



Waste Operations/Compliance, Monitoring and Enforcement/2021

Plastic Bag Ban Compliance Programme

Programme Report



Ministry for the
Environment
Māori Mō Te Taiao

New Zealand Government



Ministry for the
Environment
Manatū Mō Te Taiao

**NOT TO BE PUBLISHED (names of
reported retailers in the report, including
cases in progress)**

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Executive summary

The Plastic Bag Ban Compliance Programme has been highly successful in supporting retailers to comply with the lightweight plastic bag ban. Even though the programme was briefly suspended during COVID-19 lockdowns, exceptional results were achieved.

The key outcomes include:

- Case management process for 495 inbound reports of suspected non-compliant retailers (as at 31 December 2020), resolving 96% to compliance.
- Face-to-face spot check engagements of 1818 retailers across 54 metropolitan and regional locations throughout New Zealand, revealing an estimated 97% national compliance.
- Tailored advice and recommendations to retailers about the bag ban to help them understand their obligations and seek sustainable bag alternatives.
- Promotion of over 110 retailers choosing more sustainable non-plastic options via the Ministry's photo feed.
- Comprehensive evidence of the success of the ban and this program; and
- Real-world insights into retailer challenges, benefits, and support to inform future policy initiatives.

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Introduction

The Waste Minimisation (Plastic Shopping Bags) Regulations 2018 (the Regulations) entered into force on 1 July 2019. Since that date, retailers are no longer allowed to distribute or sell plastic bags (including oxo-degradable, biodegradable, and compostable plastics) which have handles, are new/unused, and are predominantly or wholly made from plastic that is under 70 microns in thickness.

In January 2020, The Ministry recruited a fixed term Kaihono Ahumahi - Industry Engagement Liaison to lead a plastic bag ban compliance programme.

Our compliance approach

Key aims of the Plastic Bag Ban compliance programme

The Ministry is the only direct regulator of the ban on the use of plastic bags. The ban was widely supported but levels of compliance were not well-understood. A one-year project-based approach was initiated to help set a strategic direction for the compliance function that was evidence based. The main aims of the project included:

- management and resolution of reports of suspected banned bags received from the public
- providing support and advice to businesses to ensure compliance
- liaising with retailers using deficient or borderline bags to influence compliance, but to also prevent reversion and encourage retailers to make more sustainable choices
- providing assurance to retailers found to be genuinely compliant and promote examples of real retailers using alternatives to plastic bags
- providing assurance to the public that the legislation is implemented and crosschecked as promised
- providing feedback and insight from New Zealand retailers to government and raising awareness and support for the reduction of other problematic plastics.

To deliver on these expectations, the Ministry's Waste Operations Compliance Monitoring and Enforcement (CME) team delivered a multi-faceted retailer engagement, case management and sector assessment project from December 2019 to December 2020. Our compliance approach was ultimately grounded in achieving the best outcomes for our environment. This project focussed on educating retailers about their obligations, and supporting them to make compliant, environmentally conscious decisions that still meet their customer's needs.

Five key pillars

The Draft WMA Compliance Strategy recognises five key pillars of an effective compliance approach.

1. **Education, engagement and incentives** to promote voluntary compliance
2. **Monitoring** the activities of our regulated communities to deploy pro-active programmes and to identify potential breaches in a timely manner
3. **Investigating alleged breaches**
4. **Taking appropriate action** when a breach occurs
5. **Performance monitoring** of our Compliance Strategy

The table below sets out the compliance project method against these pillars and provides further detail on activities undertaken.

Key pillar	Implementation
Education, engagement, and incentives to promote voluntary compliance	<p>Provide proactive guidance to retailers to advise of requirements (including in different languages)</p> <p>Engage, educate and assist retailers</p> <ul style="list-style-type: none"> ○ Utilise innovative engagement strategies to increase retailer knowledge, compliance, and support for Ministry's sustainability initiatives. ○ Improve communication channels between government and business. <p>Assess compliance and make recommendations to each spot-checked retailer to gain compliance.</p> <p>Improve compliance rates</p> <ul style="list-style-type: none"> ○ Where non-compliance is discovered, Ministry is to educate and assist retailers to become compliant. ○ Where possible, Ministry is to encourage retailers to consider more sustainable options, not just compliance.
Monitoring the activities of our regulated communities to deploy pro-active programmes and to identify potential breaches in a timely manner	<p>Assess reported retailers for compliance</p> <ul style="list-style-type: none"> ○ Using a methodical case management approach, assess and act upon every report received via the Ministry's reporting channel. ○ Contact each reported retailer and acquire evidence of compliance. <p>Assess nationwide compliance</p> <ul style="list-style-type: none"> ○ In addition to resolving reported cases, Ministry will assess nationwide compliance by performing a high volume of spot checks in retail precincts, including metropolitan and regional locations.
Investigating alleged breaches	Refer instances of confirmed non-compliance to Ministry Senior Analyst (Investigations).
Taking appropriate action when a breach occurs	The Ministry has a range of measures available in response to breaches, such as warning letters, and prosecution. If, after investigation, it is considered that a breach has occurred, the Ministry will balance a range of factors to ensure the appropriate action is proportional and targeted at the greatest risk to the purpose of the Regulations.
Performance monitoring of our Strategy	<p>Reporting</p> <ul style="list-style-type: none"> ○ Provide regular reports to relay progress, outcomes and insights. <p>Retailer survey</p> <ul style="list-style-type: none"> ○ As an additional strategy, the Ministry undertook 263 surveys of retailers to assess retailer perceptions, knowledge and concerns in relation to the ban, as well as future initiatives.

Timeline

Strategy	Activities	Timing
Preparation	Pre-project consultation including contracts and project plan developed.	Sept – Dec 2019
Recruitment	Ministry interviewed candidates in Auckland, Wellington and Christchurch for role as Industry Engagement Liaison.	Oct – Nov 2019
Training	Training of Liaison – 3 in-person training tours	Dec 2019 21 – 24 Jan 2020 25 – 26 Feb 2020
System development	Various spreadsheets to record data from the public portal reports, spot-check records, weekly and monthly reports, bag measurement data and a Case Management database.	Ongoing updates
Materials development	Flyers were created to give to retailers on completion of a spot check. Depending on the spot check result, they were handed the applicable flyer giving them information on the result of the spot-check and what the next step is towards compliance, if any.	February 2020
Case management undertaken – non-chain businesses	The Ministry's Liaison has been following up the reports received from the public directly with the retailer involved. Non-chain retailers are approached first by phone or email and, if contact or resolution is not possible, a store visit is scheduled.	Jan 2020 – present
Case management undertaken – chain businesses	The Ministry's Senior Policy Analyst (Investigations) has sent letters to chain head offices seeking bag samples, or a copy of invoice from their supplier showing the thickness of the bags.	September 2020 – present
Spot Check tours	The Ministry's Liaison conducted spot-checks and engagement across New Zealand to gauge compliance and provide education.	February – Nov 2020
Surveys conducted	Ministry surveyed 263 retailers across New Zealand to gather data on retailer perceptions, knowledge and concerns about the ban.	Aug – Oct 2020
Reporting	Weekly and Monthly reports on case management process, spot-checks and surveys conducted	Jan – December 2020

A note on COVID-19 impacts

COVID-19 was declared a pandemic by the World Health Organisation (WHO) on 11 March 2020. On March 21, Rt Hon Jacinda Ardern announced New Zealand COVID-19 alert levels. Advice from other jurisdictions around the world showed that retailers were facing significant uncertainty with an unknown period of disruption to trade.

As a result, it was decided that it would be inappropriate to engage with retailers regarding the ban when many of them were facing significant revenue loss, staff redundancies and store closures due to potential serious downturns in the retail trade. Therefore, outbound engagement of retailers regarding the plastic bag ban was suspended from late March to July 2020. Ministry maintained inbound communication lines during this time to support retailers when requested by the sector.

New Zealand moved to Alert Level 1 in June and, following a positive Canterbury Pilot Survey in July, it was deemed appropriate to recommence retail engagement about the ban in August, while minimising perception of insensitivity to ongoing COVID-related business challenges. Therefore, surveys were developed and conducted from August to October to gauge retailer sentiment while gradually recommencing case management and outbound compliance communications at the same time. It should be noted that resolution of reported retailer cases was significantly delayed by COVID-19 disruptions, as evidenced by remaining cases in progress.

Key results

REPORTED RETAILERS	No.	Notes
Reports of suspected banned bags	495	Actionable reports received from members of the public from 1 July 2019 to 31 December 2020.
Businesses reported (cases)	213	Number of businesses reported (many businesses were reported multiple times).
- Non-chain stores reported	157	Number of reports received for retailers not part of a national chain or franchise (decision-maker instore)
- Chain stores reported	56	Number of reports received for retailers as part of a national chain or franchise (decision-maker at head office)
Cases resolved	173	Cases resolved to confirmed compliance ie. confirmation retailer is not using banned bags.
Cases in progress	36	In progress due to: <ul style="list-style-type: none"> • No response from the retailer • Awaiting evidence • Chains (longer processing times)
Cases escalated	2	Extensive actions taken (contact and/or spot checks) but complex case requiring MfE advice.
Cases not started	2	Yet to be commenced.
SPOT CHECKS	No.	Notes
Retailers spot checked	1818	Spot checks were performed at shopping centres and retail precincts across Aotearoa New Zealand.
Retailers using deficient bags	49	Liaison provided advice to cease using banned bags and left specific flier.
Retailers using borderline bags	15	Liaison provided advice to consider more sustainable alternatives and left specific flier.
Retailers using compliant plastic bags	115	Liaison provided advice re non-plastic options.
Retailers not using plastic bags	1639	Liaison confirmed no plastic bags in use, congratulated retailer and took picture with permission if positive example.
Retail coverage	3147	Approximate number of retailers in the precincts visited.
Total assessed compliant	3089	Retailers in the precinct not spot-checked (low risk of non-compliance based on category or previous visits) plus those confirmed compliant.
Estimated nationwide compliance	97%	Assessed compliance as a percentage of coverage.
SERVICE STANDARDS	Days	Notes
Average days to resolve	18	Average days to resolve new reports

Implementing the compliance approach

The Plastic Bag Ban Compliance Project comprised three key components:

1. responding to complaints of alleged breaches by retailers (chain and non-chain),
2. proactive spot-checks of retailers nationwide and
3. the execution of a survey of retailers to garner additional information.

This section sets out the methodology and results of each of these components. To facilitate communication and clear systems, key criteria and key processes were developed at commencement and throughout the project.

See Appendix A for bag classification thresholds and agreed evidence options.

Most retailers have responded positively to being contacted by the Ministry and were grateful for the clarity and support provided. The program has also increased sustainable choices. Some of the reported or visited retailers found to be offering compliant plastic bags changed to non-plastic options to avoid confusion and protect their brand after hearing that members of the public reported (or might report) their bag.

Case management of reported retailers

Background

Members of the public have been able to report businesses they suspect of non-compliance since July 2019, when the ban came into place, through an online form and via phone contact channels. From July 2019 to December 2020, a total of **495 reports** were received. Many retailers were reported by multiple members of the public, resulting in a total of **213 retailers** being reported. *Note: Within the program, one “case” refers to one reported retailer, not the number of reports.*

Methodology

The volume of cases necessitated the deliberate design of a case management approach. The case management strategy adopted depended on whether the business was a chain or a non-chain retailer, as this determined where decisions about shopping bags were made (in-store or head office).

As part of the chain engagement, the Measurements Standards Laboratory of New Zealand has been engaged on a preliminary basis to undertake forensic testing of the thickness of plastic shopping bags according to the ISO 4593:1993 standard. This is a long-term option for escalating concerns with chain stores that are not willing to change the plastic bags that they use.

Chain approach

Chain retailers are businesses in which several locations share a brand, central management, and standardised business practices. They may be corporately owned or franchise structures. Store, regional or national managers do not make decisions about procurement of bags and packaging, rather it is a head office or corporate management function which is relayed across all stores. The

head office places orders with importers or manufacturers, sometimes directly to an offshore manufacturer to enable bulk quantities of custom designs.

Non-chain approach

Non-chain retailers are those that operate one or two stores and tend to be small, independent businesses. Decisions about shopping bags tend to be made by the business owner or store manager and they place orders directly with a supplier or manufacturer.

Non-chain retailers were prioritised from the commencement of the program and were approached first by phone and email using publicly sourced contact information. Retailers were asked to provide evidence of their bag's compliance (such as an invoice or purchase order showing thickness) with multiple communications often needed to clarify compliance.

Once we could establish compliance, or non-compliance, retailers were advised on the appropriate actions to take – whether to continue unchanged (compliant) or seek alternatives (deficient or borderline). Ministry also reminded retailers that random spot checks would be performed to verify statements of compliance in the future. Some retailers sent bags to the Ministry office for voluntary spot checking when they could not produce evidence. If reported retailers could not be contacted after multiple attempts, they were identified for spot checking.

Results

A total of **157 Non-Chain businesses** were reported. The top 5 categories were restaurants, takeaways, fresh produce, convenience, and specialty stores.

As of 31 December 2020, 138 of 157 cases (87.9%) have been resolved with the Non-Chain retailer confirmed compliant. 18 remain in progress.

A total of **56 Chain stores** were reported, representing 314 individual reports from the public. The top 5 categories were fashion/shoe retailers, department stores, food delivery, furniture/homewares and specialty stores (e.g., records, pets, health).

35 cases (62.5%) have been resolved with the Chain retailer confirmed compliant. 20 are in progress and 2 yet to be commenced.

At this point in time, of the 213 chain and non-chain cases:

- 173 (81%) are resolved with the retailer assessed as compliant.
- 36 (17%) are still in progress, with the key reasons for this being:
 - No response from the retailer
 - Recently received
 - Chains (longer processing times)
- 2 cases not started and 2 cases escalated (complex case requiring MfE advice) (2%).

See Appendix B for Case Status of reported retailers.

Spot checks of retailers

Background

Nationwide compliance can only be assessed by random checks of retail stores, not just relying on the reports received from the public. This strategy has been proven highly successful recently in Australia including Queensland, Western Australia, and Victoria.

Methodology

A comprehensive tour of Aotearoa New Zealand was undertaken from January to November 2020, in which our Kaihono Ahumahi - Industry Engagement Liaison visited over 54 locations, covering every local government region except Northland (due to flooding).

In brief, the spot check process involved the Ministry's Liaison walking through retail precincts (shopping centres, malls and street strips) and visiting high-risk category retailers in their stores, performing a spot check using a handheld micrometer to determine bag thickness and then providing advice and information to the retailer based on these results. These micrometer tests are considered a guide, not an audit, as they are not performed under laboratory conditions. They are however useful in providing an indication of non-compliance risk and tailoring advice and support to the retailer. Educational fliers were provided to each retailer to provide further support and recommendations.

To ensure efforts were focused within each area, high risk retail categories were targeted while avoiding those likely to be compliant based on prior engagement with a chain business or unimpacted retail categories (for example, many coffee shops have never used bags).

More detail on factors which determine high risk retailers are outlined in Appendix C.

Spot checks were performed on some chain stores as part of the regional engagement work to confirm compliance. It was recognised, however, that it would be more effective to engage with the head offices of chain stores to achieve change nationwide. Approval for this coordinated chain approach was delayed due to the COVID-19 pandemic but commenced in earnest in October 2020.

Results

From January to November 2020, our Liaison scheduled and conducted **1818 spot checks** in **54 locations** across New Zealand.

Spot checks of 1818 high-risk retailers yielded the following results:

- 1639 retailers (90.2%) found to be compliant AND not using plastic bags
- 115 retailers (6.3%) found to be using compliant plastic bags
- 15 retailers (0.8%) found to be using borderline plastic bags
- 49 retailers (2.7%) found to be using deficient plastic bags

Therefore, of the 1818 high-risk retailers spot-checked, 1769 (**97.3%**) are **technically compliant**.

Each spot check tour focused on high-risk retailers, so the above results are skewed towards categories likely to be at risk of non-compliance. If we assume that retailers not classified as high-risk, and therefore not spot checked, were compliant, we can estimate approximate non-compliance in the wider retail community.

There were approximately 3147 stores in the locations spot checked, with 3098 assessed compliant, therefore it is estimated **98% of retailers nationwide are compliant with the bag ban**.

See Appendix D for full spot check schedule.

Celebrating sustainable choices

During the spot check itinerary, our Liaison met thousands of retailers of all sizes across the country and we took advantage of this unique opportunity to celebrate success and innovation we witnessed.

Retailers found to be using non-plastic or innovative sustainable solutions were photographed (with permission) and images placed on social media website Flickr (an image hosting service). These have since been embedded as a photo feed on the Ministry's website, with photos showing businesses and their compliant bags or creative alternatives.

Results

One hundred and ten images of NZ retailers using sustainable solutions have been published on the feed in the past few months. The benefits of unique communication strategy include:

- Publicly commending most businesses who have adapted to the ban quickly and with enthusiasm.
- demonstrating that the Ministry is taking the ban seriously and has an active compliance programme in local communities.
- bridging the perceived gap between government policy and retail businesses, promoting optimal outcomes of working together for the environment.
- offering a catalogue of images of real people and real businesses which serve as a useful tool for businesses seeking compliant solutions; and
- providing the Ministry with a tangible, visual representation of ban's success and retailer support of this environmental initiative.

See all images on Flickr: [Flickr Feed Photo Album](#)

See the live feed: [MfE Live Website Feed](#)

See Appendix E for graphical representations of key results



Surveys

Background

As Aotearoa New Zealand slowly emerged from COVID-19 lockdown, it was considered (based on feedback from equivalent Australian jurisdictions) that it would be best to approach retailers differently for a period, reducing the risk of being perceived as insensitive in monitoring compliance while businesses struggled to get back on their feet.

Methodology

The opportunity was taken to develop and conduct a survey of retailers, asking them about their experience of the ban and their opinion of future initiatives, rather than focusing solely on bag compliance.

From August to October 2020, the Ministry for the Environment surveyed 263 retailers across Aotearoa New Zealand. Small or independent businesses were over-represented in the survey (as intended).

Results

The survey was highly successful in providing a wide range of useful insights into retailer perceptions, awareness, support and challenges.

Key findings of retailer survey included:

- Very high retailer awareness, compliance and support of the ban (98%)
- Significant change away from all forms of plastic shopping bags and drops in consumption of all bags not just plastic
- Increased use of virgin paper which may need to be addressed
- High awareness of penalties but low awareness of reporting mechanisms
- Overall retailers had a reasonable experience with the ban's introduction; and
- Many would support further bans on single-use plastic items but raise valid challenges and issues to be addressed.

The results are set out in further detail below.

- **Current bags**
 - 98% are using compliant bags or none at all.
 - Most retailers are going plastic bag free – only 9% use a plastic bag compared to 73% before the ban.
 - Virgin paper bags are the primary alternative chosen, which suggests more may need to be done to educate about recycled or sustainable options.
 - Consumption of bags (not just plastic bags) has dramatically dropped with an average of 60% drop in volume consumed.
 - Only 36% of customers BYO bags so more may need to be done to remind customers, reduce business costs and prevent reversion.

- Retailers remain reluctant to charge for bags even though this contributes to significant drops in consumption.
- **Enforcement**
 - While 85% of retailers believe penalties apply, only 2% know how to report suspected non-compliance.
- **Experience of the ban**
 - Over 92% of retailers support the ban.
 - The majority (68%) did not face notable issues or challenges.
 - 92% were prepared for the ban more than average but retailers felt more prepared than their customers, especially those in food retail.
 - Overall, 88% of retailers were satisfied with the way the bag ban was introduced by Government.

The team also took the opportunity to ask retailers about **proposed future initiatives** and how Government could best assist businesses to prepare.

- 85% of retailers support further bans on single-use plastic items, such as straws, cutlery, containers and cups, however it is very important to note that 50% of these would not be directly affected.
- Food businesses (takeaway, cafes, restaurants) and convenience stores or dairies were more likely to feel bans would have an impact on their business, most feeling both positive and negative about proposed bans.
- Retailers presented challenges such as the high cost, limited range and functional problems of alternatives, and many suggested that help sourcing cheap alternatives would assist.

The research indicates that there is retailer support for further environmental initiatives however **engagement, education and advice on alternatives 12 to 18 months prior to the ban being implemented will be critical.**

See full survey report is attached

Addressing non-compliance

Retailers confirmed as being non-compliant continue to be subject to the compliance approach. Non-compliant store cases have been referred to the Senior Policy Analyst (Investigations) for assessment.

The Senior Policy Analyst (Investigations) has corresponded with the corporate offices of 25 chain retailers seeking samples of bags that are provided to their customers, or a copy of an invoice from their supplier showing the thickness of the bags. The Ministry also reminded retailers that random spot checks may be performed to verify statements of compliance in the future.

Of these 25 chain stores, 16 provided evidence of compliance, with most providing invoices from their suppliers. These included two retailers that had already phased out plastic and moved to paper bags. Several of the head offices noted that a transition to paper was under consideration despite appearing compliant. Many of the invoices showed that head offices had purchased plastic bags from suppliers that were stated as being at or around 70 microns in thickness.

Further chain stores have been identified for potential engagement in 2021. 20 cases therefore remain in progress, representing chain retailers where compliance has not been able to be confirmed, with 13 of these already having had spot checks performed on them giving an indication of compliance. The Ministry will also leverage its contacts within the industry to obtain responses from those head offices that have chosen not to respond to date. Non-compliance under the Regulations risks prosecution with a potential fine of \$100,000.

Discussion

Insights from the compliance project

The results of the project on implementing the plastic bag ban have demonstrated that the bag ban has been a successful initiative with a remarkably high rate of acceptance and compliance. This section sets out insights gleaned from the project and discusses the learnings for future compliance work in this area and potential policy findings of interest to this and other regulatory programmes. Key insights that the plastic bag ban compliance programme provided included:

- That a high level of support and compliance were evident
- That retailers faced a suite of challenges in implementing the ban, that could have been avoided by more effective prior engagement from the Ministry (e.g., a significant amount of leftover non-compliant stock needs to be disposed of in the wake of the ban)
- A number of unintended consequences arose despite the policy being overall highly effective and well-supported.
- The regulations provided insufficient regulatory tools to fully address non-compliance in a fair and proportional manner.

These insights are set out in further detail below.

High rates of compliance and support

Overall, there is a **very high level of compliance** (98%) with the ban and most retailers are not only aware of their obligations, but supportive of the ban. Most retailers were very satisfied with the rollout of the ban, though some retailers would have preferred longer timeframes to phase-out plastic bags as well as further education around the more sustainable alternatives available.

Some retailers have transitioned to creative solutions, such as making bags from recycled newspaper. Some recalcitrant retailers have also changed their approach after experiencing public or media backlash. For example, Paradise Takeaways (a takeaway store) was reported in the media after the ban for cutting off the handles of plastic shopping bags.¹ This business was also reported to the Ministry. The business experienced public criticism from the article and ceased this practice quickly.

Many retailers are now using paper bags and non-woven bags as a replacement to plastic bags. We have been promoting retailers who found alternative sustainable options on the Ministry's website (via a Flickr feed).²

Retailer sentiment

- Response to the ban:
 - Many retailers have expressed support of the ban, and some would like to see further action on issues like commercial recycling costs and access, plastic packaging, and other

¹ <https://www.nzherald.co.nz/nz/cut-away-the-handles-indian-takeaway-finds-a-way-to-get-around-the-nz-plastic-bag-ban/MDSRIOPY7SEQGDKMGX7EWU4QNNQ/>

² <https://www.mfe.govt.nz/waste/plastic-bag-ban/what-retailers-are-doing>

plastic items. Plastic packaging was the most recurrent issue as most products shipped from overseas (clothes, electronic devices, etc.) are wrapped up in several layers of plastic that is mostly not accepted by recycling facilities in Aotearoa New Zealand. This was the occasion to promote the Government's work on product stewardship which aims to make producers responsible for the waste generated by their products.

- Several retailers reported that they were left with bulk amounts of non-compliant stocks as they did not receive enough notice about the ban.
- Many retailers reported witnessing a decrease in bag consumption since the ban and customers bringing their own bags or refusing a bag for small purchases. Retailers also found that by asking a customer if they need a bag rather than if they want a bag further decreased bag usage.
- Response to engagement program:
 - Most retailers were receptive to Ministry recommendations to contact their supplier regarding the discrepancy and either exchange the bags for those certifiably thicker, have their supplier guarantee their invoice for all future purchases or investigate more sustainable options.
 - Most retailers found to be providing a deficient bag agreed to cease supplying the bags immediately and understood the risks of continuing to supply these bags.
 - Most spot-checked retailers expressed gratitude at receiving further clarification around their obligations, suitable alternatives for their business and recommendations on how to deal with leftover bag supplies.

Retailer challenges

Most retailers responded in a positive manner to the Ministry's engagement however they also raised challenges faced by their business, which provide useful insight for future policy implementation.

- Misinformation from suppliers:
 - Most retailers found to be using deficient or borderline bags believed they were ordering compliant bags based on the measurement stated on their invoice or verbal assurance from their supplier.
 - Some suppliers are allegedly advising retailers that their bags are compliant with the Regulations, but they are below 70 microns in thickness upon micrometer testing.
 - Some suppliers use weight as a form of thickness measurement which can be widely inaccurate on individual bags.
 - Many retailers assumed that plastic bags labelled by suppliers as "reusable" comply with the Regulations, though multiple were found to fail thickness tests.
 - Many retailers still express confusion regarding environmental claims such as oxy-degradable, compostable, and biodegradable plastic despite the Ministry's communication about it³. One prevalent example was a brand of plastic which is oxy-degradable but retailers believed them to be either biodegradable or compostable.

³ <https://www.mfe.govt.nz/waste/plastic-bag-ban/about-biodegradable-and-compostable-plastics>

- Proving compliance:
 - Most retailers do not understand that plastic is inconsistent in thickness and that they should not rely on averages provided by suppliers. Using the handheld micrometer during spot checks was extremely useful in demonstrating this inconsistency.
 - Some retailers struggled to provide proof or invoices. Some purchased their bags a long time ago, have since lost their invoice or they don't trust the information provided by their supplier. The Ministry offered voluntary spot checking of samples in some instances.
 - Many plastic bags are printed with statements such as "environmentally-friendly", "reusable" or "recyclable". Some even state "this bag complies with the Plastic Shopping Bag Regulations in New Zealand" and retailers assume this is an official government endorsement of the bag.
- Challenges of alternatives:
 - Alternatives to lightweight plastic bags are more expensive and some retailers are concerned that this increases their costs, especially in low margin businesses such as food and produce. Some suggested a Government subsidy to afford alternatives.
 - Several retailers reported that their staff experienced verbal abuse from aggressive customers when trying to implement bag fees. Some retailers eventually gave up the fee.
- Substantial number of leftovers:
 - Several retailers pointed out that they had ordered plastic bags in bulk two years in advance as they were cheaper. The 6-month phase-out was not sufficient to use up their stock. Those retailers thought there was a grace period to use up their remaining plastic bags. Some believed they could, if the bags were purchased before the ban entered into force and promised not to repurchase.
 - Our Industry Engagement Liaison suggested retailers to recycle plastic bag leftovers by sending them to the recycling operators Comspec (in Christchurch) and Astron (in Auckland).

Unintended consequences

Direct engagement offered the chance for the Ministry to understand the solutions retailers are choosing and assess whether there have been any unintended consequences of the ban. There was always a risk that the ban might lead to the adoption of alternatives that are more damaging to our environment for example:

- Most retailers are choosing virgin paper bags as an alternative to plastic bags. More could be done to encourage retailers to use recycled content, or at the least, seek bags which have achieved sustainably sourcing certification. Some retailers also allege that the main supplier of paper bags in New Zealand has significantly increased its prices following the ban. Some retailers also pointed out that paper bag production requires lots of raw materials and energy, contributing to greenhouse emissions.
- Multiple retailers have reported that they now use several plastic produce bags (without handles) instead of one plastic shopping bag to stop spills and cross contamination of foods, particularly takeaway stores and restaurants which serve hot liquid food like curries or soup.

- On being advised that a bag was borderline, a few retailers have attempted to source thicker bags, which, while heavier and less likely to blow away as litter, are ultimately made of more virgin plastic that must be disposed of.
- Some retailers allege that the number of thefts has been slowly increasing since the ban. More often, there is no 'proof of purchase' when customers are bringing in their own bags.

Regulatory limitations

- Lack of supplier penalties
 - One particular type of bag is being used relatively widely; an oxo-degradable bag printed with the phrase "Reduce, Reuse, Recycle". Packaging suppliers and distributors are allegedly advising retailers that these bags are a more sustainable option.
 - This situation highlights a limitation of the Regulations, in that there is no legislative penalty applicable to suppliers or manufacturers who might make false or misleading claims in relation to a banned bag. This means that the Ministry's only recourse is to take action against the retailer, when they themselves might genuinely be operating under a mistaken belief that their bags were compliant.
 - While the retailer may be able to take private action under the Fair Trading Act 1986, the resources involved would likely deter many business owners from pursuing a claim. Trying to uphold the intent of the ban using mechanisms across several pieces of legislation ultimately creates a fractured and inefficient regulatory system.
 - In comparison, regulations in Victoria (Australia) and Western Australia make it an offence for a plastic bag manufacturer to provide false or misleading information about the composition of a banned plastic bag or whether a bag is a banned plastic bag or an exempt plastic bag.
- Lack of enforcement tools
 - The Ministry's Compliance Strategy, developed in 2017, notes that compliance has historically been an area of weakness for the Ministry. It recognises one of the drivers for this poor performance is a lack of adequate legislative tools and institutional structures to enable effective compliance, monitoring and enforcement – for example, many regulatory systems we administer do not have an infringement fines regime.
 - In the case of the Regulations, the only formal enforcement action available to the Ministry is prosecution in a criminal court. Prosecution is a time and resource intensive process that risks appearing disproportionate to the relative harm caused by one case of non-compliance.
 - Ideally, more options such as a formal warning, directive notice, and an infringement regime would be built into the regulatory regime to allow for proportionate and effective action.

Recommendations

Interactions with retailers (whether reported or not) have been positive and provided valuable opportunities for education about the Regulations and managing the transition to more sustainable options. The Ministry's Liaison has been able to target information and advice to answer questions and approached each engagement with a focus on support and encouragement rather than reproach. While researching reported retailer details and attempting to make contact were time-consuming, this personal engagement strategy allowed the Ministry to tailor advice applicable to the very different scenarios faced by small businesses, medium-sized and large chains. This section sets out key recommendations for both the continuation of the plastic bag programme and any other future regulatory initiatives of this nature by the Ministry.

Summary of recommendations

Recommendation 1 – the CME programme continues at a lower intensity

Recommendation 2 – better and more advanced project planning for future initiatives

Recommendation 3 – accessibility and diversity of messaging required

Recommendation 4 – adequate tools to enable appropriate enforcement

Recommendation 5 – planning for lockdown scenarios (unexpected events)

Recommendation 1 –Ongoing compliance programme at a lower intensity

That the compliance programme continues to be resourced including:

- That the cases outstanding be followed through to compliance or other resolution as appropriate
- That further reports continue to be recorded and addressed reactively given the high levels of compliance observed
- That all public portal report recipients be acknowledged via email. Could include the status of the report and/or a synopsis of the project outcomes to date
- While we continue to receive multiple reports for chain stores that are deemed compliant, suggestion to advise retailers of this continuing to happen so that they may consider a more sustainable alternatives to plastic.

Recommendation 2 – Better and more advanced project planning for future policy initiatives

That more emphasis is based on consultation and engagement with the regulated community prior to initiating a ban of this kind in the future.

- There is a clear need for further retailer engagement and education before introducing additional bans. While most retailers visited were aware of the ban, many were not comfortable with its complexities. For instance, many retailers did not know about the 70

microns threshold or thought that bags labelled as 'reusable' or 'compostable' were exempt from the ban.

- Education and engagement should also continue following the entry into force of the bans. We found that most retailers were willing to comply and when they were not, it was generally out of knowledge. Continuous and ongoing education and engagement would be useful to support those businesses.

That more time is given to phase in changes that are the consequence of new regulations banning items of this nature

- Cases of non-compliance were partly due to the fact that some retailers had large amounts of plastic bags leftover. Retailers with high volumes of banned plastic bags ordered before the ban were less likely to comply. A 12-month phase-out would reduce the risk of non-compliance.

That more support is provided to retailers to help them make sustainable choices of alternatives.

- Our experience delivering the plastic bag compliance programme suggests it is important to not only assist retailers to comply, but to promote sustainable alternatives to plastic bags. As discussed above, we only promoted non-plastic bag alternatives (even if some plastic bags are technically compliant as they do not have carry handles or are above 70 microns in thickness) to encourage retailers to move away from plastic. This is to encourage retailers to transition beyond basic compliance to long-term sustainable options and be in line with the objectives of the Waste Minimisation Act 2008 to encourage waste minimisation and a decrease in waste disposal.

That the Ministry initiates planning for compliance monitoring and enforcement support at an earlier stage.

- The Ministry has a direct regulatory role in compliance, monitoring and enforcement of the Waste Minimisation Act 2008 and associated regulations (such as the plastic bag ban). However, how we would undertake our regulatory activities to achieve compliance and support the performance of our regulated communities was not particularly explored during the development of the regulation for the plastic bag ban. Development of compliance programmes should be developed before future bans enter into force. Adequate resourcing is also necessary.
- The cabinet paper⁴ and the regulatory impact statement⁵ noted that the Act allowed enforcement officers to be appointed under the Act, but no framework or compliance plan was set up at the time. Likewise, the public consultation document⁶ stated that the ban "*may be largely self-policing through consumer complaints or may require additional enforcement officers to be appointed and resourced.*"

Recommendation 3 – accessibility⁵

That more support is provided for linguistically diverse audiences so they may better understand their obligations

- Although the Ministry translated some plastic bag ban factsheets on the Ministry's website in te reo Māori, Hindi and Mandarin⁷, we found that direct engagement was needed to ensure linguistically diverse audiences were familiar with the ban.
- In August 2020, we started using updated flyers translated in Mandarin during our engagements. This material has proven very efficient and effective as many retailers felt more comfortable with the ban.

Recommendation 4 – adequate tools⁷

Ensure an appropriate array of enforcement tools are available for future bans, which are proportional to the nature of offences likely to be committed.

- Penalties under the Waste Minimisation Act 2008 cannot be levied without a conviction in court which requires a high test for evidence. Although this risk has been mitigated by early information and education, options like infringement notices are needed to enforce future bans more effectively.

Recommendation 5 – plan for lockdown scenarios

Future engagement programmes allow for lockdown scenarios.

- A minimum of an additional 6 months added to the project timeframe to ensure the project is given the time and resources to complete to a satisfactory level should we experience future lockdowns. Interactions with retailers (whether reported or not) have been positive and provided valuable opportunities for education about the Regulations and managing the transition to more sustainable options. The Ministry's Liaison has been able to target information and advice to answer questions and is approaching each engagement with a focus on support and encouragement rather than reproach. While researching reported retailer details and attempting to make contact were time-consuming, this personal engagement strategy allowed the Ministry to tailor advice applicable to the very different scenarios faced by small businesses, medium-sized and large chains. This section sets out key recommendations for both the continuation of the plastic bag programme and any other future regulatory initiatives of this nature by the Ministry.

Appendixes

a) Internal classification thresholds

The Regulations prohibit the sale or distribution of single-use plastic shopping bags which are:

- a) wholly or predominantly made of plastic (including oxo-degradable, biodegradable and compostable plastics) that is less than 70 microns (μm) in thickness, and
- b) have carry handles, and
- c) new or unused.

Definitions

The following internal definitions and thresholds for classifying bags were developed in line with legal advice to enable clear and consistent communication to retailers that is aligned to the Regulations.

- a) *Deficient plastic*: Spot check yields 3+ measurements under $70\mu\text{m}$ or supplier invoice states $69\mu\text{m}$ or less.
- b) *Borderline plastic*: Spot check yields 3 measurements under/over $70\mu\text{m}$ or supplier invoice states $70\text{--}74\mu\text{m}$.
- c) *Compliant plastic*: Spot check yields no measurements under $70\mu\text{m}$ or supplier invoice states $75\mu\text{m} +$
- d) *Compliant no plastic*: Retailer provides evidence of no longer using any plastic shopping bags (using paper, cloth or no bag at all).

The benefit of the classifications outlined above is they allow the Industry Engagement Liaison to provide advice to retailers without using a binary “compliant” or “non-compliant” assessment. This is a pragmatic approach given the potential for a margin of error when using micrometers and the inconsistency of plastic film. It also allows the Ministry to encourage those retailers using bags that are only just technically compliant (“borderline”) to consider more sustainable options to reduce their risk, reduce consumer complaints and improve environmental outcomes.

Evidence options

a) Micrometer testing

It is important to note that most plastic shopping bags are not one consistent thickness with variations up to 10 microns across different parts of the bag.

Based on advice from other jurisdictions, several handheld digital micrometers were purchased to perform spot checks in retail stores and at the Ministry when retailers sent samples. The micrometers are calibrated to international standards and have a margin of error of $\pm 4\mu\text{m}$.

Spot checks involved physical measurement of the thickness of each side and gusset of bags. A minimum of three measurements (although usually around six to ten) were taken from different points across each bag.



These measurements were then used to classify the bag (see *Classification thresholds*) and advise the retailer accordingly.

Handheld micrometers are only designed to provide a guide to thickness, not a definitive result such as that achievable in an environmentally controlled laboratory. In the case that micrometer results are disputed, the Ministry has the option of arranging for laboratory standard measurements to be conducted.

b) Supplier documentation

To assess the validity of a public report we can request evidence of compliance. More often than not, the request is done by phone, or email. This is the most effective method when working with language barriers – see email example and copy of an invoice showing compliance below:

Kia Ora

I hope my email finds you safe and well.

As you are aware, the New Zealand Government introduced a nation-wide ban on providing lightweight plastic shopping bags to customers from 1 July 2019. I wanted to call and let you know that the Ministry for the Environment has received a report from a member of the public reporting that your organisation may have supplied banned bags to customers during the Pet and Animal Expo 2019 (see picture attached).

The purpose of our communication is to firstly assess the validity of this complaint, and then, if needed, provide advice to help you towards compliance.

Important

*So we can help resolve this situation, could you please provide, **within the next 5 working days**, details about the plastic carry bags you supplied to customers?*

This can include:

- *An invoice, order form or email from your supplier which **states the thickness of the bags in microns (um)**, OR*
- *If the above is not possible, you can send a few samples of your bags to the following address in order for us to perform a spot check. We will then advise you of the results and provide advice on steps you may need to take. Please respond to this email if you are going to send samples.*

Send samples to:

*Plastic Bag Ban
PO Box 10362
Wellington 6143
New Zealand*

**Please clearly write the name of your business on the outside of the package*

Please do not hesitate to contact us if you require clarification or if you encounter any issues in obtaining this information.

Below is an example of an invoice that contains the specific bag details for compliance levels

DATE	5 July 2020
QUOTATION FOR	
SPECIFICATIONS	Printed Plastic Carry Bags

OPTION:	PLASTIC OUTLET - REORDER
SIZE:	490 X 480mm + 105BG + 40TG
DESCRIPTION:	Blue PP Cord Handle (1040 x 3mm x 1 Pcs) threaded through Top Gusset with Knot. Bottom Gusset.
MATERIAL:	LDPE
MICRONS:	75
BAG COLOUR:	White
PRINT COLOUR:	Four Colour Process - Both Sides and Gussets
PRINT AREA:	100%
QUANTITY:	30,000
PRICE PER UNIT: (PULL + PAY)	
STANDARD DELIVERY TIME:	5 - 10 Weeks

Example invoice received from a retailer