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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CIRCULAR ECONOMY BILL 2023

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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CIRCULAR ECONOMY BILL 2023

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

INTRODUCTION

This explanatory statement relates to the Circular Economy Bill 2023 (the Bill) as presented to the ACT Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. 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.

BACKGROUND

The Bill has been prepared to implement the [Parliamentary and Governing Agreement](#) of the 10th Legislative Assembly of the ACT's Agreed Legislative Reform item 21: *Create circular economy legislation to, amongst other things, phase out single-use plastics and require businesses to have a separate collection for co-mingled recycling and organic waste collection and a food waste reduction plan from 2023.*

The *Plastic Reduction Act 2021* was enacted to address the problem of plastic pollution, and in particular the prevalence of single-use plastics. This Act, and the regulations made under it, have banned a number of problematic single-use plastic products. This has been a key step in reducing waste and embracing a more sustainable approach to resources, and the Bill builds on this to further address sources of waste.

The Circular Economy Strategy (the Strategy) is a key policy that forms the context in which the Bill is being made. The Strategy sets the vision, strategic objectives, and focus areas to guide the first steps to making the ACT economy more circular. It aims to keep resources circulating in the economy for as long as possible and maximise the value of materials. The Strategy features five key focus areas to advance circularity in the ACT. These are food and organics, the built environment, consumer goods, emerging and problematic waste streams, and creating space for the circular economy. Three of these, namely food and organics, emerging and problematic waste streams and consumer goods, are directly relevant to this Bill. The Strategy includes the following actions that the Bill addresses:

- Introduce circular economy legislation to require businesses to have food waste reduction plans and separate waste streams, including food organics.
- Create circular economy legislation for businesses to have separate collections for co-mingled recycling.

OVERVIEW OF THE BILL

The purpose of the Bill is to take steps toward a circular economy, and in particular to reduce waste and have a more circular approach to resources. It creates the power to require businesses to have plans to reduce types of waste, such as food waste. It also creates the power to require businesses to sort, dispose or arrange for the collection of certain waste types in particular ways. This is the power that will be used to require separate food organics and co-mingled recycling collections. The Bill also repeals and remakes provisions from the *Plastic Reduction Act 2021* so that these powers are contained within the one Act. It also expands the power to prohibit products beyond only single-use plastic products to also include other problematic products in future.

Food waste accounts for a significant loss of value from the economy and causes environmental harm. Food waste reduction plans are a way of addressing this problem and have been demonstrated to be effective at reducing waste. Food waste occurs at various stages of the food supply chain from primary production to households; however, this measure is to target reducing food waste from businesses, such as hospitality businesses. The requirement for businesses to have food waste reduction plans is not designed to be an onerous or overly prescriptive requirement but is instead designed to require businesses to engage with the issue while allowing them to take an approach that suits their business.

The Bill creates a framework for requiring businesses to have a waste reduction plan. It does this by creating a regulation making power so the details of this requirement, including what must be in such a plan and the businesses to which it applies, will be contained in a regulation. This provides greater flexibility to remain responsive to changes as the circular economy landscape continues to evolve. For example, to respond to industry changes or to require waste reduction plans for other types of waste following consultation.

The Bill also aims to reduce waste to landfill by addressing waste streams that have higher value pathways. In particular, it targets food organics and co-mingled recycling from businesses and allows requirement to be made about types of waste, so that these can be directed to be composted or recycled. Diverting these materials from landfill reduces the negative environmental and waste management impacts of landfilling waste and is also a move towards understanding these waste streams as a resource and promoting a higher value use of them.

The Bill creates a framework for requiring business to sort, dispose of, and arrange for the collection of waste in certain ways. This is also done by creating a regulation making power so that the details of this requirement, including the waste type and businesses to which it applies, will be contained in a regulation. This provides greater flexibility than establishing these details in the Bill itself and allows for accompanying offences to be presented in the regulation alongside relevant detail for greater transparency. It also means that additional requirements, beyond those that the Bill has been created to implement, can be developed in future. This power could be used in relation to other waste types.

The Bill repeals the *Plastic Reduction Act 2021* and its subordinate legislation and incorporates these provisions into the Bill and future subordinate legislation under the

new Act. This will continue the effect of the ban on currently prohibited products set out in the *Plastic Reduction Act 2021* and Plastic Reduction Regulation 2022 and will allow additional items to be banned in future.

The Bill also expands the types of products that can be banned. Products that are harmful to the natural or built environment or human health, or which a reasonably affordable and available alternative that better promotes the circular economy can now also be prescribed as prohibited. This may include non-plastic items that are single-use or that lack sufficient end-of-life recycling or reuse potential. This recognised that while single-use plastic presents a particular problem, non-plastic products and non-single-use products can also be problematic. As with previous bans, relevant consultation and analysis will be undertaken as part of the process of banning additional products.

CONSULTATION ON THE PROPOSED APPROACH

The Bill has been informed by extensive consultation, including on the *Plastic Reduction Act 2021* and the draft Circular Economy Strategy, and regulations made under the Bill will be informed by detailed industry consultation.

In 2019 the ACT Government undertook a 15-week consultation on the Phasing out single-use plastic discussion paper. This aimed to ensure meaningful engagement across industry, business and the community about problematic single-use plastic waste and pollution. Results revealed very high levels of support amongst industry, business and the community for action to phase out single-use plastic products in the ACT. This included the phase out of specific single-use plastic items and plastic-free events. Consultation was also undertaken on tranches two and three of the single-use plastic ban. This included written submissions received in accordance with a public notice period, and consultation with industry and community stakeholders including through the ACT Plastic Reduction Taskforce.

In 2022, the ACT Government consulted on the draft ACT Circular Economy Strategy. The ACT Government ran a six-week public consultation on the draft Strategy between October and December 2022. This included a survey on the YourSay website, social media, publications in the Canberra Business Update e-newsletter and an opportunity for community, industry and business groups to provide written submissions. This consultation period was followed by industry and business workshops to inform development of the final Strategy and the ACT Circular Economy Action Plan in early 2023. The Circular Economy Strategy, and the consultation that was undertaken on this, is an important part of the context that informs the Bill.

Targeted industry consultation was undertaken as part of the process of developing the cost benefit analysis and regulatory impact statement that informed the development of the Bill. Further consultation will be undertaken on the draft regulation to be made under the Bill. A draft regulation and a consultation regulatory impact statement have been developed to seek feedback on the proposed requirements. The information from this consultation will be a key input to the development of the requirements, which will contain much of the details of the measures in the Bill.

CONSISTENCY WITH HUMAN RIGHTS

The Bill repeals the *Plastic Reduction Act 2021* and remakes these provisions as well as creating new provisions. This explanatory statement discusses all the human rights impacts of enacting these provisions, including those that previously existed under the *Plastic Reduction Act 2021*.

Rights engaged

The following rights are limited by the Bill:

- a. Right to be presumed innocent until proven guilty under s 22(1) of the Human Rights Act
- b. Right to privacy and reputation under s 12 of the Human Rights Act
- c. Right to equality and non-discrimination under s 8 of the Human Rights Act

Rights Promoted

The Bill promotes the right to life (s 9 of the Human Rights Act) by supporting a healthy environment. The transition to a circular economy will improve the natural environment, wellbeing, and the transition to a net zero city. A healthy environment and reduced harm from pollution will have health benefits for the ACT population, which will promote the right to life.

Rights in criminal proceedings

The nature and extent of the limitation (ss 28(2)(a) and (c))

The inclusion of strict liability offences engages the right to be presumed innocent until proven guilty under s 22(1) of the Human Rights Act.

The following offences are strict liability and have been carried over from the *Plastic Reduction Act 2021* with some expansion to allow non-plastic products in future: supplying a prohibited product at s 17 (50 penalty units), not complying with a notice to dispose of prohibited products at s 19 (20 penalty units), supplying declared products at a declared public event at s 22 (50 penalty units), not complying with an exemption condition at s 23 (50 penalty units), not returning an identity card at s 26 (1 penalty unit), not complying with direction to give name and address at s 30 (5 penalty units), and interfering with a seized thing without approval at s 46 (50 penalty units). The Bill introduces a regulation making power capping offences at 50 penalty units to align with the existing offences from the *Plastic Reduction Act 2021* listed above. This exceeds the 20 penalty units or 30 penalty units in exceptional circumstances set out in the Guide to Framing Offences.

A strict liability offence allows an infringement notice scheme to be put in place for the offence. While an infringement notice scheme offers the opportunity for a person to pay the infringement notice rather than face prosecution, it does not prevent them from choosing to challenge the notice and instead face prosecution in court, so the minimum guarantees in criminal proceedings under s 22(2) and rights to a fair trial under s 21 of the Human Rights Act remain available and are not undermined by the possibility of an infringement notice scheme.

With the exception of the offence for interfering with a seized thing at s 46, each of the strict liability offences listed above are intended to have corresponding infringement notice amounts applied by regulation, as is currently the case under the *Plastic Reduction Act 2021*. Additional strict liability offences introduced in future by regulation under the regulation making power of the Bill may also be subject to the infringement notices scheme.

Section 22 of the Human Rights Act contains rights in criminal proceedings, which include the right to be presumed innocent until proven guilty (s 22(1)).

In a strict liability offence, there is no mental element (only a physical element). The defence of reasonable and honest mistake may apply, but if this is the case then this must be established by the defendant, effectively reversing the onus of proving this aspect of the offence. Placing the burden of proof to the accused limits the right to be presumed innocent until proven guilty. The prosecution still has the burden of proving the physical element. Strict liability offences allow an infringement notice scheme to be used for the efficient enforcement of offence provisions.

The use of strict liability offences is an established and common approach to enforcing offences in regulatory contexts. While this does limit rights in criminal proceedings, strict liability offences exist within the constraints of the education-focused compliance framework in the Bill and the general protections of criminal law.

Section 28 of the Bill provides that the privilege against self-incrimination does not apply. If an authorised person gives someone a direction to provide information, a document or another thing under Part 5 of the Bill (Enforcement), then they are not excused from complying simply because doing so may tend to incriminate them or expose them to penalty.

However, information, documents or things obtained because of compliance with this provision are not admissible in evidence against the person in a criminal or civil proceeding (other than for an offence arising out of the false or misleading nature of the document, information or thing).

This provision limits rights in criminal proceedings; specifically the right against self-incrimination, which is that anyone charged with a criminal offence has the right not to be compelled to testify against themselves or to confess guilt. This is because it explicitly disapplies a standard legal protection that people usually have against incriminating themselves.

Legitimate purpose (s 28(2)(b))

The limitation on this right is for the legitimate purpose of moving toward a circular economy and reducing negative environmental and waste management impacts of food waste and of recyclable material being sent to landfill. The limitation supports the aim by allowing effective enforcement of regulatory type offences to require businesses to have food waste reduction plans and separate collections for food organics and comingled recycling, and that prohibited products are not supplied.

Rational connection between the limitation and its purpose (s 28(2)(d))

The use of strict liability offences directly supports the effective enforcement of the legislation which will create a deterrent for businesses from breaching the law . Through this it supports the circular economy objectives of the Bill.

The rationale for inclusion of strict liability offences is to ensure that a sufficiently robust and consistent enforcement regime can operate as part of an escalating enforcement framework, without requiring prosecution in all cases, to meet the purpose of ensuring community wellbeing, environmental and safety objectives.

For the provisions at s 28 to disapply the privilege against self-incrimination, limiting an excuse that a person may otherwise have for not providing information directly supports and strengthens the power in the Bill to obtain materials that could assist in the investigation of offences.

The purpose of the provisions at s 28 of the Bill to disapply privilege against self-incrimination is to support investigations by allowing authorised persons to fully consider all available information when exercising functions. This supports the effective enforcement of the Bill and, through this, its circular economy objectives. There is a public interest in the environmental and waste management benefits that will come from this.

Proportionality (s 28(2)(e))

Strict liability offences arise in a regulatory context where reasons such as public standards, environmental protection, safety, community wellbeing and the public interest in ensuring that regulatory schemes are observed require the sanction of criminal penalties. In particular, where a defendant can reasonably be expected to know what the requirements of the law are, the mental, or fault element can justifiably be excluded.

A less restrictive approach (namely, making the offences not strict liability) would still enable enforcement, but would not be as effective as a deterrent and would only be feasible to enforce for larger-scale breaches. Given the educative approach to circular economy changes, the effectiveness of deterrence is critical to generate wide-scale behavioural change. A less restrictive approach would not achieve this, and would thus not induce the myriad of changes to practices that are needed to move towards a circular economy for the ACT.

The issuing of infringement notices is guided by internal policy, where education and awareness is the primary mechanism used for compliance with the law. The

compliance approach for the *Plastic Reduction Act 2021* has been education focused, and this will continue to be the case for the offences in the Bill.

The purpose of the offence framework in the Bill is to apply an effective deterrent for businesses and ensure enforcement is available following education efforts. The reverse evidential burden for an individual who does not return their identity card within seven days at s 26 is justified as these circumstances only apply to persons who were authorised previously and understand their obligations. This offence also does not apply where the card was lost or stolen or destroyed by someone else.

The regulation making power allowing offences in subordinate legislation up to 50 penalty units is considered a proportionate and necessary deterrent for businesses to ensure education and behavioural change efforts can be supported.

The purpose of the Bill and any future offences by regulation is to regulate operations by businesses, rather than individuals. There is already a pre-established regulatory framework addressing businesses in the waste reduction space and businesses are already aware they have obligations to follow these regulations. The ACT Government has an ongoing role in engaging businesses to ensure they are involved in this evolving regulatory environment.

The unique and fast-evolving waste reduction landscape involves heavy technical detail as industry capacity, technology and community and industry attitudes continue to shape alongside a developing circular economy. It is appropriate, in this context, for related offences to be placed in subordinate legislation to ensure government can be responsive to changes and that how the offences apply can be clear to businesses without separating between primary and subordinate legislation. There is also a need to maintain consistency with existing plastic reduction offences at 50 penalty units. This requires deviation from the standard ACT policy set out in the Guide to Framing Offences.

As the existing standard for the current plastic reduction offences reaches 50 penalty units for larger offences, it is essential that future circular economy offences have the same penalty amount. This consistency demonstrates to businesses impacted by the requirements that these larger offences are of equally serious nature as they seek to prevent environmental harm and support the transition to a more sustainable economic system. The level of these offences is appropriate to their intended purpose as a deterrent, particularly for businesses, from breaching the requirements of the Bill. These substantial penalties recognise the importance of the circular economy transition to address global problems of overreliance on finite resources and disposal of materials in ways that disrupt natural systems and harm the climate and ecosystems on which we rely. Deterrence is the most effective solution as environmental harms often occur on an ecological systems level where local action to reverse or repair them is not possible or practicable.

As circular economy offences for requirements on businesses, such as waste reduction plans and separate waste processing, may be established by regulation, this exceeds the maximum penalty for subordinate legislation in the Guide to Framing Offences. Considering the fast-evolving nature of circular economy

technologies, industry capability, and expectations, the level of detail required to establish these offences is not appropriate for primary legislation. Allowing the regulation making power in the Bill to enable offences that match the existing 50 penalty units standard is considered the most appropriate way to respond to a changing landscape and present offences clearly and transparently to the businesses they apply to.

As demonstrated from the implementation of existing offences in the *Plastic Reduction Act 2021* that are being carried over by this Bill, an emphasis on education and awareness is at the forefront of the enforcement framework for waste reduction regulation. These offences and any offences made by regulation using the Bill's regulation making power serve as a deterrent and have not yet been used. It is recognised that behavioural change and changes in the industry and service providers will take time and so the implementation of the Bill will prioritise an educative approach.

Safeguards exist for the regulation making power which allows offences of up to 50 penalty units. The safeguards include the consultation requirements for waste processing requirements and new prohibited products at ss 10 and 16 of the Bill and the ability for the Legislative Assembly to disallow subordinate legislation, which provides oversight for future offences that may be included in regulations. These future offences by regulation will apply to businesses and relate to requirements around establishing waste reduction plans for the business and separating certain waste streams from landfill, such as recycling and food waste. Businesses will be consulted on the draft regulation prior to its establishment to ensure businesses understand how to comply in advance and can contribute to their design.

The limitation of s 28 to disapply privilege against self-incrimination is constrained by the qualification that any incriminating material obtained as a result of this provision cannot be used in later court proceedings (other than in relation to the falsity or misleading nature of the document, information or thing). This is a reasonable protection designed to ensure that there are still protections for people facing criminal proceedings, while also providing strong information-gathering powers for this scheme which aims to reduce negative environmental impacts. Also, the privilege against self-incrimination is only limited in relation to the power to direct a person to give information, a document or other thing, and is still generally available in relation to other aspects of the Bill.

This is an existing provision in the *Plastic Reduction Act 2021* to be remade under the Bill. It is proportionate because it is a reasonable and qualified limitation of the right and is targeted to its legitimate purpose of supporting enforcement to achieve the circular economy objectives of the Bill.

The right to privacy and reputation

The nature and extent of the limitation (ss 28(2)(a) and (c))

Under s 12(a) of the Human Rights Act, everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The Bill limits this right by carrying over powers of entry and information-gathering powers from the *Plastic Reduction Act 2021*. These support enforcement by giving authorised officers the ability to investigate potential offences.

Section 29 of the Bill contains the power for an authorised person to direct a person to give the authorised person a document, information or other thing if it is reasonably required. S 30 of the Bill contains the power for an authorised person to compel a person to give their name and address. Compelling people to give their name and address, or directing people to give information, documents or other things, limits the right to privacy and reputation because it requires people to provide information about themselves.

Section 31 of the Bill contains the power for an authorised person to enter premises. In most circumstances the power to enter premises would likely apply to a commercial, rather than residential, premises and so would not affect the privacy of an individual. However, there may be some food businesses operating out of residential premises, in which case the privacy of an individual could be affected.

Entering a residential premises limits this right because entering a premises could be an interference with a person's home. This power is limited as it does not include entry to a part of the premises used only for residential purposes unless with the occupier's consent or in accordance with a warrant.

Section 34 outlines the powers of an authorised officer who enters premises, these being: to examine, measure, photograph, or record or to require anyone at the premises to provide information, documents, things or reasonable help for the authorised person to exercise their powers under this part.

The Bill also enables authorised officers to confiscate personal property under s 43 if the authorised officer is satisfied on reasonable grounds that the thing is connected with an offence under the Bill and the seizure is necessary to prevent the thing being concealed, lost or destroyed or used to commit, continue or repeat the offence. The power to seize things also extends to anything consistent with the purposes of entry told to the occupier when seeking consent and anything the authorised person is authorised to seize under a warrant.

Legitimate purpose (s 28(2)(b))

The purpose of the Bill is to protect the environment by promoting the circular economy. Enforcement of the requirements and prohibitions in the Bill, such as being able to find out information and gather evidence in accordance with the powers set out in the Bill, will impact the effectiveness of the ACT's transition towards a circular economy.

Rational connection between the limitation and its purpose (s 28(2)(d))

The limitation directly supports the legitimate purpose of the Bill because being able to investigate possible offences by businesses, including gathering information, is crucial for the effective enforcement of the offences in the Bill. Enforcement provisions aim to ensure the requirements of the Bill are followed and that compliance action may be taken where these are breached. The limitations to the right to privacy support effective compliance action, which serves to increase compliance with the Bill and achievement of its circular economy objectives.

Enforceable offences are an important way to deter activities prohibited in the Bill. This is particularly important for this Bill as commercial waste reduction and processing requirements, and provisions around the limiting of prohibited products, serve to reduce environmental harms. Effective deterrents, within appropriate limits, will support the Bill's ability to encourage businesses to adopt sustainable behaviours that will keep resources in use at their highest value, reduce waste and its harmful impacts on the climate and ecosystems and promote the regeneration of natural systems.

Proportionality (s 28(2)(e))

These powers impose a reasonable and proportionate limitation on the right to privacy because it is only limited in circumstances in accordance with the requirements of the Bill. Any less restrictive means, namely not having these powers, would compromise the potential for effective enforcement, which would undermine education efforts.

The powers of entry are proportional as they only apply to private premises when the premises are open to the public, when the occupier has granted consent, when there is a warrant in place or when the authorised person believes on reasonable grounds that an offence has or is likely to be committed at the premises, causing a serious and urgent risk to environmental or public health. This recognises that the occupier's privacy is their right and may only be disturbed where reasonable. The powers of entry apply in proportion to the gravity of the situation and its potential harm.

The powers of entry only extend to areas used solely for residential purposes when the occupier has granted consent or when this entry is in accordance with a warrant. This ensures that powers of entry are restricted to non-residential areas at all other times, respecting the privacy of occupiers.

These powers are not arbitrary because they are targeted to the effective enforcement of the offences in the Bill. They are not unlawful and are specific powers that fit within the constraints of the relevant provisions of the Bill.

There are requirements that constrain the exercise of these powers. An authorised person must show their identity card and tell the person about any relevant offence in relation to the power and the reason for exercising the power as per s 27.

Section 32 sets out constraints for obtaining the occupier's consent to enter a premises, including that the occupier must be informed of the purpose of the request for consent, reasoning and the identity of anyone accompanying the authorised

person, that anything seized may be used as evidence in court, and that consent may be refused. If consent is obtained, this must be confirmed in writing including the information given verbally and the date and time when consent was given.

General powers upon entry to premises under s 34 are carried over from the *Plastic Reduction Act 2021*. The power under s 34 (1) (d) for an authorised person to take images, make audio or video recordings or other records when entering a premises is only to be conducted in accordance with existing Commonwealth and Territory law. The powers to record evidence may only be exercised where the premises is already open to the public, where entry was made with the occupier's consent (in which case the occupier must already have been informed under s 32 that evidence may be used in court), or where entry was made under a warrant (in which case the occupier must already have been provided a copy of the warrant). These existing powers of entry are central to maintaining accurate records of inspections and offences committed that support effective and transparent enforcement of the circular economy framework.

In addition, an authorised person must announce themselves before entry under a warrant in accordance with s 40, provide a copy of the warrant and rights and obligations under s 41 and respect that an occupier is entitled to watch the search or other exercise of power under a warrant unless this would interfere with the objective of the warrant in accordance with s 42. An authorised person must also only exercise powers of entry in circumstances and location set out in s 43, such as not entering a part of the premises used only for residential purposes unless with the occupier's consent or in accordance with a warrant. S 50 also requires an authorised person and anyone assisting them to take all reasonable steps to cause as little inconvenience, detriment and damage as is practicable when entering premises, and to note and notify the owner of any damage that does occur.

Safeguards ensure that this power is limited to appropriate use: under s 45 the owner may access seized things, under s 47 the authorised person must issue a receipt for seized things as soon as practicable, and under s 48 the seized things must be returned to their owner or reasonable compensation paid by the Territory where compliance action – such as an infringement notice or prosecution for an offence- has not been started or has been withdrawn within one year. A person may also apply under s49 to the Magistrates Court for a seizure of a thing to be disallowed.

Recognition and equality before the law

The nature and extent of the limitation (ss 28(2)(a) and (c))

The Bill allows for plastic and other products that would be harmful to the natural or built environment or human health to be prohibited by regulation (s 12 and s 13). The prohibition of some of these products may disproportionately impact some members of the community, such as people with disability. This is an existing limitation under the *Plastic Reduction Act 2021*.

For example, single-use plastic straws were originally banned by the Plastic Reduction Regulation 2022 as part of tranche two of the single-use plastics ban. This was accompanied by the Plastic Reduction (Single-use Plastic Products – Special Circumstances) Exemption 2022 (No 1), which created an exemption for supplying single-use plastic straws to those who request them and an exemption for healthcare entities.

It is intended that, under this new legislation, a regulation will ban products that were previously banned under the *Plastic Reduction Act 2021*, including straws. This legislative reform also continues the effect of the exemption, so the requirements affecting access to straws will be the same as under the previous legislation.

Banning straws engages the right to recognition and equality before the law under s 8 of the Human Rights Act, which provides that everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind and that everyone has the right to equal and effective protection against discrimination on any ground. Under s 7 of the Human Rights Act this Act is not exhaustive of the rights that an individual may have, including, for example, under the *Discrimination Act 1991*. The Discrimination Act creates obligations not to discriminate on the basis of disability. Discrimination can include indirect discrimination, which is where a rule is the same for everyone but affects people differently.

Similarly to banning single-use plastic straws, banning other items in future (including problematic non-plastic products), in accordance with the provisions in this Bill, could potentially raise issues related to discrimination and could engage the right to recognition and equality before the law. This is because banning some products may have a larger impact on some people than others, such as those living with disability. While there are no specific issues foreseen now, any impacts will be considered and addressed (including through human rights analysis) as part of the process of making a regulation to ban such products.

Legitimate purpose (s 28(2)(b))

A purpose of the Bill and its subordinate legislation is to reduce single-use plastics from circulation to reduce reliance on single-use plastics and other products which are harmful to the environment or human health, reduce pollution, and reduce excessive reliance on landfill.

Rational connection between the limitation and its purpose (s 28(2)(d))

The single-use plastics ban, including straws, achieves the purpose by creating behavioural change, reducing the supply of single-use items in the ACT community, and promoting the emergence of more environmentally sustainable alternatives and practices.

Proportionality (s 28(2)(e))

The Bill remakes the existing safeguards under the *Plastic Reduction Act 2021*, including that bans can only be made where there are reasonably available and affordable alternatives as per s 12 (1) (a) (ii) (B), the consultation requirements at s 16, and exemptions for persons or products at s 23.

The bans on straws under the *Plastic Reduction Act 2021* was accompanied by an exemption to allow straws to be supplied to those who need them. The Government intends to recreate both this ban and the exemption under this Bill and its subordinate legislation. The exemption has been designed to allow single-use plastic straws to be broadly available if required, and there are two exemptions to allow single-use plastic straws to be supplied in certain circumstances. The exemptions will allow businesses and organisations that provide care or supply products to people with disability or healthcare needs to display and supply packets of straws and individual straws for those who need them, while also allowing for hospitality venues to supply an individual plastic straw to those who ask for one, with no requirement to provide evidence or proof of a need for a plastic straw. This is so that, for example, a café could provide a straw with a beverage. There is a general exemption for the supply of single-use plastic straws by a healthcare entity. There is also an exemption so that an individual straw can be supplied by anyone if requested. Neither of these exemptions imposes a mandatory requirement on businesses to stock the exempt products.

In addition to the availability of single-use plastic straws, another potential human rights and discrimination issue is the possible stigma associated with asking for a straw. The negative reputation that plastic straws have, because of increasing awareness of their environmental harm, means there may possibly be stigmatisation associated with asking for a straw. To address this, the education and engagement campaign for tranche 2 of the *Plastic Reduction Act 2021* regulations emphasised that some people have a need for single-use plastic straws. It highlighted that straws should be given out if requested without being questioned. The education and engagement for tranche two was an opportunity to promote messages related to accessibility and the important role that single-use plastic straws have as an accessibility tool.

Section 12 of the Human Rights Act contains the right to privacy and reputation. This includes that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily. The exemption to allow straws was designed so that potential limitations on the right to privacy are minimised. No evidence or proof of disability or a medical need is required to access a single-use plastic straw. Further, it is not required that someone say that they need a straw because of disability or medical need. Though this is the reason that the exemption exists, it has been designed to allow a straw to be supplied on request, without any requirement relating to the need the person requesting the straw has for it. This will protect the right to privacy because people will be able to be supplied single-use plastic straws without having to disclose information about the reason that they need a single-use plastic straw. This was emphasised during the engagement and education for tranche two so that relevant businesses and organisations understand this, and the implementation of the exemption achieves this. This design

of the exemption also protects those supplying straws, including businesses and staff, by providing certainty that they will not be committing an offence by supplying a straw to someone who requests it.

Some people with disability or a medical need require single-use plastic straws because no alternative straw can exactly replicate all the properties of these straws. Unduly restricting access to these straws would therefore have a discriminatory effect. For this reason, the exemption has been designed so that, in addition to packets of straws being available at certain places, individual straws can also be supplied by any person, business or organisation, including at hospitality venues or other locations where they may be required. This may still result in straws being less readily available in some circumstances. However, it has been designed to make them as widely available as they can be in the context of a ban. Any less restrictive approach would effectively not ban straws and thus not achieve the Bill's aim of reducing the environmental harm of single-use plastic products including straws.

The inclusion of single-use plastic straws as a prohibited plastic product was delayed until tranche two of the ban to allow additional time to consider human rights and consult with affected stakeholders. Consultation included a 12-week public consultation period inviting written submissions, meetings with relevant stakeholders including disability advocacy stakeholders, and meetings of the ACT Plastic Reduction Taskforce. This consultation, and consideration of human rights and discrimination, informed the design of the exemption so that it best meets the needs of those who require single-use plastic straws.

As noted in s 13, which defines 'compostable plastic product' by reference to two Australian Standards (AS 4736-2006 and AS 5810-2010), these Standards may be purchased at www.standards.org.au. The copyright in Australian Standards is owned by a non-government organisation, Standards Australia. While it may be prohibitive for stakeholders to purchase these Standards, undue expense is minimised as the only parties that are materially affected are compostable plastic manufacturers. Ensuring that their products meet the relevant standards is core business for those manufacturers and they will already have copies. The public can access copies of many standards at the National Library of Australia. These provisions are carried over from the existing *Plastic Reduction Act 2021*.

There is a voluntary verification scheme for these two Standards, which is administered by the Australasian Bioplastics Association and includes logos for each of the two Standards (the seedling logo for AS4736-2006 and home compostable logo for AS5810-2010). Businesses that use or supply compostable plastic products, including retail and hospitality businesses, can identify products that meet either of these Standards from the labelling. Additionally, the Australasian Bioplastics Association website contains information about the Standards, including listing seedling logo and home compostable logo licencees, and products verified as conforming to the Standards. As part of implementation the Government will provide information and education to businesses to assist in identifying relevant products.

Using Standards is appropriate because they are a national Standard and the purpose of using them is so that distinctions can be made between products based on broadly used categories of plastics. This is easier for industry to comply with than a definition of compostable plastic that is created by an ACT specific instrument. Most plastic products are manufactured, imported, and/or distributed through national supply chains, not specifically for the ACT market.

Circular Economy Bill 2023
Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Circular Economy Bill 2023**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

.....
Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the short title of the Act is the *Circular Economy Act 2023*.

Clause 2 Commencement

This clause provides that the Act commences on the day after its notification day.

Clause 3 Dictionary

This clause provides that the dictionary that is at the end of the Act is part of the Act. The definitions in the dictionary will apply to the meaning of those terms when used in this Act.

Clause 4 Notes

This clause provides that notes are explanatory and not part of the Act. This means that notes do not affect the interpretation of the Act but are there to provide information and assist the reader of legislation.

Clause 5 Offences against Act – application of Criminal Code etc

This clause states that other legislation applies in relation to offences against this Act.

Clause 6 Objects of Act

This clause sets out the objects of the Act. The objects reflect the Act's purpose of reducing waste and the harms caused by waste, but also going beyond this to a more circular approach of better using and valuing resources. The precautionary principle applies to the objects so that uncertainty does not become a reason for not taking measures to prevent environmental degradation.

Part 2 Waste reduction measures

Division 2.1 Preliminary

Clause 7 Definitions—Part 2

This clause provides a definition of 'business' that applies to this term when used in Part 2 of the Act. This definition is used in clauses 8 and 9. Under these clauses, requirements can be imposed on persons undertaking business. While a regulation imposing these requirements will determine which businesses or types of businesses the requirements will apply to, this definition establishes the generally type of activity to which these requirements could apply.

The definition includes a trade, industry or profession as well as any other activity carried on for fee benefit or reward. It is designed to broadly capture the types of organisations and activities that are generally considered to be business. It also includes a person or activity prescribed by regulation. This is to provide flexibility in case the need arises to include certain things.

Clause 7(b) allows for a regulation to exclude an activity from this definition. This is to provide flexibility in case a need arises to exclude certain things from this definition.

Division 2.2 Waste requirements for businesses

Clause 8 Requirements for reducing waste produced by businesses

This clause creates the power to create requirements for businesses to reduce waste, which is referred to as a 'waste reduction requirement'. These requirements can be created by regulation. The power to make a regulation is in clause 56 of the Bill and can be made by the Executive. The details of these requirements will be included in regulations, including what a plan must contain and the businesses to which the requirement applies.

This is the power that can be used to require businesses to have food waste reduction plans. A waste reduction requirement can require a business to prepare a plan to reduce the amount of waste produced by the business. It can also require a business to keep records, and report on, compliance with a regulation, which supports the requirement to have a plan. The initial intention is to use this power to create a requirement for certain businesses to have food waste reduction plans, but this power could also be used in future in relation to other types of waste.

Clause 9 Requirements for dealing with waste produced by businesses

This clause creates the power to require that businesses do certain things in relation to waste produced by the business, which is referred to as a 'waste processing requirement'. These requirements can be created by regulation. Clause 56 of the Bill contains the power for the Executive to make a regulation. The details of these requirements, including the business and types of waste it applies to and how waste must be sorted and disposed, will be in the regulation.

This is the power that can be used to require businesses to have a separate food organics and co-mingled recycling collection. A waste processing requirement can require a business to enter into an arrangement for the collection of stated waste, or to sort or dispose of waste in a particular way. It can also require a business to keep records, and report on, compliance with a regulation, which supports the requirement to have a collection of stated waste or to sort or dispose of waste in a particular way. The initial intention is to use this power to create a requirement for certain businesses to have a separate collection for food organics and co-mingled recycling, but this power could also be used in future in relation to other types of waste.

Clause 10 Consultation requirements—proposed waste reduction or processing requirements

This clause provides conditions that must be met before a regulation can be made for clauses 8 or 9. Namely, it requires that there is public consultation and that the consultation and the impact of a proposed requirement are considered. The Minister must give public notice. This must contain details about the requirements and a statement that anyone can give a submission, but only during the specified timeframe, which must be at least 12 weeks.

The Executive (which has the power to make regulations under clause 56 of the Bill) must consider any submissions received in accordance with the public notice. It must also consider the financial and operational impact of the requirement. While this does not prevent a requirement from being made simply because there is an impact, it means that this must be considered to ensure that there is adequate decision-making process. The purpose of this clause is to ensure that requirements are not imposed on businesses without consideration of the impacts and the opportunity for public consultation.

Part 3 Prohibited products

Division 3.1 Important concepts

Clause 11 Definitions—pt 3

This section provides definitions of certain terms that apply when used in this Part 3 of the Act.

Clause 12 Meaning of prohibited product—pt 3

This clause defines the meaning of 'prohibited product'. This term is used in clause 17, which makes it an offence to supply prohibited products. So, this section has the effect of specifying products that cannot be supplied.

The products included are 'a prohibited plastic product', which is defined in clause 13, and any other product prescribed by regulation. In effect, this provides that certain products are banned, and allows additional products to be banned by regulation.

A product can be banned by regulation if it meets certain conditions. Namely, if: it is harmful to the natural or built environment or human health, or there is a reasonably available and affordable alternative that is better for the circular economy.

The purpose of this is to limit this power so that only appropriate products can be banned, but to still allow sufficient flexibility in how it can be exercised. It allows products to be banned either where they are harmful or problematic, or where there is an alternative that better promotes the circular economy and is reasonably available and affordable.

This clause also contains a power to exclude a product by regulation. The reason for this is in case there is a situation where an item has been captured as a prohibited product that should be able to be supplied. There is also a power to make exemptions by disallowable instrument, under s 23. But this regulation making power provides the ability to make a more permanent exclusion.

Clause 13 Meaning of prohibited plastic product—pt 3

This clause defines ‘prohibited plastic product’. It defines this term to mean single-use plastic products and non-compostable degradable plastic products prescribed by regulation. The Bill carries over the existing provisions and regulations under the *Plastic Reduction Act 2021*. The regulation under the Bill will continue the existing bans by prescribing the following items: a single-use expanded polystyrene container for serving food or a beverage, a single-use plastic beverage stirrer, single-use plastic cutlery, a single-use plastic shopping bag, a single-use plastic drinking straw, a cotton bud with a single-use plastic stick or stem, single-use plastic microbeads contained in a rinse-off product, a single-use plastic tray made of expanded polystyrene that is used for packing perishable food for retail sale, a single-use plastic plate, a single-use plastic bowl other than a bowl designed or intended to have a spill proof lid, and a product made of oxo-degradable plastic. These are the products previously banned under the *Plastic Reduction Act 2021* and The Plastic Reduction Regulation 2022. Additional products will be able to be banned in future.

The definition excludes an integrated packaging item, which is an item that is an integral part of the packaging in which goods are sealed before they are supplied. The purpose of this is to allow items such as pre-packaged food or a beverage to still be able to be supplied.

This clause defines a ‘single-use plastic shopping bag’, which is prohibited plastic product, to mean a bag made entirely or partially of polyethylene that is less than 35 microns thick. However, barrier bags and compostable plastic bags are not included in this definition, allowing them to be supplied. ‘Barrier bag’ and ‘compostable plastic product’ are defined in this clause.

Clause 14 Meaning of single-use—pt 3

This clause defines the term ‘single-use’, for this part. It is defined to mean a product designed or intended to be used only once. It refers to the design and intent, so it is not merely about how a given product is actually used. An item that is made to be used once but that gets used multiple times will still be single-use. Even if a product can be reused, or if a use includes multiple purposes, it is still single-use. There are examples that explain this.

Clause 15 Meaning of supply—pt 3

This clause defines ‘supply’ in relation to the supply of a prohibited product to a person. It is defined to mean sell or otherwise supply. Thus, it includes giving a product away for free (for example cutlery with a meal).

It also includes to offer to provide the product to the person, receive or possess the product for the purpose of providing it to the person, display the product for the purpose of providing it to the person, or cause or permit the product to be provided to the person. This is so it does not only include the physical act of supply itself, but to also include other acts involved in supplying products.

For a plastic product, it includes to provide it as a container or packaging to the person, or use with, or in relation to, another product provided to the person. This is because this is often how single-use plastic products are supplied and used. It does not include supply in a domestic setting. So, if a person had an item in their home and gave it to another person that would not fall with the definition of supply and would thus not be an offence.

Clause 16 Consultation requirements – prohibited products and prohibited plastic products

This clause specifies consultation that must be undertaken before a regulation is made to prescribe a product as prohibited under either clause 11(1)(a)(ii) or clause 13(1)(a)(v) or (vi).

The Minister must give public notice of a period of at least 12 weeks in which anyone can send in a written submission. The notice must include details about the product to be prescribed, the reasons for prescribing the product, information about any proposed exemption, a statement that anyone may give a written submission, and a statement that submissions may only be given during the stated period of at least 12 weeks.

The Executive (who makes the regulations under clause 56) then must consider the written submissions which are received. It must also consider the availability and utility of alternative products – i.e. are there products which are available and can have the same use as the banned product.

Divisions 3.2 Supplying prohibited products

Clause 17 Person must not supply prohibited product

This clause makes it an offence to supply a prohibited product to another person. It is a strict liability offence with a maximum penalty of 50 penalty units.

Clause 18 Person must not make false representation about prohibited product

This clause makes it an offence to supply a prohibited product to another person and tell them that the product is not a prohibited product if this is done intentionally or recklessly. The penalty is 50 penalty units.

Clause 19 Notice to dispose of prohibited products

This clause enables an authorised person to require a person to dispose of a prohibited product. This can be done if the authorised person believes on reasonable grounds that a person has contravened s 17 (i.e. if they have supplied a prohibited plastic product). The person may be required to dispose of the prohibited product in a stated way within a reasonable stated period.

This must be done by a written notice that includes a statement that if the prohibited products are not disposed of in accordance with the notice, then an authorised person may dispose of the product and the person must pay for the costs. It is an offence to not comply with a notice. This is a strict liability offence with a maximum penalty of 20 penalty units.

Clause 20 Authorised person may remove and dispose of prohibited products if notice not complied with

This clause provides an authorised person with the power to remove and dispose of a prohibited product or to authorise another person to do this. It applies if a person fails to comply with a notice under clause 19. The prohibited product cannot be removed or disposed of unless the period in which the person may apply to ACAT for a review of the decision has ended; or if the person applies to the ACAT for a review and the ACAT confirms the decision, or varies or substitutes the decisions which requires the person to dispose of the product and they fail to do this, or the person withdraws the application. If a person fails to comply with a requirement in a notice under clause 19, they must pay the Territory the reasonable cost of any removal or disposal carried out under this section.

Division 3.3 Supply of declared products at public events

Clause 21 Minister may declare prohibitible products must not be supplied at public event

This clause allows the Minister to declare that certain products cannot be supplied at certain events. This can be done by a disallowable instrument.

A declaration applies to a stated prohibitible product. 'Prohibitible product' is defined as a product that could be prescribed as a prohibited product under s 11(1) or s 13(1), but which has not been. This is to enable additional products to be banned at events beyond those which are banned generally, but only the types of products that would be able to be banned.

For non-government events, a declaration must be made at least 3 months before the start of the event and Minister must consult with the person consulting the event and then be satisfied that there is a reasonably available and affordable alternative, and the declaration will not have an unreasonable impact on the event. This is to provide enough time for events to prepare for these requirements and to ensure that declarations do not impose too large a burden on events.

Clause 22 Person must not supply declared products at public event

This clause makes it an offence to supply a product declared under clause 21 to another person at an event declared under clause 21. This is a strict liability offence with a maximum penalty of 50 penalty units.

Part 4 Exemptions

Clause 23 Minister may disapply Act for person or prohibited product

This clause allows the Minister to exempt either a person, individual or business, or a prohibited product from a provision of this Act. This is done by making a disallowable instrument and can be done either if someone applies or on the Minister's own initiative. An application under this section must include any information prescribed by regulation.

The Minister must only make an exemption if satisfied that:

- it is not reasonably practicable 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
- disapplication of the provisions will not have any significant adverse effect on public health, property or the environment.

The purpose of these requirements is so that exemptions are only made in circumstances where there is a worthwhile reason, and it will not significantly undermine the purposes of prohibiting products.

An exemption can include conditions and it is an offence to supply a prohibited product in contravention of a condition that applies. This is a strict liability offence with a maximum penalty of 50 penalty units.

The types of exemptions that were made under the *Plastic Reduction Act 2021* include an exemption for persons who supply a single-use plastic drinking straw to someone who requests it, and for persons employed or engaged by healthcare entities; and an exemption for prohibited bowls, microbeads and cotton buds where the use of alternatives would compromise a medical, scientific or forensic purpose. The power to make exemptions allows products to be supplied where they are required while being prohibited generally.

Part 5 Enforcement

The main approach to enforcement of the Bill will be educative, as was the case with the *Plastic Reduction Act 2021*. Access Canberra and Health Protection Service compliance models focus on a risk-based compliance approach. This approach preferences engagement and education prior to enforcement. Enforcement is then proportional to the harm or potential harm caused by non-compliance.

However, to meet the objectives of the Bill, there may be circumstances where enforcement is required, and this part provides the provisions to enable this. These provisions are broadly similar to the enforcement provisions in the *Plastic Reduction Act 2021*.

Division 5.1 Preliminary

Clause 24 Definitions

This clause sets out definitions for this part.

Clause 25 Appointment of authorised people

This clause gives the director-general the ability to appoint a public servant as an authorised person. Authorised people have enforcement powers under the Act. Such appointments (including acting appointments) are supported by the *Legislation Act 2001*, pt 19.3, and can be made by naming a person or nominating the occupant of a position.

Under clause 24, a persons appointed as an investigator under the *Fair Trading (Australian Consumer Law) Act 1992*, or a public health officer authorised under the *Public Health Act 1997* as an authorised officer for the *Food Act 2001*, are also defined as an authorised person so have enforcement powers.

Clause 26 Identity cards

This clause details the identity card requirements for authorised persons, and offences relating to authorised persons. Appropriate identification of authorised persons will support confidence in the operation of compliance and enforcement measures.

A person commits an offence against this section if the person stops being an authorised person and does not return the relevant identity card within seven days. An offence against this section is a strict liability offence with a maximum penalty of one penalty unit. Fraudulent behaviour under this section will be treated under the criminal code.

Divisions 5.2 Exercise of powers generally

Clause 27 Requirements before certain powers can be exercised

This clause sets out requirements that must be met before an authorised person exercises certain powers. In particular, it requires that the authorised person shows their identity card (or if they are exercising the power not in person, provide other evidence of their identity), that they tell the affected person the reason for exercising the power, and that they tell the affected person about any relevant offences. They must do this in a way that the authorised person believes the affected person is likely to understand.

The powers that this section applies to are:

- giving a direction under s 29(1)
- giving a direction under s 30(1) or (2)
- entering a premises under s 31 (1)(b) or (c)

- giving a direction under s 34(1)(e).

Clause 28 Privilege against self-incrimination does not apply

This clause relates to self-incrimination. It provides that a person is not excused from answering a question or producing any document, even if the answer or the production would tend to incriminate that person or expose them to penalty. Any information that is gained through such a circumstance may not be used in evidence against the person in a civil or criminal proceeding. It may, however, be used in a proceeding for an offence arising out of the false or misleading nature of the answer, information or document.

Division 5.3 Power to obtain information

Clause 29 Direction to give information

This clause relates to the ability of an authorised person to, in writing, require any of the following people to give the authorised person information, or produce documents or anything else, that the person has, or has access to, that are reasonably required by the authorised person for this Act:

- a person to whom a waste requirement applies
- a person who supplies food or beverages in the ACT
- a person who supplies or manufactures plastic products in the ACT
- any other person prescribed by regulation.

It also provides that a person must take reasonable steps to comply with the request of an authorised person. It is an offence not to do this, with a maximum penalty of 50 penalty units. This only applies if the authorised person complies with s 27, which contains requirements that must be met before powers can be exercised, and if the authorised person explains the effect of s 28, which is that the privilege against self-incrimination does not apply.

Clause 30 Direction to give name and address

This clause relates to an authorised person's ability to request the name and address of a person in a language or way of communicating that the authorised person believes reasonable, should the authorised person have reasonable grounds to believe that a person:

- is involved in the commission of an offence against this Act; or
- may be able to assist in the investigation of an offence against this Act.

An authorised person may direct a person to provide the person's name and home address, and request the person produce evidence of the correctness of detail should they have reasonable grounds to believe the person has provided false or misleading information. Not complying with a direction is a strict liability offence with a penalty of 5 penalty units.

Division 5.4 Power to enter premises

Clause 31 Powers of authorised person to enter premises

This section details the circumstances in which authorised officers can enter a premise.

It outlines that an authorised officer may:

- at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money)
- at any time, enter with the occupier's consent
- at any time, enter if they believe on reasonable grounds that an offence against this Act is being, or is likely to be, committed at the premises, and the risk to the environment or public health resulting from the offence is so serious and urgent that immediate entry to the premises without the authority of a warrant is necessary
- enter in accordance with a search warrant
- without the occupier's consent, enter the land around a premises to ask for consent to enter the premises.

This clause does not authorise entry into part of a premises being used for residential purposes unless it is also a place from which business is conducted.

An authorised person can enter with a person with relevant knowledge or skills, and if entering under a warrant can enter with necessary force.

To remove any doubt, an authorised person entering under this clause may do so without payment of an entry fee or other charge.

The purpose of this provision is to provide authorised persons with the ability to enter premises to support enforcement activities, but to also provide reasonable constraints on this power to protect the rights of those affected and ensure that it applies in appropriate circumstance.

Clause 32 Obtaining consent to entry

This clause details the requirements of an authorised person before seeking consent to enter a premises, including what information must be supplied to the occupier. If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgement, and a copy of this must be immediately provided to them. This clause also provides the circumstances under which a court must find that an occupier did not give consent.

Clause 33 Consent to enter taken to be given if premises entered under another Act

This clause provides that the occupier of a premises will be taken to have given consent to entry if they give an authorised person consent to enter under the *Fair Trading (Australian Consumer Law) Act 1992* or the *Food Act 2001*, and the authorised person has told the occupier in writing that they intend to exercise a power under this division. Because people with enforcement functions under those

Acts are authorised persons for this Bill, they may wish to enter premises in relation to multiple Acts.

Clause 34 General powers on entry to premises

This clause details what an authorised person who enters a premises may do in relation to the premises or anything at the premises.

This clause also provides that a person must take all reasonable steps to comply with a requirement made of the person by an authorised officer. It is an offence not to do this, with a maximum penalty of 50 penalty units. This clause also provides the circumstances in which this applies.

Division 5.5 Warrants

Clause 35 Definitions—div 5.5

This clause refers to the definitions of terms used in this division.

Clause 36 Application for warrant

This clause provides that an authorised person may apply to a magistrate for a search warrant to enter a premises. The application must be sworn and state the grounds on which the warrant is sought. It also provides for remote application to be made in relevant circumstance.

Clause 37 Magistrate may refuse to consider application for warrant until authorised person gives relevant information

This clause provides that the magistrate may refuse to consider an application until all relevant information has been provided by the authorised person.

Clause 38 Decision on application for warrant

This clause provides that the magistrate may only issue the warrant if satisfied that there are reasonable grounds for suspecting there is a particular thing or activity connected with an offence against this Act, which is, or is being engaged in, at the premises, or may be engaged in at the premises within the next 14 days.

The search warrant must state that an authorised person may, with any necessary assistance and force, enter the premises and exercise powers under this part, the details of the offence for which the warrant is issued, the things that may be seized under the warrant, the hours when the premises may be entered, and, the date, within 14 days after the day of the warrant's issue, when the warrant ends.

Clause 39 Warrant issued on remote application

This clause allows a magistrate to issue a warrant on a remote application by immediately giving a written copy to the authorised person or if this is not practicable then by telling them the warrant terms and the date and time it was issued. This

clause also provides requirements for things that must be done in relation to a warrant under this section. It also provides under what circumstances the court must find that a power exercised by an authorised person was not authorised by a warrant under this clause.

Clause 40 Announcement before entry under warrant

This clause outlines what an authorised person must do before entering a premises under a search warrant.

The authorised person must announce that they are an authorised person authorised to enter the premises, give everyone at the premises the opportunity to allow entry to the premises and identify themselves to the occupier if they are present.

The authorised person is not required to comply with this if they believe on reasonable grounds that immediate entry is required to ensure the safety of anyone or to ensure the effective execution of the search warrant is not frustrated.

Clause 41 Warrant etc to be given to occupier

This clause requires that an authorised person must make a copy of the warrant or a completed warrant form and a document setting out the rights and obligations of the person available to the occupier if they are present at the premises while the search warrant is being executed.

Clause 42 Occupier entitled to watch search etc

This clause provides that the occupier of a premises is entitled to observe the search being conducted.

The person is not entitled to observe the search if it would impede the search or if the person is under arrest and allowing them to observe would interfere with the objectives of the search.

This clause does not prevent two or more areas of the premises being searched at the same time.

Division 5.6 Power to seize things

Clause 43 Authorised person may seize things at premises

This clause gives an authorised person the power to seize anything at a premises they have entered under this part if they are satisfied on reasonable grounds that the thing is connected with an offence against this Act and seizing the things is necessary to prevent it from being concealed, lost or destroyed, or used to commit, continue or repeat the offence. If the premises were entered with the occupier's consent the authorised person may seize anything where it would be consistent with the purpose told to the occupier. If the premises were entered under a warrant, the authorised person may seize anything authorised under the warrant.

An authorised person may remove the thing from the place where it was seized or leave the thing at the place of seizure but restrict access to it. If access to the thing is restricted, the authorised person must secure a notice that the thing is seized.

Clause 44 Moving things to another place for examination or processing under warrant

This clause provides for circumstances when a thing found at a premises may be removed to another place for examination or processing to decide whether it may be seized under a warrant.

Clause 45 Owner etc may access seized things

This clause provides that someone who would be entitled to inspect a thing were it not for it being seized can inspect it, make a visual recording of it, or take extracts or copies from it if it is a document.

Clause 46 Person must not interfere with seized things

This clause makes it an offence to interfere with a thing (or anything containing the thing) if it has been seized and an authorised person has not authorised the interference. This is a strict liability offence with a maximum penalty of 50 penalty units.

Clause 47 Authorised person must give receipt for seized things

This clause creates requirements for giving a receipt for a thing that has been seized to the person from whom it was seized.

Clause 48 Return of seized things

This clause provides circumstances where a thing seized under this divisions must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the things. Specifically, this applies in the following circumstance:

- A relevant infringement notice has not been served on the owner within one year, and either a prosecution has not started within the one year period or the prosecution has started but the person is not convicted or found guilty.
- A relevant infringement notice is served on the owner within one year, and the infringement notice is withdrawn and a prosecution has not started within one year or a prosecution has started within one year but the person has not been convicted or found guilty.
- A relevant infringement notice is served on the owner within one year and the owner disputes liability, and either an information is not laid in the Magistrates Court against the person within 60 days or an information is laid in the Magistrates Court against the person within 60 days but the person is not convicted or found guilty.

However, this does not apply if the things seized is a prohibited product; or a court has made an order that it be forfeited to the Territory; or a prosecution has been

started within one year, the thing is required to be produced in evidence, the prosecution has not been finalised and for subsection (1)(c)(ii)(B) the proceeding is discontinued. If anything is not required to be returned or compensation is not required for it, it is forfeited to the Territory and the director-general may direct that it is sold, destroyed or otherwise disposed of.

Clause 49 Order disallowing seizure

This clause provides the Magistrates Court with the power to make an order disallowing the seizure of a thing. A person may apply to court for such an order, and the application must be made within 10 days of the thing being seized and copy of the application must be served on the director-general. The director-general can appear as a respondent at the hearing of the application.

The Court must make an order disallowing the seizure if the applicant would be entitled to the return of the thing, it is not connected with an offence under this Act, and possession of the things would not be an offence. The Court may also make such an order if it is satisfied that there are exceptional circumstances justifying this. There are also certain ancillary orders the Court can make.

Division 5.7 Miscellaneous

Clause 50 Damage etc to be minimised

This clause provides that an authorised person must minimise inconvenience, detriment and damage when exercising functions under this Act. It also provides requirements for giving notice of any damage to the person whom the authorised person believes on reasonable grounds is the owner of the thing.

Clause 51 Compensation for exercise of enforcement powers

This clause provides for compensation for loss or expense suffered as a result of an exercise of a function under this part.

Part 6 Reviewable decisions

Clause 52 Definitions—pt 6

This clause sets out definitions for this part.

- 'Affected person' means a person given a notice to dispose of a prohibited plastic product under s 19 (2).
- 'Reviewable decision' means a decision under s 19 (2) to give an affected person a notice requiring the affected person to dispose of a prohibited plastic product.

Clause 53 Reviewable decision notices

This clause sets out that if a person makes a reviewable decision, the person must give a reviewable decision notice to the affected person in relation to the decision.

Clause 54 Applications for review

This clause sets out that the affected person and/or any other person whose interests are affected by the decision may apply to the ACAT for review of the reviewable decision.

Part 7 Miscellaneous

Clause 55 Incorporating, applying or adopting documents in regulations and instruments

This clause provides that a regulation or instrument may incorporate, apply or adopt a law, an Australian Standard or another instrument as in force from time to time, and disapplies section 47 (5) and (6) of the Legislation Act 2001.

This clause also contains requirement about making an instrument incorporated, applied or adopted publicly available.

Clause 56 Regulation making power

This clause allows regulations to be made for the Act. They can be made by the Executive. This clause allows regulations to create offence, but only with a maximum penalty of 50 penalty units or less.

The power to create offences with a maximum of 50 penalty units, while higher than the standard, is required as the waste management space is unique in its fast-evolving and technical nature. As shown by the now repealed *Plastic Shopping Bags Ban Act 2010* and proposed repeal of the *Plastic Reduction Act 2021* by this Bill, there is a clear need for subordinate legislation that can adapt to the fast-evolving waste reduction landscape.

The specific regulatory actions are entirely dependent on moving factors such as available technologies and service providers. For example, the nature of waste processing requirements will evolve over time, including the businesses to which it applies and what waste streams must be processed separately. It is not best practice to establish broad offences in the primary legislation where it is not yet clear how they may be applied in future. This lends itself towards a heavier reliance on offences being constructed in a Regulation.

Penalties must be sufficient to deter businesses from committing the offence and should be proportionate to the offence and to other offences. The existing *Plastic Reduction Act 2021* offences, being replicated by this Bill, have a maximum penalty of 50 penalty units. A reduction or inconsistency would undermine efforts around behaviour modification in the industry.

Safeguards also exist to limit the power to make Regulations. The Bill provides strict consultation and decision-making requirements that must be followed before a Regulation can be made. This requirement exists in addition to the requirement for a

Regulation to be accompanied by a publicly released Regulatory Impact Statement. This will ensure that new Regulations are appropriate and justified. Further, the ACT Legislative Assembly has oversight of all Regulations and has the power to disallow a Regulation.

Part 8 Repeals

Clause 57 Legislation repealed

This clause repeals the following legislation:

- *Plastic Reduction Act 2021 (A2021-4)*
- *Magistrates Court (Plastic Reduction Infringement Notices) Regulation 2006 (SL2021-12)*.

It also repeals the instruments made under the *Plastic Reduction Act 2021*. This is because the provisions of the *Plastic Reduction Act 2021* have been included in the Bill in order to consolidate this legislation.

Part 9 Transitional

Clause 58 Meaning of *commencement day* – pt 9

This clause defines the meaning of *commencement day* for this Part, being the day that this Act, section 3 commences.

Clause 59 Disapplication of s 16 (1) requirements for certain regulations

This clause disapplies the consultation requirements from section 16 (1) to a regulation that commences on the commencement day.

This is necessary so that the Plastic Reduction Regulation 2022 can be remade without additional consultation being required. This has the effect of continuing to ban the items already banned.

Clause 60 Disapplication of s 21 (2) requirements for certain declarations

This clause sets disapplies requirements of section 21 (2) for declarations that was in force before the repeal of the *Plastic Reduction Act 2021*.

This is necessary to transition declarations made without requiring additional consultation.

Clause 61 Expiry – pt 9

This clause sets out an expiry for this part, being on the commencement day.

Dictionary

The dictionary provides definitions of terms used in the Bill.