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**ENVIRONMENT**

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EV301

Environmental Protection Act 1986

**Environmental Protection Regulations  
Amendment (Prohibited Plastics and Balloons)  
Regulations 2021**

SL 2021/215

Made by the Governor in Executive Council.

**Part 1 — Preliminary****1. Citation**

These regulations are the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021*.

**2. Commencement**

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) Part 2 — on 1 January 2022;
- (c) Part 3 — on 1 July 2022;
- (d) the rest of the regulations — on 1 October 2022.

## Part 2 — Amendments commencing on 1 January 2022

### Division 1 — *Environmental Protection (Plastic Bags) Regulations 2018* amended

#### 3. Regulations amended

This Division amends the *Environmental Protection (Plastic Bags) Regulations 2018*.

#### 4. Regulation 1 amended

In regulation 1 delete “*(Plastic Bags)*” and insert:

*(Prohibited Plastics)*

#### 5. Regulation 3 amended

In regulation 3 insert in alphabetical order:

**accreditation authority** means the National Association of Testing Authorities Australia (ACN 004 379 748) or another body (whether in Australia or another country) that the CEO considers performs substantially equivalent accreditation functions;

**AS 4736-2006** means Australian Standard 4736-2006 *Biodegradable plastics - Biodegradable plastics suitable for composting and other microbial treatment* published by Standards Australia, as in effect from time to time;

**AS 5810-2010** means Australian Standard 5810-2010 *Biodegradable plastics - Biodegradable plastics suitable for home composting* published by Standards Australia, as in effect from time to time;

**bowl** includes a container that —

- (a) is designed to contain food; and
- (b) has a round rim and a flat base; and
- (c) tapers towards the base; and
- (d) holds at least 1 serve of food;

**cup** does not include a lid for a cup;

**cutlery** —

- (a) means utensils used for eating food; and
- (b) includes knives, forks, spoons, chopsticks, splayds and sporks;

***disposable plastic item*** means an item made wholly or partly out of plastic if —

- (a) the item is designed to be disposed of after a single use or several uses; or
- (b) the design and construction of the item is not sufficiently durable to enable the item to be kept and reused on an ongoing basis;

***food container*** —

- (a) means a container (with or without a lid) that is designed to contain food; but
- (b) does not include a cup or bowl;

***plastic*** —

- (a) means a material made from or comprising organic polymers of plant or fossil fuel origin; and
- (b) includes expanded polystyrene;

***prescribed drinking straw*** means a drinking straw that is a disposable plastic item;

***prescribed plastic item*** has the meaning given in regulation 3A;

## 6. Regulation 3A inserted

At the end of Part 1 insert:

### 3A. Prescribed plastic item

- (1) A disposable plastic item is a ***prescribed plastic item*** if it is any of the following —
  - (a) an item of cutlery;
  - (b) a drink stirrer;
  - (c) a plate;
  - (d) a food container (made from plastic that is not expanded polystyrene) without a lid;
  - (e) a food container made from expanded polystyrene;
  - (f) a lid made from expanded polystyrene for a food container;
  - (g) a tray made from expanded polystyrene;
  - (h) a bowl without a lid.

- (2) Without limiting subregulation (1), ***prescribed plastic item*** includes an item referred to in that subregulation that is —
  - (a) made wholly or partly of degradable, oxo-degradable, biodegradable or compostable plastic; or
  - (b) made from plastic-laminated paper or plastic-laminated cardboard.
- (3) Despite subregulations (1) and (2), a disposable plastic item that is any of the following is not a ***prescribed plastic item*** —
  - (a) a reusable cooler box made from expanded polystyrene;
  - (b) a lid made from expanded polystyrene for a reusable cooler box;
  - (c) a food container or bowl that is made from paperboard and certified as biodegradable.
- (4) For the purposes of subregulation (3)(c), an item is ***certified as biodegradable*** if —
  - (a) a person accredited by an accreditation authority has issued a certificate verifying that the item complies with AS 4736-2006 or AS 5810-2010; and
  - (b) the certificate's period of validity has not expired.

**7. Regulation 6 inserted**

At the end of Part 2 insert:

**6. Reference to prescribed plastic bag before commencement of *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021* Pt. 3**

In the period beginning on 1 January 2022 and ending on 30 June 2022, a reference in regulation 5 to a prescribed plastic bag includes a reference to a bag that will be a prescribed plastic bag for the purposes of these regulations immediately after the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021* Part 3 comes into operation.



**8. Part 3 replaced**

Delete Part 3 and insert:

**Part 3 — Offence relating to plastic items****7. Offence to give false or misleading information about prescribed plastic item or prescribed drinking straw**

A person who supplies or manufactures prescribed plastic items or prescribed drinking straws must not give any information that the person knows is false or misleading to another person about —

- (a) the composition of a prescribed plastic item or prescribed drinking straw; or
- (b) whether or not a plastic item is a prescribed plastic item.

Penalty: a fine of \$5 000.

**8. Reference to prescribed plastic item before commencement of *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 Pt. 4***

In the period beginning on 1 January 2022 and ending on 30 June 2022, a reference in regulation 7 to a prescribed plastic item includes a reference to an item that will be a prescribed plastic item for the purposes of these regulations immediately after the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 Part 4* comes into operation.

**Division 2 — *Environmental Protection Regulations 1987***  
**amended**

**9. Regulations amended**

This Division amends the *Environmental Protection Regulations 1987*.

**10. Schedule 6 amended**

In Schedule 6 delete:

*Environmental Protection  
(Plastic Bags)  
Regulations 2018*

|    |              |     |     |
|----|--------------|-----|-----|
| 1. | regulation 4 | 250 | 500 |
| 2. | regulation 5 | 250 | 500 |

and insert:

*Environmental Protection  
(Prohibited Plastics)  
Regulations 2018*

|    |              |     |     |
|----|--------------|-----|-----|
| 1. | regulation 4 | 250 | 500 |
| 2. | regulation 5 | 250 | 500 |
| 3. | regulation 7 | 250 | 500 |

## Part 3 — Amendments commencing on 1 July 2022

### Division 1 — *Environmental Protection (Prohibited Plastics) Regulations 2018* amended

#### 11. Regulations amended

This Division amends the *Environmental Protection (Prohibited Plastics) Regulations 2018*.

#### 12. Regulation 1 amended

In regulation 1 delete “*(Prohibited Plastics)*” and insert:

*(Prohibited Plastics and Balloons)*

#### 13. Regulation 3 amended

- (1) In regulation 3 delete the definitions of:

*medical care provider*

*prescribed plastic bag*

- (2) In regulation 3 insert in alphabetical order:

*adult* means a person who has reached 18 years of age;

*authorised business or undertaking* means —

- (a) a pharmacy the premises of which are registered under the *Pharmacy Act 2010* section 39(1); or
- (b) a business that supplies products used for medical or dental care; or
- (c) a local government customer service centre; or
- (d) a library or visitor information centre operated by a local government; or
- (e) a charitable organisation licensed under the *Charitable Collections Act 1946* section 11(3);

***care facility*** means —

- (a) a private hospital as defined in the *Private Hospitals and Health Services Act 1927* section 2(1); or
- (b) a public hospital as defined in the *Health Services Act 2016* section 8(6); or
- (c) a facility at which residential care (as defined in the *Aged Care Act 1997* (Commonwealth) section 41-3) is provided; or
- (d) a specialist disability accommodation dwelling enrolled under the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* (Commonwealth) Part 3; or
- (e) a medical or dental clinic; or
- (f) a school as defined in the *School Education Act 1999* section 4; or
- (g) a place at which community health services are provided; or
- (h) a facility at which disability support, palliative care, respite care or rehabilitation services are provided;

***community health service*** means —

- (a) any residential medical, paramedical, nursing or palliative service; or
- (b) any service relating to, or associated with, the provision of a service referred to in paragraph (a);

***conduct a business or undertaking*** has a meaning affected by regulation 3C;

***Department's website*** means a website maintained by or on behalf of the Department;

***medical care provider*** means —

- (a) an individual who practises any of the following health professions as defined in the *Health Practitioner Regulation National Law (Western Australia)* section 5 —
  - (i) Aboriginal and Torres Strait Islander health practice;
  - (ii) dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
  - (iii) medical;
  - (iv) medical radiation practice;
  - (v) midwifery;

- (vi) nursing;
- (vii) occupational therapy;
- (viii) paramedicine;
- (ix) physiotherapy;

or

- (b) a speech pathologist;

***pre-packaged food or drink product*** means a food or drink product that —

- (a) arrives at the premises from which it is to be supplied to a consumer in a container or packaging in, or by which, the food or drink is wholly enclosed, whether or not it is also in an outer container or packaging that contains multiple units of the food or drink; and
- (b) is not designed to be removed from its container or packaging, other than any outer container or packaging, before it is supplied to the consumer;

***prescribed plastic bag*** has the meaning given in regulation 3B;

#### 14. Regulations 3B to 3D inserted

At the end of Part 1 insert:

##### 3B. Prescribed plastic bag

- (1) A ***prescribed plastic bag*** is a carry bag with handles that is made wholly or partly from plastic and is designed to convey goods purchased from a retailer.
- (2) Without limiting subregulation (1), ***prescribed plastic bag*** includes a bag referred to in that subregulation that is —
  - (a) made wholly or partly of degradable, oxo-degradable, biodegradable or compostable plastic; or
  - (b) made from plastic-laminated paper or plastic-laminated cardboard.

- (3) Despite subregulations (1) and (2), ***prescribed plastic bag*** does not include —
- (a) a barrier bag; or
  - (b) a bag that is, or is an integral part of, the packaging in which goods are sealed for sale; or
  - (c) a shopping bag that is made from 1 or more of the following fabrics (whether or not mixed with a fabric that is not made from plastic) —
    - (i) woven polypropylene (whether or not it is insulated for the purpose of keeping items cold);
    - (ii) nylon;
    - (iii) recycled polyethylene terephthalate;or
  - (d) a shopping bag that is made from non-woven polypropylene (whether or not mixed with a fabric that is not made from plastic) if —
    - (i) the bag has sewn, rather than heat-welded, seams; and
    - (ii) the fabric has a minimum weight of 90 grams per square metre measured as a single layer of fabric.

**3C. Conducting business or undertaking**

Without limitation, a person ***conducts a business or undertaking*** —

- (a) whether the person conducts the business or undertaking alone or with others; and
- (b) whether or not the business or undertaking is conducted for profit or gain.

**3D. Regulations apply to supplies that occur wholly in the State**

These regulations apply to the supply of a prescribed plastic bag, prescribed plastic item or prescribed drinking straw only if both the supplier and the person supplied are in the State.

**15. Part 3 replaced**

Delete Part 3 and insert:

**Part 3 — Offences relating to plastic items****Division 1 — Prescribed plastic items****7. Offence to supply prescribed plastic item**

- (1) A person must not, in the course of conducting a business or undertaking, supply a prescribed plastic item.

Penalty for this subregulation: a fine of \$5 000.

- (2) Subregulation (1) does not apply to the supply of a prescribed plastic item if the item —
- (a) forms part of, is attached to, or is inside the sealed packaging of, a pre-packaged food or drink product; or
  - (b) is a tray made from expanded polystyrene that is used solely as packaging for raw meat or seafood.

Note for this subregulation:

The following are examples for paragraph (a):

- (a) a spoon attached to, or sealed inside, a pre-packaged yoghurt container;
  - (b) a fork attached to, or sealed inside, a pre-packaged instant noodle packet;
  - (c) a bowl that forms part of a pre-packaged instant noodle packet;
  - (d) a plate sealed inside a pre-packaged frozen meal.
- (3) Subregulation (1) does not apply to the supply of a prescribed plastic item in connection with the service or consumption of food or drink on an aircraft.
- (4) Subregulation (1) does not apply to the wholesale supply of a prescribed plastic item if the wholesale supplier believes on reasonable grounds that the person to whom the item is supplied by the wholesale supplier, or another person to whom the item is subsequently to be supplied, will use the item —
- (a) to prepare a pre-packaged food or drink product; or
  - (b) in the case of a prescribed plastic item that is a tray made from expanded polystyrene — as packaging for raw meat or seafood; or

- (c) in the case of a prescribed plastic item that is a bowl without a lid or a food container (made from plastic other than expanded polystyrene) without a lid — in conjunction with a lid; or
- (d) in connection with the service or consumption of food or drink on an aircraft.

## **Division 2 — Prescribed drinking straws**

### **8. Offence to supply prescribed drinking straw**

- (1) A person must not, in the course of conducting a business or undertaking, supply a prescribed drinking straw.

Penalty for this subregulation: a fine of \$5 000.

- (2) Subregulation (1) does not apply if the supply is permitted under regulation 9, 10, 11, 12, 13, 14 or 15.

### **9. Permitted supply: straw supplied as part of pre-packaged food or drink product**

A person may supply a prescribed drinking straw if the straw forms part of, is attached to, or is inside the sealed packaging of, a pre-packaged food or drink product.

Example for this regulation:

A drinking straw attached to a juice box.

### **10. Permitted supply: straw supplied by medical care provider**

A medical care provider may supply a prescribed drinking straw (either as a single straw or as part of a pack) in the course of conducting their practice as a medical care provider.

### **11. Permitted supply: straw supplied on aircraft**

A person may supply a single prescribed drinking straw to a person if the supply occurs in connection with the service or consumption of food or drink on an aircraft.



**12. Permitted supply: straw supplied at care facility**

- (1) A person (the **supplier**) may supply a prescribed drinking straw (either as a single straw or as part of a pack) to a person being cared for at a care facility if —
  - (a) before the supply, the straw or pack of straws is not kept where it is generally available to be taken by persons at the care facility; and
  - (b) either —
    - (i) the person being cared for has requested the straw or pack of straws; or
    - (ii) the supplier reasonably believes that the straw or pack of straws is required for medical, disability or therapeutic purposes.
- (2) For the purposes of subregulation (1), there is no requirement for the supplier to request or obtain any information or evidence in relation to any medical, disability or therapeutic purposes for which the straw or pack of straws is required.

**13. Permitted supply: straw supplied on request with food or drink**

A person may supply a single prescribed drinking straw to a person in the course of conducting a business or undertaking (other than a retail business) as part of which food or drink is supplied if —

- (a) before the supply, the straw is not kept on display or where it is generally available to be taken by persons at the place where the supply occurs; and
- (b) the straw is supplied —
  - (i) at the request of a person; and
  - (ii) for use with food or drink.

**14. Permitted supply: pack of straws supplied by authorised business or undertaking**

- (1) A person (the *supplier*) may supply a pack of prescribed drinking straws to a person in the course of conducting an authorised business or undertaking if —
- (a) before the supply, the pack of straws is not kept on display or where it is generally available to be taken by persons at the place where the supply occurs; and
  - (b) the person requests the pack of straws; and
  - (c) either —
    - (i) the supplier communicates to the person that prescribed drinking straws can only be supplied for medical, disability or therapeutic purposes; or
    - (ii) the person states that the pack of straws is required for medical, disability or therapeutic purposes.
- (2) For the purposes of subregulation (1), there is no requirement for the supplier to request or obtain any information or evidence in relation to any medical, disability or therapeutic purposes for which the pack of straws is required.

**15. Permitted supply: straw supplied on wholesale basis**

A person (the *wholesale supplier*) may supply a prescribed drinking straw on a wholesale basis if the wholesale supplier believes on reasonable grounds that the person to whom the straw is supplied by the wholesale supplier, or another person to whom the straw is subsequently to be supplied —

- (a) will use the straw to prepare a pre-packaged food or drink product; or
- (b) will use the straw in connection with the service or consumption of food or drink on an aircraft; or
- (c) is a medical care provider; or
- (d) conducts, or is involved in conducting, a business or undertaking that is —
  - (i) a care facility; or
  - (ii) a business or undertaking (other than a retail business) as part of which food or drink is supplied to persons; or
  - (iii) an authorised business or undertaking.

**Division 3 — General****16. CEO may grant exemption**

- (1) If the CEO considers that it is reasonably necessary to do so, the CEO may, by notice published on the Department's website, exempt a person or class of persons from regulation 7(1) in relation to —
  - (a) all supplies of prescribed plastic items; or
  - (b) supplies of prescribed plastic items of specified kinds, or in specified circumstances, or both.
- (2) If the CEO considers that it is reasonably necessary to do so, the CEO may, by notice published on the Department's website, exempt a person or class of persons from regulation 8(1) in relation to —
  - (a) all supplies of prescribed drinking straws; or
  - (b) supplies of prescribed drinking straws of specified kinds, or in specified circumstances, or both.
- (3) The CEO may grant an exemption under subregulation (1) or (2) subject to conditions specified in the notice.
- (4) If the CEO grants an exemption under subregulation (1) or (2), the CEO must specify in the notice the period for which the exemption applies.
- (5) The CEO may, by notice published on the Department's website, revoke or vary an exemption granted under subregulation (1) or (2).

**17. Application for exemption**

- (1) A person may apply to the CEO for an exemption under regulation 16(1) or (2).
- (2) Before determining the application, the CEO may require the applicant to provide any further information the CEO requires in any particular case.

**18. Effect of exemption**

- (1) Regulation 7(1) does not apply to —
  - (a) the supply of a prescribed plastic item by a person if an exemption under regulation 16(1) applies to the person in relation to the supply; or
  - (b) the wholesale supply of a prescribed plastic item if the wholesale supplier believes on reasonable grounds that an exemption under regulation 16(1) applies to any of the following persons in relation to the supply of prescribed plastic items of that kind —
    - (i) the person to whom the item is supplied by the wholesale supplier;
    - (ii) another person to whom the item is subsequently to be supplied.
- (2) Regulation 8(1) does not apply to —
  - (a) the supply of a prescribed drinking straw by a person if an exemption under regulation 16(2) applies to the person in relation to the supply; or
  - (b) the wholesale supply of a prescribed drinking straw if the wholesale supplier believes on reasonable grounds that an exemption under regulation 16(2) applies to any of the following persons in relation to the supply of prescribed drinking straws of that kind —
    - (i) the person to whom the straw is supplied by the wholesale supplier;
    - (ii) another person to whom the straw is subsequently to be supplied.

**19. Offence to give false or misleading information about prescribed plastic item or prescribed drinking straw**

A person who supplies or manufactures prescribed plastic items or prescribed drinking straws must not give any information that the person knows is false or misleading to another person about —

- (a) the composition of a prescribed plastic item or prescribed drinking straw; or
- (b) whether or not a plastic item is a prescribed plastic item.

Penalty: a fine of \$5 000.

**20. Reference to prescribed plastic item before commencement of *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 Pt. 4***

In the period beginning on 1 July 2022 and ending on 30 September 2022, a reference in regulation 19 to a prescribed plastic item includes a reference to an item that will be a prescribed plastic item for the purposes of these regulations immediately after the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 Part 4* comes into operation.

**Part 4 — Offences relating to the release of balloons**

**21. Offences relating to release of balloons**

- (1) A person must not release, or cause or permit the release of, a balloon inflated with gas that causes it to rise in the air.  
Penalty for this subregulation: a fine of \$5 000.
- (2) An adult commits an offence if a child in the adult's care releases a balloon inflated with gas that causes it to rise in the air.  
Penalty for this subregulation: a fine of \$5 000.
- (3) It is a defence to a charge under subregulation (2) to prove that the adult took steps that were reasonable in the circumstances to ensure that the child did not release the balloon.
- (4) Subregulations (1) and (2) do not apply if the balloon is —
  - (a) released for scientific (including meteorological) purposes; or
  - (b) released inside a building or structure and does not make its way into the open air; or
  - (c) a hot air balloon that is designed to —
    - (i) carry persons; or
    - (ii) be recovered after landing.

**Division 2 — *Environmental Protection Regulations 1987***  
**amended**

**16. Regulations amended**

This Division amends the *Environmental Protection Regulations 1987*.

**17. Schedule 6 amended**

In Schedule 6 delete:

*Environmental Protection  
(Prohibited Plastics)  
Regulations 2018*

|    |              |     |     |
|----|--------------|-----|-----|
| 1. | regulation 4 | 250 | 500 |
| 2. | regulation 5 | 250 | 500 |
| 3. | regulation 7 | 250 | 500 |

and insert:

*Environmental Protection  
(Prohibited Plastics and  
Balloons) Regulations 2018*

|    |                  |     |     |
|----|------------------|-----|-----|
| 1. | regulation 4     | 250 | 500 |
| 2. | regulation 5     | 250 | 500 |
| 3. | regulation 7(1)  | 250 | 500 |
| 4. | regulation 8(1)  | 250 | 500 |
| 5. | regulation 19    | 250 | 500 |
| 6. | regulation 21(1) | 250 | 500 |
| 7. | regulation 21(2) | 250 | 500 |

## Part 4 — Amendments commencing on 1 October 2022

### 18. Regulations amended

This Part amends the *Environmental Protection (Prohibited Plastics and Balloons) Regulations 2018*.

### 19. Regulation 3 amended

In regulation 3 insert in alphabetical order:

*hot drink or soup* means a drink or soup at a temperature higher than the ambient temperature;

### 20. Regulation 3A amended

(1) In regulation 3A(1):

(a) in paragraph (h) delete “lid.” and insert:

lid;

(b) after paragraph (h) insert:

(i) a cup.

(2) In regulation 3A(3):

(a) in paragraph (c) delete “biodegradable.” and insert:

biodegradable;

(b) after paragraph (c) insert:

(d) a cup made from expanded polystyrene.

### 21. Regulation 7 amended

(1) In regulation 7(2):

(a) in paragraph (b) delete “seafood.” and insert:

seafood; or

(b) after paragraph (b) insert:

(c) is a cup that contains a hot drink or soup when it is supplied.

(2) After regulation 7(4) insert:

- (5) Subregulation (1) does not apply to the wholesale supply of a prescribed plastic item if the item is a cup of a kind that is suitable to be used to contain a hot drink or soup.

V.MOLAN, Clerk of the Executive Council.