

Australian Capital Territory

Circular Economy (Prohibited Products) Exemption Declaration 2023 (No 1)

Disallowable instrument DI2023-248

made under the

Circular Economy Act 2023, section 23 (Minister may disapply Act for person or prohibited product)

EXPLANATORY STATEMENT

Overview

Section 4 of the Circular Economy Regulation 2023 (the Regulation) prescribes a single-use plastic plate and a single-use plastic bowl as prohibited products under section 13 of the *Circular Economy Act 2023* (the Act), and under Division 3.2 of the Act it is an offence to supply these products. This instrument recreates the exemption (DI2023-99) that was originally made under the *Plastic Reduction Act 2021*, which has been repealed and replaced by the Act.

Section 23 of the Act provides that the Minister may exempt a person or a prohibited product from provisions of the Act. The Minister may make an exemption on application or on the Minister's own initiative.

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

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

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

Disapplication of the provision will not have an effect on public health or property because neither the availability of this product nor the ban on it relates to health or property. Allowing single-use paper or cardboard plates or bowls with any plastic

lining to be supplied will not have a significant effect on the environment because the number of these items supplied is small compared to the overall quantity of plastic in the ACT. This risk to the environment via littering is low, as these products are largely bought to be used either at home, or in venues.

Human Rights

The creation of exemptions engages the right to be presumed innocent until proven guilty because it has the effect of reversing the onus of proof in the situation that conduct falls within an exemption. This conduct is not prohibited, but the onus of proving the exemption is on the defendant; the prosecution is not required to prove that the exemptions do not apply. However, this is justified and proportionate because the approach of making exemptions enables single-use paper or cardboard plates or bowls lined with any plastic to continue to be supplied. 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 products where no practicable alternative currently exists.

Section Notes

Section 1 Name of instrument

This section names the instrument.

Section 2 Commencement

This section provides that the instrument commences on the day the Circular Economy Act, section 3 commences.

Section 3 Exemption

This section provides that division 3.2 of the Act does not apply to prohibited products in the schedule. Division 3.2 of the Act contains the offence of supply of prohibited products. The products listed in the schedule are plastic-lined paper plates and plastic-lined paper bowls. This has the effect that these products can still be supplied.

This section also states that the Minister is satisfied of relevant criteria.

Section 4 Expiry

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

Schedule

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