

Plastic Reduction (Single-use Plastic Products) Exemption 2023

Disallowable instrument DI2023–99

made under the

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

EXPLANATORY STATEMENT

Overview

Section 4 of the *Plastic Reduction Amendment Regulation 2023* prescribes a single-use plastic plate, and a single-use plastic bowl as prohibited plastic products under section 7 of the *Plastic Reduction Act 2021* (the Act), and under section 10 of the Act 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.

This instrument provides an exemption to allow single-use paper or cardboard plates lined with plastic, and single-use paper or cardboard bowls lined with plastic, to be supplied and has been made on the Minister's own initiative.

There is currently no practicable alternative to these products, as paper and cardboard plates and bowls have a thin lining, usually made from polyethylene (PE). This applies to all printed items, coloured items, and white or natural-coloured items. This lining is required as a barrier to prevent inks transferring or contaminating the foodstuff, to be deemed food safe. Additionally, the plastic helps to maintain the structural integrity of the item when exposed to hot, wet foods.

The Minister may make an exemption only if satisfied that noncompliance with the provision will not have any significant adverse effect on public health, property, or the environment.

Noncompliance with the provision will not have an effect on public health or property because neither the availability of this product nor the ban on it relates to health or property. Allowing single-use paper or cardboard plates or bowls with any plastic lining to be supplied will not have a significant effect on the environment because the number of these items supplied is small compared to the overall quantity of plastic in

the ACT. This risk to the environment via littering is low, as these products are largely bought to be used either at home, or in venues.

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 paper or cardboard plates or bowls lined with any plastic, 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.

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. This is to align with the commencement of the regulation that bans these products.

Section 3 Exemption

This section provides that part 3 of the Act does not apply to a single-use plastic products in the schedule. Part 3 of the Act contains the offence of supply of prohibited plastic products. The products listed in the schedule are plastic lined paper plates and plastic lined paper bowls. This has the effect that these products can still be supplied.

This section also states that the Minister is satisfied of relevant criteria. This is to remove doubt that these requirements have been met.

Section 4 Expiry

This section provides that the instrument expires on 31 October 2024. This is to provide time for a transition away from the exempted products and aligns with exemptions for these products in New South Wales and Victoria.

Schedule

The schedule lists plastic lined paper plates and plastic lined paper bowls as products and provides a description of these products, to which the exemption in section 3 applies.