

# EXPOSURE DRAFT

**Minister for Recycling and Waste Reduction**

(Prepared by Parliamentary Counsel's Office)

## Plastic Reduction Bill 2020

### Contents

---

		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of Act	2
2	Commencement	2
3	Dictionary	2
4	Notes	2
5	Offences against Act—application of Criminal Code etc	3
6	Objects of Act	3

	Page
<b>Part 2</b>	<b>Important concepts</b>
7	Meaning of <i>single-use</i> 4
8	Meaning of <i>prohibited plastic product</i> 5
<b>Part 3</b>	<b>Supplying prohibited plastic products</b>
9	Supply of prohibited plastic products 8
10	False representation about prohibited plastic product 8
11	Notice to dispose of prohibited plastic products 8
12	Authorised person may remove and dispose of prohibited plastic products if notice not complied with 9
13	Liability for cost of disposal of prohibited plastic products 10
<b>Part 4</b>	<b>Supplying other single-use plastic products— declared public events</b>
14	Declaration of public events 11
15	Supply of declared single-use plastic products at declared public event prohibited 12
<b>Part 5</b>	<b>Exemptions</b>
16	Minister may exempt person or plastic product 13
17	Exemption conditions 14
<b>Part 6</b>	<b>Enforcement</b>
<b>Division 6.1</b>	<b>General</b>
18	Definitions—pt 6 15
19	Appointment of authorised people 16
20	Identity cards 16
<b>Division 6.2</b>	<b>Powers of authorised people</b>
21	Authorised person must show identity card on exercising power 17
22	Entry to premises 17
23	Production of identity card 18
24	Consent to entry 18

## Contents

---

	Page	
25	General powers on entry to premises	20
26	Power to obtain information	21
27	Abrogation of privilege against self-incrimination	21
28	Warning to be given	21
29	Power to seize things	22
30	Direction to give name and address	23
31	Offence—fail to comply with direction to give name and address	24
<b>Division 6.3 Search warrants</b>		
32	Warrants generally	25
33	Warrants—application other than in person	26
34	Search warrants—announcement before entry	28
35	Details of search warrant to be given to occupier etc	28
36	Occupier entitled to be present during search etc	29
<b>Part 7 Reviewable decisions</b>		
37	Definitions—pt 7	30
38	Reviewable decision notices	30
39	Applications for review	30
<b>Part 8 Miscellaneous</b>		
40	Regulation-making power	31
<b>Part 9 Repeals</b>		
41	Legislation repealed	32
<b>Dictionary</b>		33



# EXPOSURE DRAFT

**Minister for Recycling and Waste Reduction**

(Prepared by Parliamentary Counsel's Office)

## **Plastic Reduction Bill 2020**

---

### **A Bill for**

An Act to reduce the use of plastic, and for other purposes

---

The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Plastic Reduction Act 2020*.

### 2 Commencement

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*prohibited plastic product*—see section 8.' means that the term 'prohibited plastic product' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 Objects of Act

The objects of this Act are to reduce—

- (a) the use of plastic in the ACT; and
- (b) the impact of plastic on the environment; and
- (c) the impact of plastic on waste management and resource recovery systems.

## Part 2 Important concepts

### 7 Meaning of *single-use*

- (1) For this Act, a *single-use* plastic product is a plastic product that is designed or intended to be used once only.

**Example**

A cafe sells coffee in plastic take-away cups under a cup-return scheme. Under the scheme, a customer buys their coffee in a plastic take-away cup and returns the empty cup to the cafe or any other participating cafe to be washed and re-used by other customers of the cafe. The use and return of the plastic take-away cups is tracked using a mobile phone app. The plastic take-away cups are *not* intended to be used once only.

- (2) Subsection (1) applies even if a single-use plastic product may be subsequently re-used.

**Example—subsequent re-use**

A restaurant selling take-away food places the prepared food in plastic take-away food containers and then in a single-use plastic shopping bag along with plastic cutlery for a customer to take away and eat. The customer washes the empty plastic take-away containers and re-uses them to take their lunch to work. The customer also re-uses the single-use plastic shopping bag as a bin liner and the plastic cutlery as planting labels for seedlings. The subsequent re-use of these items is unrelated to the restaurant's original intended use.

- (3) For subsection (1), *used once* may include multiple purposes within the 1 use.

**Example—multiple purposes**

Fresh herbs are placed in a plastic sleeve by the grower. The plastic sleeve has the following purposes:

- (a) portioning the herbs for sale;
- (b) protecting the herbs during transport to the supermarket;
- (c) extending the shelf-life of the herbs at the supermarket;
- (d) protecting the herbs during purchase and transport to the home of the ultimate consumer.



**8 Meaning of *prohibited plastic product***

(1) In this Act:

*prohibited plastic product* means any of the following:

- (a) a single-use expanded polystyrene container;
- (b) a single-use plastic beverage stirrer;
- (c) single-use plastic cutlery;
- (d) a single-use plastic shopping bag;
- (e) any other single-use plastic product prescribed by regulation.

(2) Before a regulation is made for subsection (1) (e) to prescribe a single-use plastic product the Minister must give public notice of the proposed regulation.

(3) The public notice must—

- (a) state the single-use plastic product to be prescribed in the proposed regulation; and
- (b) state the reason for prescribing the product; and
- (c) include information about any proposed exemption to be made under section 16 in relation to the product; and
- (d) state that—
  - (i) anyone may give a written submission to the Minister about the proposed regulation; and
  - (ii) submissions may be given only in the period starting on the day the notice is published and ending 8 weeks later or any later day stated in the notice (the *consultation period*).

(4) The Minister must consider any written submissions received in the consultation period.

(5) In this section:

**barrier bag** means a bag used to carry unpackaged perishable food including fruit, vegetables, meat and fish.

**compostable**, in relation to a plastic bag, means a bag that is designated—

- (a) compostable in accordance with Australian Standard AS 4736-2006 (Biodegradable plastics suitable for composting and other microbial treatment) as in force from time to time; or
- (b) home compostable in accordance with Australian Standard AS 5810-2010 (Biodegradable plastics—Biodegradable plastics suitable for home composting) as in force from time to time.

*Note* AS 4736-2006 and AS 5810-2010 may be purchased at [www.standards.org.au](http://www.standards.org.au).

**single-use expanded polystyrene container** means—

- (a) a container used for serving food or a beverage and includes a clam-shell container, cup, plate or bowl; but
- (b) does not include a container that is an integral part of the packaging in which food or beverages are sealed before retail supply.

**Example—container that is an integral part of packaging**

- 1 a pack of 5 sealed expanded polystyrene cups containing dry noodles with flavouring
- 2 an expanded polystyrene tray for uncooked meat sealed with cling film

*single-use plastic shopping bag—*

- (a) means—
- (i) a bag that is made (in whole or in part) of polyethylene with a thickness of less than 35 microns; or
  - (ii) a bag prescribed by regulation to be a single-use plastic shopping bag; but
- (b) does not include—
- (i) a compostable plastic bag; or
  - (ii) a plastic bag that is an integral part of the packaging in which goods are sealed before sale; or
  - (iii) a barrier bag; or
  - (iv) a bag prescribed by regulation not to be a single-use plastic shopping bag.

## **Part 3**                      **Supplying prohibited plastic products**

### **9**                      **Supply of prohibited plastic products**

- (1) A person commits an offence if the person supplies a prohibited plastic product.

Maximum penalty: 50 penalty units.

*Note*        A person or plastic product may be exempted by the Minister under s 16.

- (2) An offence against this section is a strict liability offence.

### **10**                      **False representation about prohibited plastic product**

A person commits an offence if the person—

- (a) supplies a prohibited plastic product; and
- (b) in the course of supplying the product, intentionally or recklessly falsely represents that the product is not a prohibited plastic product.

Maximum penalty: 50 penalty units.

### **11**                      **Notice to dispose of prohibited plastic products**

- (1) This section applies if an authorised person believes on reasonable grounds that a person has contravened section 9.
- (2) The authorised person may, by written notice to the person, require the person to dispose of the prohibited plastic product in a stated way within a reasonable stated period.

*Note*        If the notice is given to a person who may apply to the ACAT for review of the decision, the notice must be a reviewable decision notice (see s 38).

- (3) For subsection (2), the authorised person may only state a way of disposal that—
- (a) does not unreasonably financially disadvantage the person; and
  - (b) is consistent with the objects of this Act.

**Example—par (b)**

A direction to take the prohibited plastic product to a waste management and resource recovery centre for appropriate disposal.

- (4) The notice must contain a statement to the effect that if the prohibited plastic product is not disposed of in accordance with the notice—
- (a) an authorised person may authorise a stated person to remove and dispose of the prohibited plastic product; and
  - (b) the reasonable cost of the removal and disposal is a debt due to the Territory by the person who is required to comply with the notice.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

- (5) A person commits an offence if the person—
- (a) is given a notice under subsection (2); and
  - (b) fails to comply with the notice.

Maximum penalty: 20 penalty units.

- (6) An offence against this section is a strict liability offence.

**12 Authorised person may remove and dispose of prohibited plastic products if notice not complied with**

- (1) This section applies if a person fails to comply with a notice under section 11.

- (2) An authorised person may—
- (a) remove and dispose of the prohibited plastic product the subject of the notice; or
  - (b) authorise a stated person to remove and dispose of the prohibited plastic product.
- (3) However, the authorised person or a stated person must not remove and dispose of the prohibited plastic product—
- (a) until the end of the period (or any extended period) within which an application may be made to the ACAT for review of the decision to which the notice relates; or
  - (b) if an application is made to the ACAT for a review of the decision—unless the decision is upheld or the application is withdrawn.

### **13 Liability for cost of disposal of prohibited plastic products**

A person who fails to comply with a requirement in a notice under section 11 must pay to the Territory the reasonable cost of any removal or disposal carried out under section 12.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

## Part 4                      Supplying other single-use plastic products—declared public events

### 14                      Declaration of public events

- (1) The Minister may declare that—
- (a) a public event is an event to which this part applies (a *declared public event*); and
  - (b) a single-use plastic product other than a prohibited plastic product (a *declared single-use plastic product*) must not be supplied at the event.

*Note*            Part 3 deals with the supply of prohibited plastic products.

- (2) The Minister may only make a declaration under subsection (1) in relation to a public event that is not a government event if—
- (a) the declaration is made not less than 3 months before the day the event starts; and
  - (b) there is an alternative product to the declared single-use plastic product reasonably available to the organisers of the declared public event; and
  - (c) the declaration will not have an unreasonable financial impact on the event.
- (3) A declaration is a disallowable instrument.

*Note*            A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (4) In this section:

*government event* means an event conducted by the Territory.

**15 Supply of declared single-use plastic products at declared public event prohibited**

- (1) A person commits an offence if—
- (a) the person supplies a declared single-use plastic product; and
  - (b) the supply is to a person at a declared public event.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) In this section:

*declared public event*—see section 14 (1).

*declared single-use plastic product*—see section 14 (1).



## Part 5 Exemptions

### 16 Minister may exempt person or plastic product

- (1) The Minister may, on application or on the Minister's own initiative, exempt the following from a provision of this Act:
  - (a) a person;
  - (b) a plastic product.

*Note* Power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (2) An application must include the information prescribed by regulation.
- (3) The Minister may make an exemption in relation to a provision only if satisfied that—
  - (a) for subsection (1) (a)—
    - (i) it is not practicable for the person to comply with the provision; or
    - (ii) it is not consistent with the person's human rights for the person to comply with the provision; and
  - (b) noncompliance with the provision will not have any significant adverse effect on public health, property or the environment.
- (4) An exemption is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (5) An exemption may commence on a day earlier than its notification day.

**17 Exemption conditions**

- (1) The Minister may make an exemption under section 16 on condition.
- (2) A person commits an offence if—
  - (a) an exemption applies to the person or a prohibited plastic product; and
  - (b) the person supplies a prohibited plastic product in contravention of a condition of the exemption.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

## **Part 6**                      **Enforcement**

### **Division 6.1**              **General**

#### **18**              **Definitions—pt 6**

In this part:

*authorised person* means—

- (a) a person appointed as an authorised person under section 19; or
- (b) a person appointed as an investigator under the *Fair Trading (Australian Consumer Law) Act 1992*, section 36; or
- (c) a public health officer authorised under the *Public Health Act 1997*, section 12A (2) as an authorised officer for the *Food Act 2001* or a provision of that Act.

*connected*—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

*premises* includes a space in a larger area used for the sale of a product to consumers.

**Example**

a food stall at an open-air fresh produce market

**19 Appointment of authorised people**

The director-general may appoint a public servant as an authorised person for this Act.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

**20 Identity cards**

- (1) The director-general must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
  - (a) a recent photograph of the person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
  - (a) the person stops being an authorised person; and
  - (b) the person does not return the person's identity card to the director-general as soon as practicable, but no later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

## **Division 6.2 Powers of authorised people**

### **21 Authorised person must show identity card on exercising power**

- (1) If an authorised person exercises a power under this Act that affects an individual, the authorised person must first show the authorised person's identity card to the individual.
- (2) If an authorised person exercises a power under this Act that affects a person, other than an individual, the authorised person must first show the authorised person's identity card to an individual the authorised person believes on reasonable grounds is an employee, officer or agent of the person.

**Example—person other than an individual**

- corporation
- partnership

### **22 Entry to premises**

- (1) For this Act, an authorised officer may—
- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
- (b) at any time, enter premises with the occupier's consent; or
- (c) at any time, enter premises if the authorised officer believes on reasonable grounds that an offence against this Act is being, or is likely to be, or has just been, committed at premises not on public land; or
- (d) enter premises in accordance with a search warrant.

- (2) However—
- (a) subsection (1) (a) does not authorise entry into a part of the premises that is being used only for residential purposes; and
  - (b) subsection (1) (c) does not authorise entry into premises that are used for residential purposes, unless the premises are also the place from which a business is conducted.
- (3) An authorised person may, without the occupier’s consent, enter the land around premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) An authorised person who enters premises under this section may inspect the premises or anything on it.

**23 Production of identity card**

An authorised person and any other person other than a police officer who is accompanying the authorised person may not remain at premises entered under this part if the authorised person does not produce their identity card when asked by the occupier.

**24 Consent to entry**

- (1) This section applies if an authorised person intends to ask the occupier of premises to consent to the authorised person entering the premises.
- (2) Before asking for the consent, the authorised person must—
- (a) produce their identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and

- (ii) the reason for, and identity of, any other person accompanying the authorised person; and
  - (iii) that anything found and seized under this part may be used in evidence in court; and
  - (iv) that consent may be refused.
- (3) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) the reason for, and identity of, any other person accompanying the authorised person; and
    - (iii) that anything found and seized under this part may be used in evidence in court; and
    - (iv) that consent may be refused; and
  - (b) that the occupier consents to the entry; and
  - (c) stating the time and date when consent was given.
- (4) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (5) A court must find that the occupier did not consent if—
  - (a) a question arises, in a proceeding in the court, whether the occupier consented to the authorised person entering the premises under this part; and
  - (b) an acknowledgment under this section is not produced in evidence for the entry; and

- (c) it is not proved that the occupier consented to the entry.

## **25 General powers on entry to premises**

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
- (a) examine anything;
  - (b) examine and copy, or take extracts from, documents relating to a contravention, or possible contravention, of this Act;
  - (c) take photographs, films, or audio, video or other recordings;
  - (d) require the occupier, or anyone at the premises, to give information, answer questions, or produce a document or anything else (whether the information, document or other thing is at the premises or elsewhere) that the occupier or person at the premises has, or has access to, that is reasonably necessary to exercise a function under this Act;
  - (e) require the occupier, or anyone else at the premises, to give the authorised person copies of documents produced under paragraph (d) that are reasonably necessary to exercise a function under this Act;
  - (f) require the occupier, or anyone else at the premises, to give the authorised person reasonable help to exercise a power under this part.

*Note* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (d), (e) or (f).

Maximum penalty: 50 penalty units.



**26 Power to obtain information**

- (1) An authorised person may, in writing, require any of the following people to give the authorised person information, or produce documents or anything else, that the person has, or has access to, that are reasonably required by the authorised person for this Act:
  - (a) a person who supplies food or beverages in the ACT;
  - (b) a person who supplies or manufactures plastic products in the ACT.
- (2) A person must take reasonable steps to comply with a requirement made of the person under this section.

Maximum penalty: 50 penalty units.

**27 Abrogation of privilege against self-incrimination**

- (1) A person is not excused from answering a question or providing information or a document under this part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.
- (2) However, any information, document or thing obtained, directly or indirectly, because of the giving of the answer or the production of the document is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence arising out of the false or misleading nature of the answer, information or document.

**28 Warning to be given**

- (1) Before requiring a person to comply with a requirement under section 25 (1) (d) or (e) or section 26, an authorised person must warn the person—
  - (a) that failure to comply constitutes an offence; and

- (b) about the effect of section 27.
- (2) It is not an offence for an individual to refuse to answer a question put by an authorised person or provide information or a document to an authorised person under section 25 (1) (d) or (e) or section 26 on the ground that the question, information or document might tend to incriminate the individual, unless the individual was first given the warning in subsection (1) (b).
- (3) Nothing in this section prevents an authorised person from obtaining and using evidence given to the authorised person voluntarily by any person.

## **29 Power to seize things**

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
  - (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.

- (4) Having seized a thing, an authorised person may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
  - (b) the person does not have an authorised person’s approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (6) An offence against subsection (5) is a strict liability offence.

### **30 Direction to give name and address**

- (1) This section applies if an authorised person believes on reasonable grounds that a person—
- (a) has committed, is committing or is about to commit an offence against this Act; or
  - (b) may be able to assist in the investigation of an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) The authorised person may direct the person to give the authorised person, immediately, either of the following personal details:
- (a) the person’s full name;

(b) the person's home address.

*Note* The authorised person must first show the person the authorised person's identity card (see s 21).

- (3) If the authorised person believes on reasonable grounds that a personal detail given by a person in response to a name and address direction is false or misleading, the authorised person may direct the person to produce evidence, immediately, of the correctness of the detail.
- (4) If an authorised person gives a direction to a person, the authorised person must tell the person that it is an offence if the person fails to comply with the direction.
- (5) If an authorised person gives a direction to a person, the authorised person must give the direction in a language, or in a way of communicating, that the authorised person believes on reasonable grounds the person is likely to understand.

**31 Offence—fail to comply with direction to give name and address**

- (1) A person commits an offence if the person fails to comply with a direction under section 30.

Maximum penalty: 5 penalty units.

*Note* It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the authorised person, before giving the direction, did not—
  - (a) produce the authorised person's identity card for inspection by the person; or

- (b) warn the person that failure to comply with the direction is an offence.
- (4) Also, for a direction under section 30 (3), this section does not apply if the person produces evidence of the correctness of the detail not more than 3 days after the day the direction was given.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

## **Division 6.3 Search warrants**

### **32 Warrants generally**

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must—
  - (a) be sworn; and
  - (b) state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or

- (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The warrant must state—
- (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person’s powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 14 days after the day of the warrant’s issue, when the warrant ends.

**33 Warrants—application other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, radio, email, letter or other form of communication if the authorised person considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately give a written copy to the authorised person if it is practicable to do so.

- (5) If it is not practicable to give a written copy of the warrant to the authorised person—
- (a) the magistrate must tell the authorised person—
    - (i) what the terms of the warrant are; and
    - (ii) the date and time the warrant was issued; and
  - (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
    - (i) the magistrate’s name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant’s terms.
- (6) The written copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person’s powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
- (a) the sworn application; and
  - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents mentioned in subsection (7), the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by an authorised person was not authorised by a warrant under this section if—
- (a) a question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and

- (c) it is not proved that the exercise of power was authorised by a warrant under this section.

**34 Search warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a search warrant—
  - (a) announce that the authorised person is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify themselves to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
  - (a) the safety of anyone (including the authorised person or any person assisting an authorised person); or
  - (b) that the effective execution of the warrant is not frustrated.

**35 Details of search warrant to be given to occupier etc**

If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of—
  - (i) the warrant; or
  - (ii) if section 34 (5) applies—the completed warrant form; and



- (b) a document setting out the rights and obligations of the person.

**36 Occupier entitled to be present during search etc**

- (1) If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

## Part 7 Reviewable decisions

### 37 Definitions—pt 7

In this part:

*affected person* means a person given a notice to dispose of a prohibited plastic product under section 11 (2).

*reviewable decision* means a decision under section 11 (2) to give an affected person a notice requiring the affected person to dispose of a prohibited plastic product.

### 38 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to the affected person in relation to the decision.

*Note 1* The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*, div 6.3.

### 39 Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) the affected person;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Part 8                      Miscellaneous

### 40                      Regulation-making power

- (1) The Executive may make regulations for this Act.

*Note*                      A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may apply, adopt or incorporate an instrument as in force from time to time.

*Note 1*                      The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2*                      A notifiable instrument must be notified under the [Legislation Act](#).

## Part 9 Repeals

### 41 Legislation repealed

The following legislation is repealed:

- *Magistrates Court (Plastic Shopping Bags Ban Infringement Notices) Regulation 2011* (SL2011-19)
- *Plastic Shopping Bags Ban Act 2010* (A2010-49)
- *Plastic Shopping Bags Ban Regulation 2011* (SL2011-18).

---

## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACT
- AS (s 164 (1))
- Australian Standard (s 164 (1))
- disallowable instrument (s 9)
- may (s 146)
- Minister (s 162)
- notifiable instrument (s 10)
- penalty unit (s 133)
- the Territory.

*affected person*, for part 7 (Reviewable decisions)—see section 37.

*authorised person*, for part 6 (Enforcement)—see section 18.

*beverage* includes water.

*connected*, for part 6 (Enforcement)—see section 18.

*cutlery* means utensils used for consuming food and includes a spork, a splade and chopsticks.

*declared public event*, for part 4 (Supplying other single-use plastic products—declared public events)—see section 14 (1) (a).

*declared single-use plastic product*, for part 4 (Supplying other single-use plastic products—declared public events)—see section 14 (1) (b).

**occupier**, of premises, for part 6 (Enforcement)—see section 18.

**offence**, for part 6 (Enforcement)—see section 18.

**plastic** means material made from, or comprising, organic polymers from plant extracts or fossil fuels.

**plastic product** means a product made, in whole or in part, of plastic.

**premises**, for part 6 (Enforcement)—see section 18.

**prohibited plastic product**—see section 8.

**reviewable decision**, for part 7 (Reviewable decisions)—see section 37.

**sell**, for a plastic product, includes—

- (a) barter; or
- (b) offer for sale; or
- (c) receive for sale; or
- (d) have in possession for sale; or
- (e) display for sale; or
- (f) cause or permit to be sold or offered for sale; or
- (g) dispose of by any method for valuable consideration.

**single-use**, in relation to a plastic product—see section 7.

**supply**, in relation to a plastic product—

- (a) means sell a plastic product; and
- (b) includes giving or offering a plastic product—
  - (i) as a container or packaging for another product that is sold;  
or

- (ii) for use with, or in relation to, another product that is sold; but
- (c) does not include supply of a plastic product if the plastic product is manufactured in the ACT for wholesale supply or distribution outside the ACT.

**Example—par (b) (i)**

allowing someone to put uneaten restaurant food into a plastic take-away container

**Example—par (b) (ii)**

plastic beverage stirrers made available on the counter at a cafe selling beverages

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2020.

**2 Notification**

Notified under the [Legislation Act](#) on 2020.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

---