



## PRODUCT ECO-RESPONSIBILITY (AMENDMENT) BILL 2023

### THE LAW SOCIETY'S SUBMISSIONS

#### INTRODUCTION

The Product Eco-responsibility (Amendment) Bill 2023 (“Bill”) was introduced to the Legislative Council on 15 March 2023. The Law Society provides the following comments on the Bill.

#### OVERALL COMMENTS

2. The Government states that the Bill is for the regulation of disposable plastic tableware and other plastic products. It proposes to prohibit local sale and provision of any disposable plastic tableware for both dine-in and takeaway customers. The proposal is to be implemented in two phases. The first phase is intended to start six months after the passage of the Bill, i.e. in late 2023 or early 2024 at the earliest.
3. By way of a general comment, the Law Society considers that Hong Kong must be *more proactive and aggressive* in plastic waste reduction. For one thing, microplastics are present in our food, water and air; they could also be found in human placentas<sup>1</sup>. These plastic wastes are already killing wildlife and are becoming a disaster for humans. Plastic waste pollution is posing a *serious* and *an imminent* threat to the environment. The risks posed are *not illusory* or *academic*.
4. The world is trying to catch up and salvage the situation. Compared to other jurisdictions, disappointedly Hong Kong is lagging behind, notwithstanding the fact

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<sup>1</sup> “Microplastics revealed in the placentas of unborn babies”, The Guardian, 12 Dec 2020, <https://www.theguardian.com/environment/2020/dec/22/microplastics-revealed-in-placentas-unborn-babies>

that Hong Kong could readily have access to alternatives (by comparison to most of the neighboring regions).

5. With regard to the above, the Law Society echoes the recommendation of the Council for Sustainable Development (paragraph 3.4 of Annex G to the Legislative Council Brief on the Bill prepared by the Environmental Protection Department (“EPD”) dated 8 February 2023 (“Brief”)):

*“The Government should demonstrate its determination to promote a plastic-free culture in society. The Government should stand steadfast in inculcating the concept of eliminating / minimal use of single-use plastics in the community. Single-use plastic items should only be used when they are absolutely essential (e.g. for health or hygiene reasons) and without non-plastic alternatives.”* (emphasis added)

The above should be highlighted and emphasized, when the Legislative Council and the Government are to consider those proposals under the Bill.

6. Legislating regulations on environmental protection could help drive the market to a greener practice, but it should be recognized that the legislative process takes time and generally lags behind, especially when one is to take into account the relatively lengthy legislative process. On the other hand, it serves no useful purpose for us to wait until the market is ready (for a greener practice or otherwise),
7. When we review the proposals now put forward by the EPD, we are not convinced that those proposals are forged upon public views that the EPD has gauged in its own survey. For example, in response to a question as to whether disposable plastic tableware of pre-packaged food or drink products should be excluded from the Scheme on Regulation of Disposable Plastic Tableware (as referred to in paragraph 1 of Annex F of the Brief), the result of the public consultation shows that 45.7% of responses disagree with the exclusion (some suggested that it could create a loophole) and only 27.3% agree (27% being neutral) (Question 9(ii) of Annex F to the Brief). Yet, the EPD has apparently ignored the majority views and keeps the exclusion (see paragraph 7(a) of the Brief).
8. We urge a reconsideration on the above exclusion. For one thing, plastics is not irreplaceable, as there are viable alternatives. Disposable plastic straws attached to beverage cartons and disposable plastic cutlery provided inside cup noodles and ice cream cups, for example, can be replaced by wooden cutlery inside ice cream (non-plastic) cups and paper straws attached to beverage cartons. A number of cup noodles nowadays do not include any plastic cutlery at all.

9. We have already made a submission on 31 August 2021 in response to the EPD's consultation on regulation of disposable plastic tableware. In the submission, we have said that, amongst others, bans should be imposed on plastic cups, lids and containers and cutlery to customers dining in as well as to customers for takeaway, unless there is a recyclable alternative. We invite the Government's attention to the above.
10. We would supplement that there must be a clear timeline laid down in order that the market and the consumers could take steps in time to adjust themselves to fully phase out plastic products. Setting a timeline sends to the market a loud and strong message on the replacement of plastics by affordable alternatives.
11. The above apply *mutatis mutandis* to other regulated products.
12. The way that the proposals are now put forward by the EPD begs a wider and a more fundamental question as to whether the EPD has meaningfully engaged local and international environmental protection agencies in discussing the relevant policy initiatives *before* the Department now puts out the proposal in the Legislative Council Brief. Without disrespect, we notice that there have been much discussions in the international community on the subject matter of this consultation. Yet, apart from a passing reference to various countries (appearing as a summary in Annex B to the Legislative Council Brief), we do not see deliberations in the Brief as to whether and if so how Hong Kong should embrace those policies and practices in those countries as surveyed. It goes on without saying that in formulating and in implementing environmental protection policy, Hong Kong ought to be in pace with the international community.

## **TYPES OF REGULATED PLASTIC PRODUCTS**

13. When considering which types of disposable plastic products are included in the Bill, as we have commented in paragraphs 2 to 11 above, the starting position should be that all disposable plastic products should be regulated, unless there are convincing justifications for exceptions. As a corollary, if a plastic product is regulated in other countries, there is no reason why it is not possible to regulate that product in Hong Kong. By reference to the EU directive on single-use plastic<sup>2</sup>, we note that at least

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<sup>2</sup> e.g. the statistics compiled by the citizen science project "My Nature Diary": [https://environment.ec.europa.eu/topics/plastics/single-use-plastics\\_en](https://environment.ec.europa.eu/topics/plastics/single-use-plastics_en)

two major debris have not been included in the Bill, namely **wet wipes** and **cigarette butts**.

14. Hong Kong has itself compiled local initiatives, for example on the commonest types of debris found on HK beaches and mountain trails. According to a study<sup>3</sup>, **cigarette butts**, **packaging of tissue paper/wet wipes**, and **wet wipes** respectively rank the 2<sup>nd</sup>, the 6<sup>th</sup>, and the 7<sup>th</sup> most frequently found rubbish on mountain trails. Why are they not to be regulated under the Bill?
15. For reference, the UK Parliament is at the time of this submission considering a Plastics (Wet Wipes) Bill.<sup>4</sup> The UK Bill aims to prohibit the manufacture and sale of wet wipes containing plastic. On the other hand, Tesco has changed its own-labeled wet wipes to fully plastic-free in 2020 and since early 2022 sells only plastic-free wet wipes of other brands too<sup>5</sup>. There is no lack of alternatives.

By reference to the above, we urge the Government to seriously reconsider the list of products in the Bill that must not be supplied or displayed, and that, among other things, non-plastic-free wet wipes should be added to the above list.

16. While a plastic-free alternative to cigarette butts is not readily available, other measures are warranted to regulate and reduce the immense environmental impact of cigarette butts.
17. Looking at the proposed Part 7 of Schedule 10 in the Bill:
  - (a) “Item 4. Disposable balloon stick made of plastic” - why just the stick but not the balloons themselves are banned? A ban on balloons is not unheard of<sup>6</sup> and can be added to phase 2 or even a further phase 3, if not phase 1 itself.
  - (b) “Item 5. Disposable plastic inflatable cheer stick” - this ban is welcomed but it is not sufficient. The major use in concerts or promotional events has moved from inflatable cheer sticks to all kinds of plastic products, e.g. light-emitting devices in plastic casing, light-emitting plastic wristbands (even allowing the organizer of the event to control the emission of the lights), etc. Banning cheer sticks alone will only push the market to adopt other plastic

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<sup>3</sup> A project initiated by Tom NG, Sharon SIU, and Judy CHU, students of Master of Science in Environmental Management at the University of Hong Kong. See: <https://ecobus.org.hk/diary/statistics/>

<sup>4</sup> <https://publications.parliament.uk/pa/bills/cbill/58-02/0182/210182.pdf>

<sup>5</sup> <https://www.tescopl.com/news/2022/tesco-to-ban-wet-wipes-containing-plastic/>

<sup>6</sup> <https://www.theguardian.com/environment/2023/feb/23/california-laguna-beach-bans-balloons-ocean>

products. The regulation in this regard can be more encompassing and comprehensive.

## **PLASTIC PRODUCTS SUPPLIED WITHOUT CHARGE**

18. The above discussion is on the proposed Section 79 (Supply of tissue paper packs without charge for promotion purposes prohibited) and Part 8 of Schedule 10 in the Bill (Plastic Products that must not be Supplied without Charge). We have in addition the following questions and comments:

- (a) Why supply of tissue paper packs for promotion purposes are singled out? Would it create a loophole and encourage the supply without charge of other disposable plastic products for promotion purposes?
- (b) Should any disposable plastic products be allowed to be supplied without charge at all, for promotion purposes or otherwise? (We would answer in the negative).
- (c) If the supply of disposable plastic products without charge is banned but not non-disposable plastic products, there is a risk of distribution of plastic products which are not manufactured to be disposable yet will end up being discarded after a single or a very short-term use. Is it possible to ban *all* supplies of plastic products without charge with only limited exceptions? (The definition of “disposable” at Section 3C under the proposed Section 32 in the Bill may have to be considered and be revisited in tandem with the above comments.)
- (d) Supply of plastic products without charge nudges consumers to think that there is no consequence in the use of plastic products - the fact that plastics is “free of charge” undesirably encourages wastage and is counterintuitive to waste reduction.
- (e) If, for some justifiable reasons, it is not possible to implement a full ban on the use of plastics in phase 1, what is the suggested timeline for a full ban, in the light of our comments in paragraphs 2 to 11 above?

## **PLASTIC PRODUCTS SUPPLIED FREE OF CHARGE**

19. On the proposed Section 81 & Part 9 of Schedule 10 in the Bill (Plastic Products that may only be Supplied with Charge at Licensed Hotels or Licensed Guesthouses),

there are legitimate questions as to how proactive and how prepared Hong Kong should be.

- (a) Toothbrush with a handle made of plastic: there are readily available and affordable alternatives like toothbrush with a bamboo handle.
  - (b) Toothpaste in plastic container: there are plastic-free toothpaste tablets readily available as an alternative.
  - (c) Non-plastic alternatives are readily available for combs, razors, etc.
20. Important considerations to the above questions include: what is the reason as to why some plastic products like plastic stemmed cotton buds are to be banned entirely but not other plastic products like toothbrushes with a plastic handle? Are these products supplied free of charge at the hotels/guesthouses intended to be disposed of by the guests after their stay? If yes, the toothbrushes, combs, razors, etc. will be in effect “disposable” plastic products. If hotels/ guesthouses are to continue to supply these products to their guests, can hotels/guesthouses be asked to supply non-plastic or more durable alternatives?
21. Additionally, to encourage a positive change of habit of guests, we suggest that these products should be offered for acceptance by guests *only* by way of opting in. The practice of routinely (and without discretion) provisioning the above upon the booking at the hotel/guesthouse (notwithstanding an option to opt out, if this option is available) is not helpful and should be abandoned.

## CONCLUSION

22. While it is a step in the right direction to regulate disposable plastic tableware and other plastic products, there is yet a long way to go, in order to achieve sustainable consumer behaviors. If there is no fundamental change in the consumer behaviour, the market may simply move from one plastic product to another plastic product or to another disposable product of a different material. In respect of tableware specifically, there have been initiatives proposed by NGOs and corporations to adopt reusable tableware for food delivery. The use of disposables (of whatever material) should strongly be discouraged.
23. There could only be a positive change if the Hong Kong Government could be more proactive to promote the use of reusable and endurable products. There should be more aggressive campaigns to encourage recycling and recovery in order to develop a greener economy. Last but not the least, the Government should set an example

for the public and itself take a leading role by, for instance, phasing out all disposables in Government buildings.

**The Law Society of Hong Kong**  
**25 April 2023**