



Western Australia

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

Compare between:

[04 Jun 2022, 00-f0-00] and [01 Jul 2022, 00-g0-00]



# Environmental Protection (Prohibited Plastics and Balloons) Regulations 2018

## Part 1 — Preliminary

### 1. Citation

These regulations are the *Environmental Protection (Prohibited Plastics [and Balloons](#)) Regulations 2018*.

[Regulation 1 amended: [SL 2021/215 r. 44](#); [SL 2022/64 r. 12](#).]

### 2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) regulations 4 and 7(2) — on 1 January 2019;
- (c) the rest of the regulations — on 1 July 2018.

### 3. Terms used

In these regulations —

**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;

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

**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;

**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);

**barrier bag** means a plastic bag without handles used to carry unpackaged perishable food;

**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;

**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;

*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;

***medical care provider*** means—

- (a) an individual who practises ~~a~~ any of the following health ~~profession within the meaning of~~ professions as defined in the *Health Practitioner Regulation National Law (Western Australia)* section 5 ~~but excludes~~ —

- (i) Aboriginal and Torres Strait Islander health practice;

- (ii) dental (including the profession of a ~~pharmacist~~ 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 optometrist~~

- (b) a speech pathologist;

***plastic*** —

- (a) means a material consisting of a polymer, to which additives or other substances may have been added, which can function as a main structural component of final products; and
- (b) includes expanded polystyrene; but
- (c) does not include a material consisting of natural polymers that have not been chemically modified;

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

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

- ~~(a) means a bag that is —~~
  - ~~(i) made in whole or in part of plastic; and~~
  - ~~(ii) has handles; and~~
  - ~~(iii) has a thickness of 35 microns or less;~~
- ~~but~~
- ~~(b) does not include a bag that is —~~
  - ~~(i) a barrier bag; or~~
  - ~~(ii) a plastic bag that is, or is an integral part of, the packaging in which goods are sealed for sale; or~~
  - ~~(iii) a plastic bag provided by a medical care provider to a person receiving services from that medical care provider;~~

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

*retailer* means a person who sells goods in trade or commerce;

*supply* includes sell, provide and make available.

[Regulation 3 amended: SL 2021/215 r. 5; SL 2022/64 r. 7 and 13.]

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**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.

[Regulation 3A inserted: SL 2021/215 r. 6.]

**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) an unsealed bag that is the packaging in which perishable food is offered for sale; or

(c) a bag that is, or is an integral part of, the packaging in which goods are sealed for sale; or

(d) 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;

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(iii) polyester;

or

(e) 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.

[Regulation 3B inserted: SL 2022/64 r. 14.]

**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.

[Regulation 3C inserted: SL 2022/64 r. 14.]

**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.

[Regulation 3D inserted: SL 2022/64 r. 14.]

## **Part 2 — Offences relating to plastic bags**

### **4. Offence to supply prescribed plastic bag**

A retailer must not supply a prescribed plastic bag to a person for the person to carry goods sold by the retailer.

Penalty: a fine of \$5 000.

### **5. Offence to give false or misleading information about a prescribed plastic bag**

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

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

Penalty: a fine of \$5 000.

### **6. Reference to prescribed plastic bag before commencement of *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2022 Pt. 3***

Before 1 July 2022, a reference in regulation 5 to a prescribed plastic bag is 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 2022 Part 3* comes into operation.

*[Regulation 6 inserted: SL 2022/64 r. 8.]*

## **Part 3 — ~~Offence~~Offences relating to plastic items**

*[Heading inserted: SL ~~2021/215~~2022/64 r. 15.]*

### **Division 1 — Prescribed plastic items**

*[Heading inserted: SL 2022/64 r. 15.]*

#### **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.

[Regulation 7 inserted: SL 2022/64 r. 15.]

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

[Heading inserted: SL 2022/64 r. 15.]

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

7. (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.

[Regulation 8 inserted: SL 2022/64 r. 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.

[Regulation 9 inserted: SL 2022/64 r. 15.]

**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.

[Regulation 10 inserted: SL 2022/64 r. 15.]

**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.

[Regulation 11 inserted: SL 2022/64 r. 15.]

**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.

[Regulation 12 inserted: SL 2022/64 r. 15.]

**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.

[Regulation 13 inserted: SL 2022/64 r. 15.]

**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

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(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.

[Regulation 14 inserted: SL 2022/64 r. 15.]

**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) is a medical care provider; or

(c) will use the straw in connection with the service or consumption of food or drink on an aircraft; 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.

[Regulation 15 inserted: SL 2022/64 r. 15.]



**Division 3 — False or misleading information**

*[Heading inserted: SL 2022/64 r. 15.]*

**16. 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.

*[Regulation ~~7~~16 inserted: SL ~~2021/215~~2022/64 r. ~~8~~15.]*

**817. Reference to prescribed plastic item before commencement of *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2022 Pt. 4***

~~Before~~In the period beginning on 1 July 2022 and ending on 30 September 2022, a reference in regulation ~~7~~16 to a prescribed plastic item is 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 2022 Part 4* comes into operation.

*[Regulation ~~8~~17 inserted: SL 2022/64 r. ~~9~~15.]*

~~*{9-17. Have not come into operation<sup>2</sup>.}*~~

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

*[Heading inserted: SL 2022/64 r. 15.]*

**18) has. 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 ~~come into operation~~<sup>2</sup> 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.

*[Regulation 18 inserted: SL 2022/64 r. 15.]*

## **Part 5 — Exemptions**

*[Heading inserted: SL 2022/64 r. 10.]*

### **19. Terms used**

In this Part —

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

***offence of supplying prescribed drinking straws*** means regulation 8(1), as in force on and after the coming into operation on 1 July 2022 of the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2022* Part 3;

***offence of supplying prescribed plastic items*** means regulation 7(1), as in force on and after the coming into operation on 1 July 2022 of the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2022* Part 3.

*[Regulation 19 inserted: SL 2022/64 r. 10.]*

### **20. 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 the offence of supplying prescribed plastic items 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 the offence of supplying prescribed drinking straws in relation to —
  - (a) all supplies of prescribed drinking straws; or

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- (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).
- (6) A period specified in a notice under subregulation (4) must not begin before 1 July 2022.

*[Regulation 20 inserted: SL 2022/64 r. 10.]*

**21. Application for exemption**

- (1) An exemption under regulation 20(1) or (2) may be granted on application or on the CEO's own initiative.
- (2) Before determining an application for an exemption under regulation 20(1) or (2), the CEO may require the applicant to provide any further information the CEO requires in any particular case.

*[Regulation 21 inserted: SL 2022/64 r. 10.]*

**22. Effect of exemption**

- (1) The offence of supplying prescribed plastic items does not apply to —
  - (a) the supply of a prescribed plastic item by a person if an exemption under regulation 20(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 20(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) The offence of supplying prescribed drinking straws does not apply to —
- (a) the supply of a prescribed drinking straw by a person if an exemption under regulation 20(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 20(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.

*[Regulation 22 inserted: SL 2022/64 r. 10.]*

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

Notes                      Compilation table

### Notes

This is a compilation of the *Environmental Protection (Prohibited Plastics [and Balloons](#)) Regulations 2018* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

### Compilation table

Citation	Published	Commencement
<i>Environmental Protection (Plastic Bags) Regulations 2018</i> <sup>1</sup>	12 Jun 2018 p. 1890-1	r. 1 and 2: 12 Jun 2018 (see r. 2(a)); Regulations (other than r. 1, 2, 4 and 7(2)): 1 Jul 2018 (see r. 2(c)); r. 4 and 7(2): 1 Jan 2019 (see r. 2(b))
<i>Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 Pt. 2 Div. 1</i> <sup>2</sup>	SL 2021/215 17 Dec 2021	1 Jan 2022 (see r. 2(b));
<i>Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2022 Pt. 22 and Pt. 3 Div. 1</i>	SL 2022/64 3 Jun 2022	<a href="#">Pt. 2</a> : 4 Jun 2022 (see r. 2(d)); <a href="#">Pt. 3 Div. 1</a> : 1 Jul 2022 (see r. 2(b))

### Uncommenced provisions table

To view the text of the uncommenced provisions see *Subsidiary legislation as made* on the WA Legislation website.

Citation	Published	Commencement
<i>Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2022 Pt. 3 Div. 1 and Pt. 44</i>	SL 2022/64 3 Jun 2022	<del>Pt. 3 Div. 1</del> : 1 Jul 2022 (see r. 2(b)); <del>Pt. 4</del> : 1 Oct 2022 (see r. 2(c))

### Other notes

<sup>1</sup> Now known as the *Environmental Protection (Prohibited Plastics [and Balloons](#)) Regulations 2018*; citation changed (see note under r. 1).

<sup>2</sup> ~~Regulations 9-17 and Part 4 (r. 18) will be inserted by the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2022 Pt. 3 Div. 1 (SL 2022/64)* on 1 July 2022.~~

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<sup>32</sup> The *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021* Pt. 3 Div. 1 and Pt. 4 (SL 2021/215) were deleted before those provisions could come into operation (see the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2022* r. 5 (SL 2022/64)).