

Plastic Reduction (Single-use Plastic Cutlery— Special Circumstances) Exemption 2021 (No 1)

Disallowable instrument DI2021-159

made under the

Plastic Reduction Act 2021, section 17 (Exemptions – Minister may exempt person or plastic product)

EXPLANATORY STATEMENT

Section 17 of the *Plastic Reduction Act 2021* (the Act) provides that the Minister may exempt a person or a plastic product from provisions of the Act. The Minister may make an exemption on application or on the Minister's own initiative.

The Minister may make an exemption under this clause only if satisfied that:

- it is not practical or in the public interest for the person to comply with the provision; or
- it is not consistent with the person's human rights for the person to comply with the provision; and
- non-compliance will not have any significant adverse effect on public health, property or the environment.

In deciding whether it is not consistent with a person's human rights for the person to comply with the provision, the Minister must comply with section 40B of the *Human Rights Act 2004* (Human Rights Act). Section 40B provides that a public authority (including a Minister) must act consistently with human rights and must give proper consideration to a relevant human right in making a decision, including a decision of whether or not to exempt a person under section 17 of the Act. A decision is still consistent with human rights if the decision limits human rights but the limitations are reasonably justified under section 28 of the Human Rights Act.

This instrument acknowledges results of consultation when developing the Act, which found that alternatives to single-use plastic cutlery such as wood or bamboo can be more readily weaponised. In certain settings, this may impact on the right to life under the Human Rights Act.

Clause notes

1. Name of instrument

This clause sets out the name of the instrument.

2. Commencement

This clause sets out when the instrument commences.

3. Exemption

This clause sets out the provisions of the Act under which the exemption is made. It provides a list of organisations that may supply single-use plastic cutlery and the broad circumstances under which single-use plastic cutlery may be supplied. Persons who are engaged with the organisations listed in table 3.1, column 2 are exempt from part 3 of the Act in relation to the supply of single-use plastic cutlery for the circumstances detailed in Table 3.1, column 3; and persons who supply single use-plastic cutlery to the organisations listed in Table 3.1, column 2 are also exempt from part 3 of the Act for this purpose.

This exemption ensures that safety and the right to life is not unnecessarily restricted in pursuit of the Objects of the Act.

Sub-clause (2) provides that that the requirements of section 17 (3) have been met.

4. Expiry

This clause states when the instrument expires. The exemption is time limited to ensure that those who are exempt to the provisions set out in clause 3 undertake due diligence in testing whether there are alternatives to single-use plastic cutlery that may be safely used in the circumstances prescribed in Table 3.1, column 3.