

EV302

Environmental Protection Act 1986

**Environmental Protection Regulations
Amendment (Prohibited Plastics and Balloons)
Regulations 2022**

SL 2022/64

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 2022*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette* (**gazettal day**);
- (b) Part 3 — on 1 July 2022;
- (c) Part 4 — on 1 October 2022;
- (d) the rest of the regulations — on the day after gazettal day.

Part 2 — Amendments commencing on day after gazettal

Division 1 — *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021* amended

3. Regulations amended

This Division amends the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021*.

4. Regulation 2 amended

In regulation 2:

- (a) in paragraph (b) delete “2022;” and insert:

2022.

- (b) delete paragraphs (c) and (d).

5. Parts 3 and 4 deleted

Delete Parts 3 and 4.

Division 2 — *Environmental Protection (Prohibited Plastics) Regulations 2018* amended

6. Regulations amended

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

7. Regulation 3 amended

In regulation 3 delete the definition of *plastic* and insert:

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;

8. Regulation 6 replaced

Delete regulation 6 and insert:

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.

9. Regulation 8 replaced

Delete regulation 8 and insert:

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

Before 1 July 2022, a reference in regulation 7 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.

10. Part 5 inserted

After Part 3 insert:

Part 5 — Exemptions

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.

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
 - (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.

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.

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.

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;

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) 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;
 - (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.

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) 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.

Division 3 — False or misleading information**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.

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

In the period beginning on 1 July 2022 and ending on 30 September 2022, a reference in regulation 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.

Part 4 — Offences relating to the release of balloons**18. 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 16	250	500
6.	regulation 18(1)	250	500
7.	regulation 18(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) Delete regulation 3A(3)(c) and insert:

(c) a food container, bowl or cup that is made from paperboard and certified as biodegradable;

(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.

N. HAGLEY, Clerk of the Executive Council.