibid 28. Australian Standard AS4736 for biodegradable plastics suitable for composting and other microbial treatment (in commercial systems) was released in 2006. The Australian Standard AS5810 for biodegradable plastics suitable for home composting was released in July 2010.

<sup>8</sup> City of Fremantle, [City disappointed at moves to disallow plastic bag ban](#) (2015); Legislative Council of Western Australia, [Uncorrected Hansard, Tuesday 13 October 2015](#), 45a–58a.

<sup>9</sup> University of New South Wales School of Biological, Earth and Environmental Sciences, *Microplastic threat to Sydney Harbour* (25 August 2014) <<http://bees.unsw.edu.au/microplastic-threat-sydney-harbour>>.

<sup>10</sup> Mark Anthony Browne, Phillip Crump, Stewart J Niven, Emma Teuten, Andrew Tonkin, Tamara Galloway, and Richard Thompson, 'Accumulation of Microplastic on Shorelines Worldwide: Sources and Sinks' (2011) 45(21) *Environmental Science and Technology* 9175.

plastic microbeads in personal care products, effective from 2020.<sup>11</sup> Senator Kirsten Gillibrand has sponsored a similar bill, to commence in 2018, in the Federal Congress. It was referred to a Senate Committee for review on 21 May 2015.<sup>12</sup>

The Law Council recommends that the Australian Government consider introducing legislation modelled on United States Senator Kirsten Gillibrand's [Microbead-Free Waters Act 2015](#).

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<sup>11</sup> The Act title is: *An act to add Chapter 5.9 (commencing with Section 42360) to Part 3 of Division 30 of the Public Resources Code, relating to waste management*. It was approved by the [Governor of California on 8 October 2015](#). See: L O'Connor, "California Lawmakers Approve Ban on Plastic Microbeads in Cosmetics", [The Huffington Post](#), 8 September 2015.

<sup>12</sup> The [Microbead-Free Waters Act 2015](#) was introduced on 21 May, read twice and referred to the Committee on Health, Education, Labor, and Pensions for review.