

Australian Capital Territory

# Circular Economy (Prohibited Products— Special Circumstances) Exemption Declaration 2023 (No 2)

Disallowable instrument DI2023–249

made under the

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

## EXPLANATORY STATEMENT

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### Overview

Part 2 of the Circular Economy Regulation 2023 (the Regulation) prescribes single-use plastic cutlery as a prohibited product, and under division 3.2 of the *Circular Economy Act 2023* (the Act), it is an offence to supply these products. Section 23 of the Act provides that the Minister may disapply the Act for a person or prohibited product from provisions of the Act. This instrument recreates the exemption (DI2022-183) that was originally made under the *Plastic Reduction Act 2021* which has been repealed and replaced by the Act.

The Minister may make an exemption on application or on the Minister's own initiative, only if satisfied that:

- it is not reasonably practical 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 provision will not have any significant adverse effect on public health, property, or the environment.

This instrument acknowledges that alternatives to single-use plastic cutlery such as wood or bamboo can be more readily weaponised. In certain settings, this may impact on the right to life under the *Human Rights Act 2004*.

This instrument 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 made under the Plastic Reduction Act (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 previous instrument. This is to reflect the fact that single-use plastic cutlery is no longer routinely used in these settings.

It is not reasonably practicable for the persons exempted to comply with the provision because the alternatives to single-use plastic cutlery have different physical characteristics, which means they can present a risk to safety.

Disapplication of the provision will not have an adverse effect on property. It will not have an adverse effect on public health and will have a positive effect on health as it exists to prevent harm that could arise were the exemption not in place. Allowing single-use plastic cutlery to be supplied in certain situations will not have a significant effect on the environment because the number of plastic cutlery items supplied in these situations is small compared to the overall quantity of plastic in the ACT.

The instrument does not include an expiry because no suitable alternative to single-use plastic cutlery has yet been identified, and it is not anticipated that this will occur in the short term.

## **Section notes**

### **1 Name of instrument**

This section names the instrument.

### **2 Commencement**

This section provides that the instrument is taken to have commenced on the day the Circular Economy Act, section 3 commences.

### **3 Exemption**

This section provides that division 3.2 of the Act does not apply to a person who works in a relevant organisation and supplies single-use cutlery in listed circumstances. Division 3.2 of the Act contains the offence of supply of prohibited products. The organisations and circumstances listed are detainee or mental health service settings. This has the effect that single-use plastic cutlery can be used in the specified circumstances. This section also states that the Minister is satisfied of relevant criteria.