

Australian Capital Territory

# Plastic Reduction (Single-use Plastic Products — Special Circumstances) Exemption 2022 (No 2)

Disallowable instrument DI2022–183

made under the

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

## EXPLANATORY STATEMENT

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### Overview

Section 1(a)(i) of the *Plastic Reduction Act 2021* (the Act) prescribes *single-use plastic cutlery* as a prohibited plastic product, and under Section 10 it is an offence to supply these products. Section 17 of 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, 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.

This instrument acknowledges 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 2004*.

This instrument provides an exemption to allow single-use plastic cutlery to be supplied in certain settings where the use of alternatives may present a risk to safety. Specifically, it exempts persons employed or otherwise engaged at detainee facing settings and mental health service settings from the prohibition on supplying single-use plastic cutlery. The effect of this instrument is to continue an existing exemption (see the *Plastic Reduction (Single-use Plastic Cutlery – Special Circumstances) Exemption 2021 (No 1)*, which expired on 30 June 2022). The new instrument does not explicitly refer to some of the settings referred to in the previous instrument. This

is to reflect the fact that single-use plastic cutlery is no longer routinely used in these settings.

It is not practicable for the persons exempted to comply with the provision because the alternatives to single-use plastic cutlery have different physical characteristics, which means they can present a risk to safety.

Noncompliance with the provision will not have an adverse effect on property. It will not have an adverse effect on public health and will have a positive effect on health as it exists to prevent harm that could arise were the exemption not in place. Allowing single-use plastic cutlery to be supplied in certain situations will not have a significant effect on the environment because the number of plastic cutlery items supplied in these situations is small compared to the overall quantity of plastic in the ACT.

The instrument is taken to have commenced on 1 July 2022. Part 17(5) of the Act provides that an exemption may commence on a day earlier than its notification day. The exemption provisions are not prejudicial as they do not operate to the disadvantage of a person by adversely affecting the person's rights or imposing liabilities on the person. They operate to the advantage of persons because they exempt certain persons from certain offence provisions.

The instrument does not include an expiry because no suitable alternative has yet been identified, and it is not anticipated that this will occur in the short term.

## **Section notes**

### **1 Name of instrument**

This section names the instrument.

### **2 Commencement**

This section provides that the instrument is taken to have commenced on 1 July 2022.

### **3 Exemption**

This section provides that part 3 of the Act does not apply to a person who works in a relevant organisation and supplies single-use cutlery in listed circumstances. Part 3 of the Act contains the offence of supply of prohibited plastic products. The organisations and circumstances listed are detainee or mental health service settings. This has the effect that single-use plastic cutlery can be used in the specified circumstances. This section also states that the Minister is satisfied of relevant criteria. This is to remove doubt that these requirements have been met.