

Australian Capital Territory

Plastic Reduction (Single-use Plastic Products – Special Circumstances) Exemption 2023

Disallowable instrument DI2023–98

made under the

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

EXPLANATORY STATEMENT

Overview

This instrument provides an exemption to allow prohibited single-use plastic products to be supplied in certain circumstances where they are required. Specifically, it provides an exemption to allow the supply of single-use plastic bowls and single-use plastic microbeads contained in a rinse-off product in situations where they are required because alternative products are not suitable.

The purpose of this exemption is to ensure that the ban on additional plastic items does not prevent single-use plastic bowls being used in forensic, scientific, or medical situations where alternative materials would compromise the results of procedures. Alternatives to single-use plastic bowls can compromise health and safety in health scenarios, including surgical and clinical settings.

This instrument has been made in conjunction with the *Plastic Reduction Amendment Regulation 2023* (the Amendment Regulation), which prohibits the product that is being exempted.

Under s 17 of the *Plastic Reduction Act 2021* (the Act), the Minister may exempt a person or a plastic product from a provision of the Act. This instrument exempts a person who supplies certain products in certain circumstances from part 3 of the Act, which contains the offence of supplying a prohibited plastic product.

Human Rights

The creation of exemptions engages the right to be presumed innocent until proven guilty because it has the effect of reversing the onus of proof in the situation that conduct falls within an exemption. This conduct is not prohibited, but the onus of proving the exemption is on the defendant; the prosecution is not required to prove that the exemptions do not apply.

However, this is justified and proportionate because the approach of making exemptions enables single-use plastic bowls to continue to be supplied where needed, while otherwise prohibiting them. The exemptions are broadly worded and would therefore not be difficult to establish. The exemptions enable the purpose of the regulation to be achieved while also allowing access to prohibited plastic products where required.

Regulatory Impact Statement (RIS)

Section 34 of the *Legislation Act 2001* requires the preparation of a Regulatory Impact Statement (RIS) if a subordinate law or disallowable instrument is likely to impose appreciable costs on the community, or part of the community. A RIS has been prepared to support the development of the regulation, this includes consideration of exemptions.

The RIS identified a regulatory ban as the recommended option. For single-use plastic bowls, the preferred option was the inclusion of these items as banned with relevant exemptions. The inclusion of exemptions reduces potential negative impacts associated with a complete ban on these items.

Section Notes

Section 1 Name of instrument

This section names the instrument.

Section 2 Commencement

This section provides that the instrument commences on 1 July 2023, which is the same day that the regulation commences and when the relevant products will be prohibited.

Section 3 Exemption

This section provides an exemption to allow plastic bowls and microbeads to be supplied to an entity that uses them for a medical, scientific or forensic purpose. This is intended to provide for circumstances microbeads are used in relevant processes to ensure that these purposes are not compromised.

Section 4 Exemption considerations

This section states that the requirements of s 17(3) of the Act have been met. This is to provide clarity that these have been met.