

# Plastic Reduction and Circular Economy Act 2021 No 31

[2021-31]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Responsible Minister

- Minister for the Environment
- Minister for Climate Change

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Plastic Reduction and Circular Economy Act 2021 No 31



New South Wales

An Act to prohibit certain items and establish a product stewardship framework for brand owners of certain products; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Plastic Reduction and Circular Economy Act 2021*.

### 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsections (2) and (3).
- (2) Schedule 1, section 2 commences on the first day of the first month occurring 6 whole months after the commencement of section 3.
- (3) Schedule 1, sections 3–5 commence on 1 November 2022.

### 3 Objects of Act

- (1) The objects of this Act are as follows—
  - (a) to protect the environment and human health,
  - (b) to promote and support the principles of a circular economy,
  - (c) to support material circularity through design, production, use, re-use, collection, recycling, reprocessing and end-of-life management,
  - (d) to ensure responsibility for products across their life cycle,
  - (e) to reduce the impact, or potential impact, of items, waste from items and waste material on the environment and human health.
- (2) In this section—

**principles of a circular economy** include the following principles—

- (a) valuing resources and minimising the use of virgin materials by ensuring materials continue to circulate in the economy in a way that—
  - (i) minimises the risk of harm to human health and the environment, and
  - (ii) considers the waste hierarchy,
- (b) keeping resources in use and designing out waste, pollution and resource inefficiency, including through innovative systems, technologies and business models,
- (c) ecologically sustainable and regenerative management of resources and systems.

**waste hierarchy** is a reference to the hierarchy set out in the *Waste Avoidance Resource and Recovery Act 2001*, section 3(b).

#### 4 Definitions

- (1) The Dictionary in Schedule 4 defines words and expressions used in this Act.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) A person supplies an item whether or not—
  - (a) a fee is charged for the supply of the item, or
  - (b) the supply of the item is incidental to, or forms part of, the supply of another thing.

#### 5 Precautionary principle

- (1) In this Act, the **precautionary principle** is the principle that, if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (2) In applying the precautionary principle, decisions should be guided by—
  - (a) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
  - (b) an assessment of the risk-weighted consequences of various options.

#### 6 Extraterritorial application of Act

- (1) If there is an extraterritorial impact, this Act and the regulations apply to—

- (a) a person, whether or not the person is outside the State, and
- (b) premises, whether or not the premises are outside the State, and
- (c) a supplier, whether or not—
  - (i) the supplier is carrying on a business outside the State, or
  - (ii) the supplier is a party to a contract made outside the State.

(2) In this section—

**extraterritorial impact** means a matter or thing, whether it occurs or is located outside the State, that—

- (a) affects, or is likely to affect, the environment of the State, or
- (b) relates to the supply, or the likely supply, into or within the State of a regulated item, or
- (c) relates to a non-compliance matter.

**non-compliance matter** means a matter or thing that is, or is likely to be, an offence under this Act or the regulations.

## Part 2 Prohibited items

### 7 Prohibited plastic items

(1) In this Act—

**prohibited plastic item** means a plastic item that is—

- (a) specified in Schedule 1, Part 1, or
- (b) prescribed by the regulations.

(2) The Minister must not recommend the making of a regulation to prescribe a prohibited plastic item unless the Minister forms an opinion that the item is—

- (a) unnecessary, or
- (b) for environmental, human health or economic reasons, including reasons relating to waste management or resource management—problematic.

(3) Without limiting subsection (2), in forming an opinion that a plastic item is unnecessary or problematic, the Minister may consider the following—

- (a) the precautionary principle,
- (b) whether the plastic item—



- (i) can be eliminated or replaced by an item that is not a plastic item or by a reusable plastic item without causing harm or significant disruption to consumers, or
  - (ii) is difficult to collect or recover through kerbside or similar publicly accessible collection and recovery systems and services, or
  - (iii) is made from material that is difficult or costly to recycle through commercially available recycling technologies, or
  - (iv) hinders, disrupts or obstructs opportunities for other materials or resources to be recovered, collected or recycled, or
  - (v) contributes significantly to litter, or
  - (vi) is made from material that may cause harm to human health or the environment, or
  - (vii) contains additives that accelerate the breakdown of the item into particles.
- (4) The Minister must, as soon as practicable after forming an opinion, publish notice of the opinion in the NSW Government Gazette.
- (5) A failure to publish a notice does not affect the making or validity of a regulation that prescribes a prohibited plastic item.

## **8 Design standards**

- (1) The regulations may prescribe design standards for an item for environmental, human health or economic reasons, including the following—
- (a) promoting waste avoidance and reducing the likely end-of-life impact of the item on the environment,
  - (b) increasing the potential for, or reducing barriers to, the re-use, recovery, recycling, processing or reprocessing of an item,
  - (c) increasing the use of recycled material in the manufacturing or production of an item,
  - (d) reducing the impact of the production, use, processing or reprocessing of an item on the environment,
  - (e) reducing the unnecessary or inefficient use of materials in an item,
  - (f) increasing the energy or resource efficiency of an item,
  - (g) prohibiting, preventing or reducing the use of an item that may result in a risk to human health or the environment, including by applying the precautionary

principle,

(h) waste management or resource management,

(i) increasing post-consumer collection,

(j) increasing consumer awareness of the matters referred to in paragraphs (a)–(h).

(2) Without limiting subsection (1), a design standard may contain requirements for the following—

(a) the composition of an item, including the type or amount of materials or substances that must or must not be included in the item,

(b) the way in which an item must be packaged or labelled,

(c) the way in which an item must be designed, constructed or manufactured,

(d) independent testing and verification to determine compliance with a design standard,

(e) independent testing to determine whether a representation made in relation to an item is accurate.

(3) Schedule 1, Part 2 specifies a design standard.

## **9 Offence of supplying prohibited items**

(1) A person who, while carrying on a business, supplies a prohibited item to another person is guilty of an offence.

Maximum penalty—

(a) for a corporation—500 penalty units, or

(b) for an individual—100 penalty units.

(2) This section does not apply to the supply of a prohibited item to a location outside of the State.

## **Part 3 Product stewardship requirements and targets**

### **Division 1 Preliminary**

#### **10 Definitions**

In this Part—

**financial year** means the period of 12 months commencing on 1 July in a year.

**product stewardship target** means a target—

- (a) specified in accordance with section 13, or
- (b) set by the Minister under section 14.

## **11 Meaning of “brand owner”**

- (1) In this Act, the **brand owner** of a product—
  - (a) is the owner of the product name under which the product is supplied in the State, and
  - (b) includes a person prescribed by the regulations.
- (2) The regulations may prescribe the circumstances in which the following persons are taken to be brand owners in relation to the supply of a particular product—
  - (a) a person who is a licensee of a product name under which the product is supplied in the State,
  - (b) a person who is a franchisee under a business arrangement that allows the person to supply the product in the State,
  - (c) a person who first supplies the product in Australia.
- (3) Unless otherwise specified by the regulations, the brand owner of a product is taken to be the brand owner of the packaging material of the product.
- (4) The regulations may make provision for or about the following—
  - (a) whether the brand owner of a product is or is not the brand owner of the packaging material of the product, including in specified circumstances,
  - (b) the circumstances in which a person is or is not taken to be the brand owner of a product,
  - (c) the granting of exemptions from this Part—
    - (i) with or without conditions, and
    - (ii) generally, in specified circumstances or for a specified product.
- (5) In this section—

**product name** includes a trade mark, brand name or trade name, whether or not registered in this or another jurisdiction.

## **12 Meaning of “supply”**

In this Part and section 6—

**supply** also includes the following for a scheme or service—

- (a) make the scheme or service available or provide the scheme or service to a person,
- (b) an offer to provide the scheme or service, including advertising the scheme or service or making other representations with the intention of providing the scheme or service.

## **Division 2 Product stewardship requirements and targets**

### **13 Product stewardship requirements**

- (1) The regulations may—
  - (a) prescribe a requirement (a **product stewardship requirement**) for the stewardship of the life cycle of a regulated product, including the development, design, creation, production, assembly, supply, use or re-use, recovery, recycling or disposal of the regulated product, and
  - (b) specify a target for or in relation to a product stewardship requirement, including a target expressed as a percentage.
- (2) Without limiting subsection (1), the regulations may prescribe a product stewardship requirement for or in relation to the following—
  - (a) the use or re-use of recycled materials or other materials that will minimise the environmental or resource impact of a product's creation,
  - (b) the traceability of materials,
  - (c) the ability of a product to be recycled, composted, repaired, processed, re-processed or re-used,
  - (d) the re-use, re-manufacture, recovery, recycling, take-back, use or disposal of a product or resources from a product,
  - (e) the prevention, reduction or recovery of litter,
  - (f) the prevention or reduction of unlawful waste disposal,
  - (g) the reduction in material used in a product,
  - (h) the design of a product,
  - (i) the maintenance, sharing, repair, refurbishment or upgrade of a product,
  - (j) the longevity of a product,
  - (k) the reduction of the impact, including the potential impact, of a product or the life cycle of a product on resource management or waste management, including in relation to virgin materials, demand for landfill, the environment or human health.

#### **14 Minister may set product stewardship targets**

- (1) The Minister may, by order published in the Gazette, set a product stewardship target, including a target expressed as a percentage.
- (2) The order takes effect—
  - (a) on the date on which the order is published, or
  - (b) if a later date is specified in the order—the later date.
- (3) A target specified in the regulations prevails over a target set by order under this section.
- (4) The Minister may, by a further order made under this section, vary a target specified in the regulations if the regulations permit the variation of the target.

#### **15 Offence—failure to comply with product stewardship requirement or target**

- (1) The brand owner of a regulated product must comply with a product stewardship requirement for the regulated product.  
Maximum penalty—
  - (a) for a corporation—4,000 penalty units and, for a continuing offence, a further 400 penalty units for each day the offence continues, or
  - (b) for an individual—1,000 penalty units and, for a continuing offence, a further 100 penalty units for each day the offence continues.
- (2) It is a defence in proceedings for an offence against subsection (1) if the defendant establishes that, at the time of the failure to comply, the defendant—
  - (a) held an approved action plan for the product stewardship requirement, and
  - (b) complied with the approved action plan and the conditions, if any, imposed by the regulator on the approved action plan.
- (3) To the extent that an approved action plan relates to a brand owner's compliance with a product stewardship requirement, a failure to comply with the plan is evidence of a failure to comply with subsection (1).
- (4) In this section—

***product stewardship requirement*** includes a product stewardship target.

#### **16 Record keeping requirements**

- (1) The brand owner of a regulated product must—
  - (a) prepare records for each financial year in accordance with this section, and

- (b) keep the records for at least 6 years following the financial year to which the prescribed records relate, and
- (c) make the records available for inspection and copying by an authorised officer on request.

Maximum penalty—

- (a) for a corporation—4,000 penalty units and, for a continuing offence, a further 400 penalty units for each day the offence continues, or
  - (b) for an individual—1,000 penalty units and, for a continuing offence, a further 100 penalty units for each day the offence continues.
- (2) Records prepared under this section must include the information prescribed by the regulations, if any.
- (3) The regulator may, by written notice to a brand owner, direct the brand owner to, within a specified period—
- (a) arrange an independent audit of the records to be carried out by an auditor specified by the regulator, and
  - (b) provide the auditor's report to the regulator.
- (4) A brand owner must, within the specified period, comply with a direction given under this section.

Maximum penalty—

- (a) for a corporation—1,000 penalty units and, for a continuing offence, a further 100 penalty units for each day the offence continues, or
  - (b) for an individual—200 penalty units and, for a continuing offence, a further 20 penalty units for each day the offence continues.
- (5) The regulations may specify information to be included in records by reference to the following—
- (a) a brand owner,
  - (b) a regulated product,
  - (c) an activity,
  - (d) an industry.

## **17 Reporting requirements**

- (1) A brand owner must provide a report to the regulator within 3 months of the end of

the financial year.

Maximum penalty—

- (a) for a corporation—4,000 penalty units and, for a continuing offence, a further 400 penalty units for each day the offence continues, or
- (b) for an individual—1,000 penalty units and, for a continuing offence, a further 100 penalty units for each day the offence continues.

(2) The report must—

- (a) be provided in the form and the way approved by the regulator, and
- (b) include the information prescribed by the regulations.

(3) Information provided to the regulator under this section may be taken into consideration by the regulator and used for the purposes of this Act.

(4) Without limiting subsection (3), the information is admissible in evidence in a prosecution of the brand owner for an offence against this Act or the regulations, whether or not the information may incriminate the brand owner.

(5) The regulations may prescribe information to be included in a report by reference to the following—

- (a) a brand owner,
- (b) a regulated product,
- (c) an activity,
- (d) an industry.

## **18 Regulator may publish certain information**

The regulator may publish information, including the name of a brand owner and other names by which the brand owner trades, on the regulator's website if the information relates to—

- (a) information provided to the regulator by a brand owner under this Part, or
- (b) the brand owner's compliance or non-compliance with a provision of this Part or regulations made under this Part, or
- (c) the brand owner's performance, from time to time, against product stewardship requirements and product stewardship targets.

## **Division 3 Action plans**

### **19 Requirement to prepare action plan**

(1) If required by the regulations, the brand owner of a regulated product must—

- (a) prepare an action plan, and
- (b) submit the action plan to the regulator.

Maximum penalty—

- (a) for a corporation—4,000 penalty units and, for a continuing offence, a further 400 penalty units for each day the offence continues, or
- (b) for an individual—1,000 penalty units and, for a continuing offence, a further 100 penalty units for each day the offence continues.

(2) The action plan—

- (a) must set out how the brand owner intends to comply with the provisions of this Part for which the action plan is required to be prepared, and
- (b) may include indirect actions intended to offset adverse environmental impacts generally or specifically in connection with the regulated product, and
- (c) must include the information prescribed by the regulations.

(3) An action plan must be submitted in the form and the way approved by the regulator.

(4) The regulator may require the brand owner to provide further information for the purpose of assessing the action plan.

(5) The regulations may specify the following by reference to a brand owner, regulated product, activity or industry—

- (a) the period within which an action plan must be submitted to the regulator,
- (b) whether an action plan is required to be prepared for compliance with the following—
  - (i) product stewardship requirements,
  - (ii) product stewardship targets,
  - (iii) record keeping requirements under section 16,
  - (iv) reporting requirements under section 17,
- (c) the circumstances in which an action plan is required to be prepared,



- (d) the information that must be included in an action plan.

## **20 Regulator may approve, or direct brand owner to resubmit, action plans**

- (1) After receiving an action plan, the regulator may, by written notice to the brand owner who submitted the action plan—
  - (a) approve the action plan (the **approved action plan**) with effect from the date specified in the notice, or
  - (b) direct the brand owner to—
    - (i) amend the action plan, and
    - (ii) resubmit the action plan within the period specified in the notice.
- (2) An approved action plan is subject to the conditions, if any, specified by the regulator in a notice under this section or section 22.
- (3) A brand owner who holds an approved action plan may submit a draft revised or amended action plan to the regulator for approval under this section.

## **21 Requirement to hold approved action plan before supply of regulated product**

- (1) The brand owner of a regulated product must hold an approved action plan before the product is supplied, whether or not the product is supplied by the brand owner.

Maximum penalty—

  - (a) for a corporation—4,000 penalty units and, for a continuing offence, a further 400 penalty units for each day the offence continues, or
  - (b) for an individual—1,000 penalty units and, for a continuing offence, a further 100 penalty units for each day the offence continues.
- (2) This section does not apply to the supply of a regulated item to a location outside of the State.

## **22 Powers of regulator—action plans**

- (1) The regulator may, by written notice to a brand owner—
  - (a) vary or revoke conditions imposed on an approved action plan, including at the request of the brand owner,
  - (b) impose further conditions on an approved action plan,
  - (c) withdraw its approval of an approved action plan,
  - (d) direct the brand owner to do 1 or more of the following within the period specified in the notice—

- (i) provide further information in relation to an approved action plan,
  - (ii) review, update or amend an approved action plan and submit the revised or amended action plan,
  - (iii) prepare and submit an action plan in accordance with section 19, whether or not the brand owner has an approved action plan,
  - (iv) arrange an independent audit of an action plan or approved action plan to be carried out by an auditor, including an auditor specified or approved by the regulator,
  - (v) provide the auditor's report to the regulator.
- (2) A brand owner must comply with a direction of the regulator given in accordance with this Part.

Maximum penalty—

- (a) for a corporation—4,000 penalty units and, for a continuing offence, a further 400 penalty units for each day the offence continues, or
- (b) for an individual—1,000 penalty units and, for a continuing offence, a further 100 penalty units for each day the offence continues.

### **23 Review of certain decisions by regulator**

- (1) A brand owner may, within 14 days of receiving notice of a reviewable decision, apply to the regulator for an internal review of the decision.
- (2) An application for internal review must—
  - (a) be made in writing and state the grounds of the application, and
  - (b) comply with other requirements, if any, prescribed by the regulations.
- (3) An application for internal review does not operate to stay the reviewable decision unless the regulator directs otherwise.
- (4) The regulator is not required to conduct a review if a review of the decision has already been conducted under this section.
- (5) In determining the application, the regulator may—
  - (a) confirm the decision, or
  - (b) vary the decision, or
  - (c) revoke the decision.

- (6) The regulator must give written notice to the applicant of the determination.
- (7) A determination to vary or revoke the reviewable decision takes effect on and from the day written notice of the determination is given to the applicant.
- (8) In this section—  
***reviewable decision*** means a decision by the regulator—
  - (a) to refuse to approve an action plan, or
  - (b) to require an action plan to be amended and resubmitted under section 20(1)(b), or
  - (c) to impose a certain condition on an action plan, or
  - (d) to vary a condition imposed on an action plan, or
  - (e) to withdraw its approval of an action plan, or
  - (f) of a kind prescribed by the regulations.

## **Part 4 Financial assurances**

### **24 Purpose of Part**

- (1) The purpose of this Part is to provide, by imposing conditions on approved action plans, financial assurances to secure or guarantee funding for or towards the carrying out of actions required to meet product stewardship requirements or targets.
- (2) A financial assurance must not operate as a penalty for a contravention of this Act, the regulations or the conditions of an approved action plan.

### **25 Requiring financial assurances**

- (1) The regulator may, at any time, impose a condition on an approved action plan to require the brand owner subject to the approved action plan to provide a financial assurance.
- (2) The regulator may require a financial assurance to be provided before it approves an action plan.
- (3) A financial assurance may be in 1 or more of the following forms—
  - (a) a bank guarantee,
  - (b) a bond,
  - (c) another form of security the regulator considers appropriate and specifies in the condition.

- (4) A condition of an action plan may provide for the procedures under which the financial assurance may be called on or used.

## **26 Restriction on requiring financial assurance**

The regulator must not impose a condition on an action plan requiring a financial assurance to be provided unless satisfied the condition is justified considering—

- (a) the degree of risk of environmental harm, harm to human health or waste management impacts associated with the brand owner's activities to which the product stewardship requirements and targets apply, or
- (b) the ongoing financial capacity of the brand owner to meet the relevant product stewardship requirements and targets, whether through its action plan or otherwise, or
- (c) the environmental record of the brand owner, including its past compliance with relevant product stewardship requirements and targets, or
- (d) other matters prescribed by the regulations.

## **27 Amount of financial assurances**

- (1) The amount of a financial assurance may be determined by the regulator.
- (2) The regulator must not require financial assurances of an amount that is more than the total cost of carrying out the actions required to comply with the product stewardship requirements and targets.
- (3) The total cost is the amount that, in the regulator's opinion, represents a reasonable estimate of—
  - (a) the total likely costs and expenses that may be incurred by the brand owner in carrying out the actions required, and
  - (b) the total likely costs and expenses of the regulator in directing and supervising the carrying out of the actions.
- (4) The regulator may require a brand owner to provide an independent assessment of the cost of the relevant actions for which the assurance is required.

## **28 Guidelines about financial assurances**

The regulations may make provision for or about guidelines to be observed in relation to—

- (a) conditions imposed on action plans requiring financial assurances, and
- (b) the calculation of the amount of financial assurances.

## **29 Regulator may carry out certain actions if brand owner fails to carry out action**

- (1) The regulator may, by the use of contractors, consultants or otherwise, cause an action covered by a financial assurance to be carried out if the brand owner fails, in the opinion of the regulator, to carry out the action.
- (2) The regulator may enter, or authorise another person to enter, premises to carry out the action.
- (3) Anything caused to be carried out under this section is taken to have been carried out by the brand owner.

## **30 Recovery or funding of reasonable costs from financial assurance**

- (1) The regulator may recover or fund from the financial assurance the reasonable costs of causing action to be carried out under section 29.
- (2) Before recovering or funding reasonable costs from the financial assurance, the regulator must give to the brand owner a written notice under this section.
- (3) The notice must—
  - (a) state details of the action to which the costs apply, and
  - (b) state the amount to be recovered or funded, and
  - (c) invite the brand owner to make written representations to the regulator to show why the amount should not be recovered or funded, and
  - (d) state the period, being at least 30 days after the notice is given to the brand owner, within which representations may be made.
- (4) After the end of the period stated in the notice, the regulator must consider written representations made by the brand owner.
- (5) If the regulator decides to recover or fund the amount from the financial assurance, the regulator must, as soon as practicable, give written notice to the brand owner of its decision and the reasons for the decision.
- (6) The regulator must return excess amounts, if any, to the brand owner.
- (7) If the amount recovered or funded from the financial assurance is not sufficient to cover all reasonable costs and expenses, the regulator may recover the excess from the brand owner as a debt in a court of competent jurisdiction.

## **31 Lapsing of financial assurance**

The requirement to provide financial assurance lapses and no longer binds the brand owner if the regulator—

- (a) is satisfied the action for which the financial assurance was required has been satisfactorily carried out, and
- (b) has given the brand owner written notice of the lapsing of the financial assurance.

### **32 Liability of regulator, State and others**

The following persons are not liable for anything done or omitted to be done in good faith in carrying out a function or action under this Part—

- (a) the State,
- (b) the Minister,
- (c) the regulator,
- (d) the members of the Board of the EPA,
- (e) a member of staff of the regulator,
- (f) a person acting under the direction of, or with the authority of, the Minister or the regulator,
- (g) a person acting as a delegate of the Minister.

### **33 Financial assurance not to affect other action**

A financial assurance may be called on and used, despite and without affecting—

- (a) the liability of the brand owner to a penalty for an offence for a contravention to which the assurance relates, and
- (b) another action that may be, or is required to be, taken in relation to a contravention or other circumstances to which the assurance relates.

### **34 Disputes regarding call on or use of financial assurance**

The Court has jurisdiction to determine disputes about calling on or using a financial assurance.

## **Part 5 Enforcement**

### **35 Definitions**

In this Part—

**compliance cost notice** means a notice given by the regulator under section 41.

**notice** means—

- (a) a compliance cost notice, and

(b) a compliance notice.

**stop notice**—see section 36(3)(a).

### 36 Compliance notices

- (1) This section applies when the regulator reasonably suspects a person has supplied, is supplying or is likely to supply from premises or otherwise than from premises—
  - (a) a prohibited plastic item, or
  - (b) an item that does not comply with a design standard—
    - (i) specified for the item in Schedule 1, Part 2, or
    - (ii) prescribed by the regulations in relation to the item.
- (2) The regulator may, by written notice, direct either or both of the following to take an action specified in the notice within the period, if any, specified in the notice—
  - (a) the occupier of the premises,
  - (b) the supplier, whether or not at the premises.
- (3) Without limiting subsection (2), the action specified in the notice may include the following—
  - (a) to stop or suspend the supply of the item (a **stop notice**),
  - (b) to stop another specified action or activity, including providing information that is, or is likely to be, false or misleading in relation to the item,
  - (c) to dispose of the item,
  - (d) to engage an independent and appropriately qualified person to carry out specified tests on the item,
  - (e) to provide a statement of compliance to a person who receives or will receive supply of the item,
  - (f) other actions prescribed by the regulations, including actions that must not be taken.
- (4) An occupier who did not supply an item referred to in a notice given to the occupier may, if the occupier complies with the notice, recover, as a debt in a court of competent jurisdiction, the cost of complying with the notice from the person who supplied the item.
- (5) Subsection (4) only applies if the occupier has taken all reasonable steps to prevent the supply of the item.

(6) In this section—

**occupier** of premises means the person who has the management or control of the premises.

### **37 Offence—non-compliance with stop notice**

A person who does not comply with a stop notice given to the person is guilty of an offence.

Maximum penalty—

- (a) for a corporation—2,500 penalty units and, for a continuing offence, a further 250 penalty units for each day the offence continues, or
- (b) for an individual—500 penalty units and, for a continuing offence, a further 50 penalty units for each day the offence continues.

### **38 Offence—non-compliance with compliance notices other than stop notices**

A person who does not comply with a compliance notice, other than a stop notice, given to the person is guilty of an offence.

Maximum penalty—

- (a) for a corporation—500 penalty units and, for a continuing offence, a further 50 penalty units for each day the offence continues, or
- (b) for an individual—100 penalty units and, for a continuing offence, a further 10 penalty units for each day the offence continues.

### **39 Commencement**

- (1) A notice, or a variation of a notice, operates from the day the notice or notice of the variation is given or from a later day specified in the notice.
- (2) If an appeal is made against a compliance notice or the variation of a compliance notice and the Court directs that the notice is stayed, the notice or variation does not operate until—
  - (a) the stay ceases to have effect, or
  - (b) the Court confirms the notice, or
  - (c) the appeal is withdrawn.

### **40 Fee to recover administrative costs of regulator**

- (1) The purpose of this section is to enable the regulator to recover the administrative costs of preparing and giving notices.



- (2) A person who is given a notice by the regulator must within 30 days pay the fee specified in the notice to the regulator.
- (3) The regulator may publish, on its website, the fees for the administrative costs of preparing and giving notices.
- (4) The regulator may—
  - (a) extend the time for payment of the fee, on the application of the person, or
  - (b) waive payment of the whole or a part of the fee, on the regulator's own initiative or on the application of the person.
- (5) The fee is not payable during the currency of an appeal against the notice.
- (6) If the decision of the Court on an appeal does not invalidate the notice, the fee is payable within 30 days of the decision.
- (7) A person who does not pay the fee within the time provided under this section is guilty of an offence.

Maximum penalty—200 penalty units.

#### **41 Compliance cost notices**

- (1) The regulator may, by written notice, require a person to whom a compliance notice is given to pay reasonable costs and expenses incurred by the regulator in connection with—
  - (a) monitoring action under the notice, and
  - (b) ensuring the notice is complied with, and
  - (c) other associated matters.
- (2) The regulator may, by written notice, require a person to whom a compliance notice is given to pay reasonable costs and expenses incurred by the regulator in taking an action under section 45 because a compliance notice is not complied with.

#### **42 Recovery of unpaid amounts**

The regulator may recover unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.

#### **43 Multiple notices**

More than 1 notice under this Part may be given to the same person.

#### **44 Revocation or variation of notices**

- (1) A notice may be revoked or varied by a subsequent notice or notices given by the

regulator.

(2) A notice may be varied by modification of, or addition to, its terms and specifications.

(3) A notice may be varied by extending the time for complying with the notice.

#### **45 Action in event of failure to comply, including power to enter land**

(1) If a person does not comply with a compliance notice given to the person, the regulator may take action to cause the compliance notice to be complied with by—

(a) the regulator, or

(b) an employee of the regulator, or

(c) an agent or contractor acting under the direction of the regulator.

(2) Without limiting subsection (1), the regulator may, by its employees, agents or contractors, enter premises at a reasonable time if the regulator reasonably suspects a person has not complied with a compliance notice given to the person.

(3) For the purposes of entering or leaving premises, subsection (2)—

(a) extends to entering other premises, and

(b) authorises entry by foot, by a motor vehicle or other vehicle or in another way.

(4) Entry may be effected by the regulator with—

(a) the number of authorised officers or police officers as the regulator considers necessary, and

(b) the use of reasonable force by police officers.

#### **46 Obstruction of persons**

A person who wilfully delays or obstructs the regulator, or another person authorised by the regulator to take the action, from taking action under section 45 is guilty of an offence.

Maximum penalty—

(a) for a corporation—500 penalty units and, for a continuing offence, a further 50 penalty units for each day the offence continues, or

(b) for an individual—100 penalty units and, for a continuing offence, a further 10 penalty units for each day the offence continues.

## Part 6 General offences

### 47 Increase in penalties for certain offences

- (1) The maximum penalty for an offence against section 9(1), 37, 38 or 50(1) is increased as provided by this section if the prosecution proves the person who committed the offence was, at the time the offence was committed, a relevant person.
- (2) The maximum penalty for the offence is double the penalty specified for the offence in the relevant section.
- (3) The Court must not impose a penalty for an offence on the basis of this section unless the process by which the proceedings are commenced specifies that the factor mentioned in subsection (1) applies to the commission of the offence.
- (4) In this section—  
**relevant person** means a person who—
  - (a) is a manufacturer or producer of the item, or
  - (b) supplies the item while carrying on a business as a wholesaler or distributor.

### 48 Ancillary offences

A person is guilty of an offence under another provision of this Act or the regulations and is liable, on conviction, to the same penalty applicable to the offence if the person—

- (a) aids, abets, counsels or procures another person to commit the offence, or
- (b) attempts or conspires to commit the offence.

### 49 Evidence as to state of mind of corporation

- (1) Evidence that a person, while acting in the person's capacity as an officer, employee or agent of a corporation, had, at a particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section—  
**state of mind** of a person includes—
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### 50 Offence—false or misleading information in connection with supply

- (1) A person must not, while carrying on a business, provide, whether by act or omission, information in connection with the supply of the following that is false or misleading in a material particular—

- (a) a prohibited plastic item,
- (b) an item for which a design standard is—
  - (i) specified in Schedule 1, Part 2, or
  - (ii) prescribed by the regulations.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) for an individual—100 penalty units.

(2) It is a defence to a prosecution under this section if the person charged with the offence proves—

- (a) the person exercised due diligence to prevent the commission of the offence, or
- (b) the circumstances of a defence prescribed by the regulations existed.

(3) In this section—

**provide** includes the following—

- (a) print or include in or on a label or packaging material,
- (b) fail to correct,
- (c) publish on a publicly available website.

#### **51 Offence—false or misleading information provided by brand owner**

(1) A brand owner must not provide, whether by act or omission, information in connection with a matter under Part 3 or 4 that is false or misleading in a material particular.

Maximum penalty—

- (a) for a corporation—4,000 penalty units, or
- (b) for an individual—1,000 penalty units.

(2) In this section—

**provide** includes the following—

- (a) print or include in or on a label or packaging material,
- (b) fail to correct,
- (c) publish on a publicly available website.

## Part 7 Criminal and other proceedings

### 52 Time within which summary proceedings may be commenced

- (1) Proceedings for an offence under this Act or the regulations may be commenced—
  - (a) for a prescribed offence—within but not later than 3 years after the date on which the offence is alleged to have been committed, or
  - (b) otherwise—within but not later than 2 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence under this Act or the regulations may also be commenced—
  - (a) for a prescribed offence—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer, or
  - (b) otherwise—within but not later than 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer.
- (3) If subsection (2) is relied on, the court attendance notice or summons—
  - (a) must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer, and
  - (b) is not required to contain particulars of the date on which the offence was committed.
- (4) The date on which evidence first came to the attention of an authorised officer is the date specified in the court attendance notice or summons unless another date is established.
- (5) This section applies only to proceedings to be dealt with summarily.
- (6) This section applies despite anything in the [Criminal Procedure Act 1986](#) or another Act.
- (7) In this section—

**authorised officer** means a person who is an authorised officer for the purposes of this Act, whether or not the person has the functions of an authorised officer in connection with the relevant offence.

**evidence** of an offence means evidence of an act or omission constituting the offence.

**prescribed offence** means an offence arising under Part 3.

### **53 Regulator may institute proceedings**

- (1) Proceedings for an offence against this Act or the regulations may be instituted by the regulator.
- (2) Proceedings may also be instituted by a member, an officer or employee of the regulator with the written consent of—
  - (a) the regulator, or
  - (b) a member, an officer or employee of the regulator authorised by the regulator for the purposes of this section.

### **54 Proof of certain appointments not required**

In proceedings under this Act, no proof is required of the appointment of a member of staff of the regulator unless evidence is given to prove otherwise.

### **55 Certificate evidence of certain matters**

- (1) A document signed by a certifier that certifies 1 or more of the following matters is admissible in proceedings under this Act and is prima facie evidence of the matter certified—
  - (a) that a relevant instrument, a copy of which is set out in or annexed to a document, was issued, made or given on a specified day,
  - (b) that a person was or was not, at a specified time or during a specified period, an authorised officer, enforcement officer or a member of staff of the regulator,
  - (c) that a person was or was not, at a specified time or during a specified period, an enforcement officer,
  - (d) that an exemption was or was not given under this Act in relation to a specified matter,
  - (e) that an exemption was or was not, at a specified time or during a specified period, in force or subject to specified conditions,
  - (f) that a consent necessary for bringing proceedings for an offence arising under this Act or the regulations has been duly given,
  - (g) that a person was or was not appointed by the regulator as an analyst under the *Protection of the Environment Operations Act 1997*, section 262 for the purposes of this Act during a specified period,
  - (h) that information required to be provided to the regulator or an authorised officer, who is a member of staff of the regulator, under this Act, the regulations or the *Protection of the Environment Operations Act 1997*, Chapter 7 in connection with

this Act or the regulations, was or was not received,

- (i) that an amount is payable under this Act or the regulations by a specified person and has not been paid,
- (j) that a person was served with a notice under this Act or the regulations,
- (k) that a specified function of the Minister was delegated to a specified person during a specified period,
- (l) that a person did or did not, at a specified time or during a specified period, hold an approved action plan.

(2) In this section—

**certifier** means—

- (a) the regulator, or
- (b) an officer designated in writing by the regulator for the purposes of this section.

**relevant instrument** means an instrument purported—

- (a) to have been issued, made or given for the purposes of this Act or the [Protection of the Environment Operations Act 1997](#), Chapter 7 in connection with this Act, and
- (b) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person.

## Part 8 Appeals

### 56 Appeals against compliance notices

- (1) A person served with a compliance notice may appeal to the Court against the notice.
- (2) The person must lodge an appeal within 21 days, or another period prescribed by the regulations, after being served with the notice.
- (3) The lodging of an appeal does not, except to the extent the Court otherwise directs in relation to the appeal, operate to stay the notice appealed against.
- (4) There is no appeal against a decision of the regulator to extend the time for complying with a compliance notice.

### 57 Appeals against financial assurance conditions

- (1) If a financial assurance condition is imposed on an approved action plan, the brand owner subject to the plan may appeal to the Court against the condition.

- (2) The brand owner must lodge an appeal within 21 days, or another period prescribed by the regulations, after being notified of the condition.
- (3) The lodging of an appeal does not, except to the extent the Court otherwise directs in relation to the appeal, operate to stay the condition appealed against.
- (4) In this section—  
***financial assurance condition*** means a condition imposed on an approved action plan under section 25.

## **58 Determination of appeals**

- (1) The Court may hear and determine an appeal made under this Act.
- (2) The Court's decision on an appeal under this Act is final and binding on the appellant and the person or body whose decision or notice is the subject of the appeal.

## **Part 9 Miscellaneous**

### **59 Service of documents**

- (1) A document authorised or required by this Act or the regulations to be served on a person may be served in any of the following ways—
  - (a) for service on an individual—
    - (i) by personal delivery to the individual, or
    - (ii) by post to—
      - (A) the address specified by the individual for service of documents generally or documents of that kind, or
      - (B) if the individual has not specified an address for service—the residential or business address of the individual last known to the person serving the document, or
    - (iii) if the individual's address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the individual, at the document exchange in accordance with the usual arrangements for the exchange, or
    - (iv) by leaving a copy of the document, addressed to the individual—
      - (A) at the address specified by the individual for service of documents generally or documents of that kind, or
      - (B) if the individual has not specified an address for service—at the residential or business address of the individual last known to the person serving the



document, or

- (v) if the individual has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or

**Examples of impliedly consenting to service of documents by means of electronic communication—**

previously using email to correspond with the EPA or including the individual's email address on applications made, or other documents given, to the EPA

- (vi) in another way authorised by the regulations for the service of documents generally or documents of that kind,

(b) for service on another person—

(i) by post to—

- (A) the address specified by the person for service of documents generally or documents of that kind, or
- (B) if the person has not specified an address for service—the business address of the person last known to the person serving the document, or

(ii) by leaving a copy of the document, addressed to the person—

- (A) at the address specified by the person for service of documents generally or documents of that kind, or
- (B) if the person has not specified an address for service—at the business address of the person last known to the person serving the document, or

- (iii) if the person's address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the person, at the document exchange in accordance with the usual arrangements for the exchange, or

- (iv) if the person has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by means of electronic communication—by means of electronic communication, or

**Examples of impliedly consenting to service of documents by means of electronic communication—**

previously using email to correspond with the EPA or including the person's email address on applications made, or other documents given, to the EPA

- (v) in another way authorised by the regulations for the service of documents generally or documents of that kind.

(2) Nothing in this section affects the operation of another law, including the rules of a

court, authorising a document to be served on a person in another way.

(3) In this section—

**electronic communication** has the same meaning as in the [Electronic Transactions Act 2000](#).

**serve** includes give, issue, notify and send.

## **60 Continuing effect of notices**

- (1) A notice given under this Act or the regulations that specifies a time by which, or period within which, the notice must be complied with continues to have effect until the notice is complied with even though the time has passed or the period has expired.
- (2) A notice that does not specify a time by which, or period within which, the notice must be complied with continues to have effect until the notice is complied with.
- (3) This section does not apply to the extent a requirement under a notice is revoked.
- (4) Nothing in this section affects the powers of the regulator in relation to the enforcement of a notice.

## **61 Regulator may grant exemptions**

- (1) The regulator may grant an exemption under this section from specified provisions of this Act or the regulations, whether generally or in specified circumstances.
- (2) The regulator may grant an exemption for—
  - (a) the supply of single-use plastic drinking straws for use by a person with a disability or other medical requirement, and
  - (b) a person by reference to the following—
    - (i) premises,
    - (ii) a product,
    - (iii) an item,
    - (iv) another matter or thing.
- (3) The regulator may grant an exemption—
  - (a) on its own initiative, or
  - (b) on the application of a person to whom the exemption applies.
- (4) An application under this section must—

- (a) be in the approved form, and
  - (b) be accompanied by the fee, if any, determined by the regulator, and
  - (c) be accompanied by information, documents or evidence the regulator requires for the purpose of determining whether the exemption should be granted.
- (5) An exemption granted under this section is effected as follows—
  - (a) for an exemption granted to specified persons only—by notice published in the Gazette or by written notice given to the persons,
  - (b) otherwise—by notice published in the Gazette.
- (6) An exemption granted under this section takes effect—
  - (a) on the date on which the notice is published or given in accordance with this section, or
  - (b) if a later date is specified in the notice—the later date.
- (7) An exemption granted under this section may be unconditional or may be subject to conditions specified in the notice.
- (8) The regulator may vary or revoke an exemption granted under this section by a further notice published or given in accordance with this section.

## **62 Delegation**

The Minister may delegate the exercise of a function of the Minister under this Act or the regulations, other than this power of delegation, to—

- (a) a person employed in the Department of Climate Change, Energy, the Environment and Water, or
- (b) a member of staff of the regulator, or
- (c) a person authorised for the purposes of this section by the regulations.

## **63 Personal liability**

- (1) A protected person is not personally subject to liability for anything done—
  - (a) in good faith, and
  - (b) for the purpose of exercising a function under this Act.
- (2) The liability instead attaches to the Crown.
- (3) In this section—

**done** includes omitted to be done.

**liability** means civil liability and includes action, claim or demand.

**protected person** means—

- (a) the Minister, or
- (b) a member of staff of the regulator, or
- (c) an authorised officer, or
- (d) an enforcement officer, or
- (e) a person acting under the direction of, or with the authority of, the Minister or the regulator.

#### **64 Fees**

- (1) A fee or other charge payable to the regulator under this Act or the regulations may be recovered by the regulator as a debt due to the Crown in a court of competent jurisdiction.
- (2) The regulator may refund or waive the whole or a part of a fee or other charge payable to the regulator under this Act or the regulations.

#### **65 Public register**

- (1) The regulator must keep a public register in accordance with this section.
- (2) The regulator must record the following information in the register—
  - (a) details of compliance notices issued or revoked under this Act or the regulations,
  - (b) details of exemptions granted by the regulator under this Act,
  - (c) details of convictions for prosecutions initiated by the regulator under this Act,
  - (d) details of penalty notices issued under this Act or the regulations,
  - (e) the outcome of civil proceedings initiated by the regulator under this Act,
  - (f) other details or information prescribed by the regulations.
- (3) The regulator may record the name of an individual or business in the register, including a name under which an individual or business trades.
- (4) The regulator may remove exemptions that are no longer in force from the register.
- (5) The register may be kept only in electronic form.

- (6) An extract of the register may be made available on request by a person.
- (7) The regulations may specify the following—
  - (a) the means by which the register may be inspected,
  - (b) when copies may be obtained,
  - (c) fees for the inspection of the register,
  - (d) fees for copies of parts of the register,
  - (e) that the register, or a part of the register, may be made publicly available.
- (8) In this section—
  - details** of a matter means—
    - (a) particulars of the matter, or
    - (b) a copy of the matter, or
    - (c) an electronic or other reproduction of the matter.

## 66 Consultation requirements

- (1) This section applies to the making of a regulation that contains a provision prescribing 1 or more of the following (a **relevant provision**)—
  - (a) a prohibited plastic item,
  - (b) a design standard in accordance with section 8,
  - (c) a regulated product.
- (2) This section does not apply to—
  - (a) the remake of a regulation, or
  - (b) the making of a regulation that repeals or amends a relevant provision.
- (3) Before recommending the making of the regulation by the Governor, the Minister must take reasonable steps—
  - (a) to publicise, for at least 8 weeks, an explanation of the intended effect of the relevant provision, and
  - (b) to seek and consider submissions from the public on the matter.
- (4) A provision of the regulation that prescribes a prohibited plastic item or a design standard must not commence earlier than 6 months after the regulation is published.

- (5) A provision of the regulation that prescribes a regulated product must not commence earlier than 12 months after the regulation is published.
- (6) The Minister may dispense with a requirement in subsection (3), (4) or (5) if satisfied that—
  - (a) dispensing with the requirement is in the public interest, or
  - (b) the making of the regulation is urgent.
- (7) In this section—

***published*** means published on the NSW legislation website.

## **67 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, to the extent the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **68 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to a matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision about the following—
  - (a) imposing requirements on suppliers to provide information, certification or statements about an item,
  - (b) imposing requirements on suppliers to carry out independent testing of an item,
  - (c) imposing requirements relating to records or reports on a person in relation to an item,
  - (d) an accreditation scheme or other scheme for the purpose of approving auditors,
  - (e) requiring or allowing information and records required to be provided or kept under this Act to be provided or kept in electronic form,
  - (f) fees and charges in connection with the administration of this Act or the regulations, including the following—
    - (i) the amount, or the determination of the amount by the regulator, of the fees and charges,
    - (ii) the time within which the fees and charges must be paid,
    - (iii) the payment and recovery of the fees and charges.
- (3) Without limiting subsection (1), the regulations may make provision about the

granting of exemptions, with or without conditions, from specified provisions of this Act or the regulations, whether generally or in specified circumstances for—

- (a) the supply of single-use plastic drinking straws for use by a person with a disability or other medical requirement, and
- (b) a person by reference to the following—
  - (i) premises,
  - (ii) a product,
  - (iii) an item,
  - (iv) another matter or thing.

(4) The regulations may create offences punishable by a penalty no more than—

- (a) 200 penalty units for an individual, or
- (b) 400 penalty units for a corporation.

(5) The regulations may incorporate by reference, wholly or in part and with or without modification, standards, rules, codes, specifications, methods or another document, as in force at a particular time or from time to time, prescribed or published by an authority or body, whether or not it is a New South Wales authority or body.

## **69 Review of Act**

- (1) The Minister must review this Act to determine whether—
  - (a) the policy objectives of the Act remain valid, and
  - (b) the terms of the Act remain appropriate for securing the objectives.
- (2) The review must be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the review is completed.

## **Schedule 1 Prohibited items and design standards**

sections 7(1) and 8(3)

### **Part 1 Prohibited plastic items**

#### **1 Definition of “integrated packaging”**

- (1) In this section—

***integrated packaging—***

- (a) means a plastic item that is, by way of a machine-automated process—
  - (i) an integrated part of packaging material used to seal or contain food or beverages, including pre-packaged portions of food or beverages, or
  - (ii) included within, or attached to, packaging material used to seal or contain food or beverages, including pre-packaged portions of food or beverages, and
- (b) includes an item prescribed by the regulations, but does not include an item excluded by the regulations.

**Examples of integrated packaging—**

- 1** a sealed expanded polystyrene cup containing dry noodles with flavouring or soup powder by a machine-automated process
- 2** a spoon sealed within the packaging of a yoghurt cup by a machine-automated process
- 3** a sealed straw attached to a juice box by a machine-automated process

**Note—**

A pre-packed salad to which cutlery is manually added to the packaging, whether or not sealed in the packaging, is not an example of integrated packaging.

- (2) Despite another provision of this Schedule, integrated packaging is not a prohibited plastic item unless otherwise provided by the regulations.
- (3) This section is repealed on 1 January 2025.

**2 Lightweight plastic bags prohibited**

- (1) A lightweight plastic bag is a prohibited plastic item.
- (2) In this section—

***barrier bag*** means a bag designed and intended to be used—

- (a) to contain waste, including food waste, household waste or human or animal waste, or
- (b) to contain items for medical purposes, other than a bag provided by a retailer to a consumer for transporting products from the retailer, or
- (c) to contain or protect unpackaged food, including fruit, vegetables, dairy, meat or fish.

***lightweight plastic bag—***

- (a) means a bag with handles, other than a barrier bag, that—
  - (i) is a plastic item, and



- (ii) has a thickness, at any part of the bag, of 35 microns or less, and
- (b) includes an item prescribed by the regulations, but does not include an item excluded by the regulations.

### 3 Certain single-use plastic items prohibited

(1) The following plastic items are prohibited plastic items—

- (a) plastic single-use straws,
- (b) plastic single-use stirrers,
- (c) plastic single-use cutlery,
- (d) plastic single-use cotton buds,
- (e) plastic single-use bowls,
- (f) plastic single-use plates.

(2) In this section—

**bowl** excludes a bowl designed or intended to have a spill-proof lid whether separate or attached.

**cutlery** means a utensil used for consuming food and includes the following—

- (a) a utensil that is a combination of other utensils,

**Example—**

a spork, being a combination of a spoon and a fork

- (b) chopsticks,
- (c) other items prescribed by the regulations.

### 4 Expanded polystyrene food service items prohibited

(1) An expanded polystyrene food service item is a prohibited plastic item.

(2) In this section—

**expanded polystyrene food service item—**

- (a) means a plastic item made, in whole or in part, of expanded polystyrene used to serve food or beverages, and
- (b) includes an item prescribed by the regulations, but does not include an item excluded by the regulations.

**Examples of prohibited expanded polystyrene food service items—**

- 1 an expanded polystyrene bowl
- 2 an expanded polystyrene cup
- 3 an expanded polystyrene clam shell
- 4 an expanded polystyrene plate

## Part 2 Design standard

### 5 Plastic microbeads prohibited in certain rinse-off personal care products

- (1) A rinse-off personal care product must not contain plastic microbeads.
- (2) In this section—

***plastic microbead*** means a plastic particle less than 5 mm wide.

***rinse-off personal care product*** means a personal care product designed and intended to be rinsed off immediately or shortly after use, and includes the following—

- (a) shampoo and conditioner,
- (b) face masks and face wash, including exfoliants,
- (c) hair dye, whether permanent, semi-permanent or otherwise,
- (d) toothpaste,
- (e) body wash products, including exfoliants,
- (f) another item prescribed by the regulations.

## Schedule 2 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—

- (a) for a provision of this Act—the date of assent to this Act, or
  - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before the provision's publication on the NSW legislation website does not—
- (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done before the publication.

- (6) In this section—

**person** does not include the State or a regulator of the State.

## Part 2 Provisions consequent on enactment of this Act

### 2 Definitions

In this Part—

**commencement date** means the date of commencement of this Act, section 3.

### 3 Authorised officers and enforcement officers

- (1) A person is taken to be an authorised officer appointed for the purposes of this Act if the person—
- (a) was, immediately before the commencement date, appointed by the EPA as an authorised officer under the [Protection of the Environment Operations Act 1997](#), Part 7.2, and
  - (b) is a member of staff of the EPA.
- (2) A person authorised by the EPA to exercise the functions of an enforcement officer immediately before the commencement date is taken to be authorised to exercise the functions of an enforcement officer under this Act.
- (3) An identity card issued to a person referred to in subsection (1) or (2) on or before the commencement date is, while in force under the [Protection of the Environment Operations Act 1997](#), taken to be an identity card issued for the purposes of this Act.

### 4 Analysts

A person appointed by the EPA as an analyst under the [Protection of the Environment Operations Act 1997](#), section 262(1) immediately before the commencement date is taken to be appointed as an analyst for the purposes of this Act.

## Schedule 3 (Repealed)

## Schedule 4 Dictionary

**approved action plan**—see section 20(1).

**authorised officer** means a person appointed as an authorised officer by the EPA under the [Protection of the Environment Operations Act 1997](#), Part 7.2 for the purposes of this Act.

**brand owner**—see section 11.

**carrying on a business** includes the following, but excludes an activity prescribed by the regulations—

- (a) carrying on an activity for commercial, charitable, sporting, educational or community purposes, and
- (b) carrying on a not-for-profit business, a partnership or a sole trader.

**commencement date**, for Schedule 2, Part 2—see Schedule 2, section 2.

**compliance cost notice**, for Part 5—see section 35.

**compliance notice** means a notice given by the regulator under section 36, including a stop notice and a notice that varies a compliance notice.

**Court** means the Land and Environment Court.

**enforcement officer** has the same meaning as in the [Protection of the Environment Operations Act 1997](#).

**environment** means components of the earth, including human-made or modified structures and areas, the following components and interacting natural ecosystems that include the following components—

- (a) land, air and water,
- (b) a layer of the atmosphere,
- (c) organic or inorganic matter and living organisms.

**EPA** means the Environment Protection Authority constituted by the [Protection of the Environment Administration Act 1991](#).

**exercise** a function includes perform a duty.

**financial year**, for Part 3—see section 10.

**function** includes a power, authority or duty.

**item** includes—

- (a) a part of an item, and

(b) a product, material or substance.

**notice**, for Part 5—see section 35.

**packaging material** means material used for containing, protecting, marketing, selling or handling a product, including—

- (a) transit packaging, for example, packaging material used to transport the product, and
- (b) packaging provided by a retailer to a consumer for transporting the product from the retailer, and
- (c) labelling.

**plastic** means the following, but does not include material excluded by the regulations—

- (a) material made from or comprising organic polymers from plant extracts or fossil fuels, whether the material is processed, reprocessed, re-used, recycled or recovered,
- (b) material prescribed by the regulations.

**plastic item** means the following, but does not include an item excluded by the regulations—

- (a) an item, including packaging material, comprised, in whole or in part, of plastic,
- (b) an item prescribed by the regulations.

**precautionary principle**—see section 5.

**product** includes the following—

- (a) a substance,
- (b) packaging material,
- (c) a scheme or service.

**product stewardship requirement**—see section 13(1).

**product stewardship target**, for Part 3—see section 10.

**prohibited item** means—

- (a) a prohibited plastic item, or
- (b) an item that does not comply with a design standard—
  - (i) specified for the item in Schedule 1, Part 2, or
  - (ii) prescribed by the regulations in relation to the item.

**prohibited plastic item**—see section 7.

**regulated item** means an item the regulator reasonably suspects is—

- (a) a prohibited plastic item, or

(b) an item for which a design standard is—

- (i) specified in Schedule 1, Part 2, or
- (ii) prescribed by the regulations, or

(c) a regulated product.

**regulated product** means a product, or part of a product, prescribed by the regulations for the purposes of Part 3.

**regulator** means the EPA.

**single-use**, in relation to an item—

- (a) means an item designed or intended to be, or ordinarily, used only once for a particular purpose, whether or not the item is or can be—
  - (i) re-used for the same or another purpose, or
  - (ii) used for more than 1 purpose, or
  - (iii) recycled, and
- (b) includes an item prescribed by the regulations, but does not include an item excluded by the regulations.

**stop notice**, for Part 5—see section 35.

**supply** an item—

- (a) includes the following, but does not include the circumstances excluded by the regulations—
  - (i) sell, supply, re-supply or distribute the item,
  - (ii) receive or possess the item for the purpose of supplying it to another person,
  - (iii) an offer to supply the item, including advertising the item or making other representations with the intention of supplying the item,
  - (iv) display the item with the intention of supplying the item,
  - (v) make the item available or provide the item to a person,
  - (vi) other circumstances prescribed by the regulations, and
- (b) see section 4(2), and
- (c) for section 6 and Part 3—see section 12.

**supplier** means a person who supplies an item.