

# CIRCULAR ECONOMY REGULATION 2023

## Subordinate Law SL2023–27

made under the

Circular Economy Act 2023

## EXPLANATORY STATEMENT

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### Introduction

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

This explanatory statement must be read in conjunction with the Regulation. It is not, and is not intended to be, a comprehensive description of the 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 13 of the *Circular Economy Act 2023* (the Act) provides that certain prohibited plastic products are prohibited products. The effect of this is that they cannot be supplied, as section 17 makes it an offence to supply prohibited products.

The *Plastic Reduction Act 2021* has been repealed and replaced by the Act. This Regulation recreates the provisions made under the repealed Plastic Reduction Regulation 2022. It differs to the repealed regulation in its heading to Part 2, where the word ‘plastic’ is removed from the title ‘Prohibited plastic products’ to reflect the expanded scope of the Act to also allow non-plastic products to be banned in future. No non-plastic products are proposed to be banned at this stage.

Under section 13 of the Act, prohibited plastic products include a single-use plastic product prescribed by regulation, and a non-compostable degradable plastic product prescribed by regulation. A prohibited product does not include an integrated packaging item. Section 56 enables regulations to be made for the Act.

The Regulation prescribes 11 single-use plastic products and one non-compostable degradable plastic product. 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 prescribed prohibited plastic products are:

- a single-use expanded polystyrene container for serving food or a beverage;
- a single-use expanded polystyrene tray 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;
- 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; and
- a product made of oxo-degradable plastic.

The definition of a single-use plastic shopping bag excludes certain single-use plastic shopping bags, with the effect that they can continue to be supplied in the ACT. This includes a barrier bag, a compostable plastic bag, an unsealed bag that is the packaging in which perishable food is offered for sale, or a carry bag that is made, in whole or in part, of one or more of nylon, polyester, woven polypropylene, non-woven polypropylene that has sewn, rather than heat welded seams, and the fabric has a minimum weight of 90 g/m<sup>2</sup> measured as a single layer of fabric.

The Regulation commences at commencement of the Act, with the exception of Schedule 1, which commences 1 January 2024.

Schedule 1 of the Regulation provides a new definition of a plastic retail carry bag to mean that it is a bag with handles that is made, in whole or in part, of plastic, and is used for carrying goods purchased from a retailer. This carries over the repealed Plastic Reduction Amendment Regulation 2023 (No 1), which was set to commence from 1 January 2024. Schedule 1 of the Regulation commences from 1 January 2024 in its place to ensure the delayed commencement of the ban on heavyweight plastic retail carry bags is retained. Schedule 1 also amends the definition of a single-use plastic shopping bag to include the new ban on plastic retail carry bags.

### Exemptions

This Regulation has been made in conjunction with the following exemptions, which recreate previous exemptions (DI2023-99, DI2022-68, DI2022-183, and DI2023-98) made under the Plastic Reduction Act:

- Circular Economy (Prohibited Products) Exemption Declaration 2023;
- Circular Economy (Prohibited Products—Special Circumstances) Exemption Declaration 2023 (No 1);
- Circular Economy (Prohibited Products—Special Circumstances) Exemption Declaration 2023 (No 2); and
- Circular Economy (Prohibited Products—Special Circumstances) Exemption Declaration 2023 (No 3).

The declarations are disallowable instruments that provide exemptions to allow the supply of certain products in certain circumstances.

Circular Economy (Prohibited Products) Exemption Declaration 2023 provides that single-use paper or cardboard plates lined with plastic, and single-use paper or cardboard bowls lined with plastic, can be supplied until a specified date. This is due to there being no current practicable alternatives to these products, as paper and cardboard plates and bowls have a thin lining, usually made from polyethylene (PE). This instrument expires on 31 October 2024.

Circular Economy (Prohibited Products—Special Circumstances) Exemption Declaration 2023 (No 1) provides exemptions to allow the supply of single-use plastic drinking straws and cotton buds with single-use plastic sticks in situations where they are required because alternative products are not suitable. The exemption allows single-use plastic drinking straws supplied on request to individuals, single-use plastic drinking straws supplied by healthcare entity, and cotton buds with plastic sticks supplied for scientific, forensic, or medical use.

Circular Economy (Prohibited Products—Special Circumstances) Exemption Declaration 2023 (No 2) provides an exemption to allow single-use plastic cutlery to be supplied in certain settings where the use of alternatives may present a risk to safety. Specifically, it exempts persons employed or otherwise engaged at detainee facing settings and mental health service settings from the prohibition on supplying single-use plastic cutlery. The effect of this instrument is to continue an existing exemption (see the Plastic Reduction (Single-use Plastic Cutlery – Special Circumstances) Exemption 2021 (No 1), which expired on 30 June 2022). The new instrument does not explicitly refer to some of the settings referred to in the original instrument. This is to reflect the fact that single-use plastic cutlery is no longer routinely used in these settings.

Circular Economy (Prohibited Products—Special Circumstances) Exemption Declaration 2023 (No 3) provides an exemption to allow plastic bowls and microbeads to be supplied to an entity that uses them for a medical, scientific, or forensic purpose. This is intended to provide for circumstances in which plastic bowls or microbeads are used in relevant processes to ensure that these purposes are not compromised.

### Events declaration

This regulation has been made in conjunction with Circular Economy (Public Event) Declaration 2023 (No 1), which recreates the declaration made under the Plastic Reduction Act (DI2022-3). Section 21 of the Act allows the Minister to declare prohibitable products that must not be supplied at a public event. Under Section 22 it is an offence to supply a declared product at a public event. The disallowable instrument provides that certain prohibited products cannot be supplied at certain events.

### Regulatory Impact Statement

A Regulatory Impact Statement (RIS) was prepared for the Plastic Reduction Bill 2020, as well as for the regulations made under Plastic Reduction Act. This Regulation recreates the provision made under the Plastic Reduction Act's subordinate legislation. Section 36 of the *Legislation Act 2001* provides that a RIS

does not need to be prepared for a proposed subordinate law or disallowable instrument in certain circumstances, including a matter of transitional character; therefore, a RIS is not required for this Regulation.

## **HUMAN RIGHTS**

### Offence provisions

The Regulation does not create any new offences, but it does bring additional conduct within existing offences set out in the Act. Supplying the products prescribed by the Regulation will fall within the existing offence of supply of prohibited products in section 17 of the Act, which is a strict liability offence. In addition, supplying the products prescribed at a declared public event will also fall within the existing offence of supply of declared products at public events in section 22 of the Act, which is a strict liability offence.

These offences engage human rights, as explained in the explanatory statement to the Circular Economy Bill 2023. 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 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 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 as strict liability offences support enforcement of offences 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 specified plastic products, which have and will continue to be 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.

This Regulation is transitional to continue the current regulatory ban from the repealed Plastic Reduction Act to the Circular Economy Act. The regulatory ban has been and will continue to be supported by public education and engagement, to ensure that stakeholders and the community are aware of their legal obligations surrounding the products. This includes 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 products to continue

to be supplied where needed. 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 that the commencement date of the regulation is (other than part 3 and schedule 1) on the day the Act section 3 commences. Part 3 and schedule 1 will commence on the day the regulation commences and 1 January 2024. This gives the effect that the prohibition of all prescribed prohibited plastic products (other than heavy weight shopping bags) will commence on the day the Act commences, with the heavy weight shopping bags ban commencing from 1 January 2024.

### **Section 3 – Notes**

This section provides that notes are explanatory and not part of the regulation. This means that the notes provide information to assist the reader but do not affect the interpretation of the regulation.

### **Section 4 – Prescribed single-use plastic product—Act, s 13(1), def prohibited plastic product, par (a) (i)**

This section specifies the single-use plastic products that are prohibited. This has the effect that the products listed at section 4(1) of the regulation are prescribed under section 13(1) (a) (i) of the Act, which means that under section 17 of the Act it is an offence to supply these products.

### **Section 5 – Prescribed non-compostable degradable plastic product—Act, s 13(1), def prohibited plastic product, par (a) (ii)**

This section specifies the non-compostable degradable plastic product that is prohibited. This has the effect of prescribing a product made of oxo-degradable plastic under section 13(1) (a) (ii) of the Act, which means that under section 17 of the Act it is an offence to supply these products.

### **Section 6 – Legislation amended—sch 1**

This section provides that the regulation amends the legislation mentioned in schedule 1.

### **Schedule 1 – Circular Economy Regulation 2023—Amendments**

This section provides that a new definition of plastic retail carry bag is added to section 4(2). It also provides that the definition of single-use plastic shopping bag in section 4(2) is substituted with a new definition for a single-use plastic shopping bag.

As per section 2 of this Regulation, this section commences on 1 January 2024. This commencement date for the expanded definition of single-use plastic shopping bag supports the incremental prohibition of problematic plastic items.