

Australian Capital Territory

# Circular Economy (Prohibited Products— Special Circumstances) Exemption Declaration 2023 (No 3)

Disallowable instrument DI2023–250

made under the

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

## EXPLANATORY STATEMENT

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### Overview

This instrument provides an exemption to allow prohibited products to be supplied in certain circumstances where they are required. Specifically, it provides an exemption to allow the supply of single-use plastic bowls and single-use plastic microbeads contained in a rinse-off product in situations where they are required because alternative products are not suitable. This instrument recreates the exemption (DI2023-98) that was originally made under the *Plastic Reduction Act 2021*, which has been repealed and replaced by the *Circular Economy Act 2023* (the Act).

The purpose of this exemption is to ensure that the ban on additional plastic items does not prevent single-use plastic bowls being used in medical, scientific, or forensic situations where alternative materials would compromise the results of procedures. Alternatives to single-use plastic bowls can compromise health and safety in health scenarios, including surgical and clinical settings.

This instrument has been made in conjunction with the Circular Economy Regulation 2023 (the Regulation), which prohibits the product that is being exempted.

Under section 23 of the Act, the Minister may exempt a person or a prohibited product from a provision of the Act. This instrument exempts a person who supplies certain products in certain circumstances from division 3.2 of the Act, which contains the offence of supplying a prohibited product.

### 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 plastic bowls to continue to be supplied where needed, while otherwise prohibiting them. The exemptions are broadly worded and would therefore not be difficult to establish. The exemptions enable the purpose of the regulation to be achieved while also allowing access to prohibited plastic products where required.

#### Regulatory Impact Statement

Section 34 of the *Legislation Act 2001* requires the preparation of a Regulatory Impact Statement (RIS) if a subordinate law or disallowable instrument is likely to impose appreciable costs on the community, or part of the community. A RIS was prepared to support the development of the original regulation made under the Plastic Reduction Act, this includes consideration of exemptions. A new RIS is not required as this instrument is transitional in nature and the impacts on the community have not changed.

The RIS identified a regulatory ban as the recommended option.

For single-use plastic bowls, the preferred option was the inclusion of these items as banned with relevant exemptions. The inclusion of exemptions reduces potential negative impacts associated with a complete ban on these items.

### **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 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 microbeads are used in relevant processes to ensure that these purposes are not compromised.

#### **Section 4      Exemption considerations**

This section states that the requirements of s 23(3) of the Act have been met.