

Australian Capital Territory

Plastic Reduction Amendment Regulation 2023 (No 1)

Subordinate law SL2023–10

made under the

Plastic Reduction Act 2021

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Plastic Reduction Amendment Regulation 2023 (No 1)* (the Amendment Regulation) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Amendment Regulation and to help inform debate on it. It does not form part of the Amendment Regulation and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Amendment Regulation. It is not, and is not intended to be, a comprehensive description of the Amendment Regulation. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the Courts.

Overview

Section 7 of the *Plastic Reduction Act 2021* (the Act) provides that certain plastic products are prohibited plastic products. The effect of this is that they cannot be supplied, as section 10 makes it an offence to supply prohibited plastic products.

Under section 7 of the Act, prohibited plastic products include certain listed products, and any other single-use plastic product or a non-compostable degradable plastic product prescribed by regulation. Section 42 enables regulations to be made for the Act.

The Amendment Regulation amends the *Plastic Reduction Regulation 2022* (the Regulation). The Amendment Regulation updates section 4 of the Regulation to include additional prescribed products. The additional prescribed products include single-use plastic microbeads contained in a rinse-off product, a single-use tray that is made of expanded polystyrene; and used for packaging perishable food for retail sale, single-use expanded polystyrene loose-fill packaging, a single-use plastic plate, a

single-use plastic bowl, other than a bowl designed or intended to have a spill-proof lid as prescribed products. The effect of this is that these products are prohibited and cannot be supplied in the ACT, except in accordance with any exemptions that apply.

The Amendment Regulation also prescribes plastic retail carry bags under the definition of a prohibited single-use plastic shopping bag. This means that a bag with handles made wholly or in part from plastic and used for conveying goods purchased from a retailer is prohibited and cannot be supplied in the ACT.

The Amendment Regulation also prescribes certain plastic retail carry bags to be excluded from the definition of a single-use plastic shopping bag, with the effect that they can continue to be supplied in the ACT. This includes an unsealed bag that is the packaging in which perishable food is offered for sale, as well as a carry bag made from nylon, polyester, woven polypropylene, or non-woven polypropylene that has sewn, rather than heat welded seams, and the fabric has a minimum weight of 90 g/m² measured as a single layer of fabric.

Exemptions

The Amendment Regulation has been made in conjunction with *Plastic Reduction (Single-use Plastic Products – Special Circumstances) Exemption 2023*, which is a disallowable instrument that provides an exemption to allow the supply of a certain product in certain circumstances. It provides an exemption to allow the supply of single-use plastic bowls and microbeads to be supplied where scientific, forensic, or medical integrity would be compromised.

The Amendment Regulation has also been made in conjunction with *Plastic Reduction (Single-use Plastic Products) Exemption 2023*, which is a disallowable instrument that provides an exemption to allow the supply of certain products in certain circumstances, until 1 November 2024. It provides an exemption to allow the supply of single-use paper or cardboard plates lined with any plastic, and single-use paper or cardboard bowls lined with any plastic, to 1 November 2024, as there are currently no viable non-plastic single-use alternatives on the market.

Regulatory Impact Statement

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 Amendment Regulation. The RIS was informed by a cost benefit analysis.

The RIS identified a regulatory ban as the recommended option to address the social, environmental and economic impacts of single-use plastics. There are several reasons why the current market is not addressing these impacts, and a socially optimal level of SUP production and consumption is not taking place (which include negative externalities, information failures and arguments relating to public goods). Market self-correction, quasi-regulation, co-regulation or self-regulation (other non-regulatory approaches) are not adequate to address the longer-term problems associated with SUPs in the ACT.

Scrutiny committee principles

This regulation is consistent with the Scrutiny Committee principles. This regulation does not make rights, liberties or obligations dependent upon administrative powers or non-reviewable decisions because it simply prescribes certain products for the purposes of the existing framework in the Act; it does not create any additional administrative or decision-making powers. Similarly, it does not delegate legislative powers. This explanatory statement has been prepared to reflect the technical or stylistic standards expected by the Assembly.

Human Rights

Offence Provisions

The Amendment Regulation does not create any new offences, but it does bring additional conduct within existing offences. Supplying the products prescribed by the Amendment Regulation will now fall within the existing offence of supply of prohibited plastic products in s 10 of the Act, which is a strict liability offence.

These offences engage human rights, as explained in the explanatory statement to the *Plastic Reduction Bill 2020* (the Bill). Namely, rights in criminal proceedings and the right to be presumed innocent until proven guilty. The offences also engage the right to privacy because of the enforcement provisions in the Act such as directions to give name and address. As with the provisions in the primary legislation, the rights limited by the Amendment Regulation are for the legitimate purpose of reducing the impact of plastic on the environment and the waste management system. The items listed in the Amendment Regulation are single-use items that are used frequently but have a very short lifespan. After use, they cannot be easily recycled and will either end up in landfill or as harmful litter, polluting the natural environment and waterways.

There is a rational connection between the limitation on rights and the purpose of the law because strict liability offences support enforcement of offences for this additional class of plastics in a regulatory context, and compelling people to give their name and address and answer questions would enable a full and proper investigation. The limitations are reasonable and proportionate as rights are limited to circumstances where offences apply to a specified class of additional plastic products, which are being implemented in a staged manner to enable individuals and businesses to find alternatives or eliminate prohibited products in their activities. The enforcement mechanisms are considered to be the most effective and least intrusive way of making sure the statutory requirements are complied with.

The regulatory ban will be supported by public education and engagement, to ensure that stakeholders and the community are aware of their legal obligations surrounding the products. This will include the development of communications materials about the ban, and store visits to directly engage with relevant businesses.

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 will enable plastic bowls and plastic microbeads to continue to be supplied where needed for medical, scientific or forensic purposes, 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 regulation

This section names the regulation.

Section 2 – Commencement

This section provides for the commencement of the regulation. Specifically, it provides that the regulation (other than section 5) commences on 1 July 2023, and that section 5 commences on 1 January 2024. This has the effect that the ban on plastic plates and bowls, plastic microbeads, expanded polystyrene loose-fill packaging, expanded polystyrene produce trays commences on 1 July 2023, and the ban on heavyweight shopping bags will commence on 1 January 2024.

Section 3 – Legislation amended

This section provides that the *Plastic Reduction Regulation 2022* is amended.

Section 4

This section substitutes a new section 4 (Prescribed single-use plastic product – Act, s 7 (1), def *prohibited plastic product*, par (a) (v)) into the *Plastic Reduction Regulation 2022*. This updated section contains the previously banned plastic products and also contains single-use plastic microbeads contained in a rinse-off product, a single-use tray that is made of expanded polystyrene and used for packaging perishable food for retail sale, single-use expanded polystyrene loose-fill packaging, a single-use plastic plate and a single-use plastic bowl, other than a bowl designed or intended to have a spill-proof lid. This has the effect of prescribing these products under s 7 of the Act (which means that under s 10 of the Act it is an offence to supply these products)

Section 5 – New section 6

This section inserts a new section 6 (**Prescribed single-use plastic shopping bag— Act, s 7 (2), def *single-use plastic shopping bag*, par (a) (ii) and (b) (iii)**) into the *Plastic Reduction Regulation 2022* that prescribes a plastic retail carry bag as a single-use plastic shopping bag under section 7(2). A plastic retail carry bag is defined as a bag with handles that is made (in whole or in part) of plastic; and used for conveying goods purchased from a retailer. A single-use plastic shopping bag is a prohibited plastic product under s 7(a)(iv) of the Act. This has the effect of banning heavyweight plastic bags and plastic-laminated paper or cardboard bags. This section also prescribes certain plastic retail carry bags to be excluded from the definition of a single-use plastic shopping bag, with the effect that they can continue to be supplied in the ACT.