

South Australia

Single-use and Other Plastic Products (Waste Avoidance) Act 2020

An Act to restrict and prohibit the manufacture, production, distribution, sale and supply of certain single-use and other plastic products and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Single-use and Other Plastic Products (Waste Avoidance) Act 2020*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

authorised officer means a person who is an authorised officer for the purposes of the *Environment Protection Act 1993*;

cutlery means utensils used for eating food;

oxo-degradable plastic means a material (however described) made of plastic which includes additives to accelerate the fragmentation of the material into smaller pieces, triggered by ultraviolet radiation or heat exposure, whether or not this is, or may be, followed by partial or complete breakdown of the material by microbial action;

plastic means a material made from, or comprising, organic polymers, whether plant extracts or of fossil fuel origin;

plastic product means a product comprised, in whole or in part, of plastic;

prohibited plastic product—see section 6;

sell or supply includes offer for sale or supply;

single-use, in relation to a product, means a product designed or intended to be used once or for a limited number of times before being disposed of.

4—Application of Act

This Act does not apply to a container that is the subject of a beverage container approval under the *Environment Protection Act 1993*.

5—Objects of Act

The objects of this Act include to—

- (a) provide for the restriction or prohibition of certain single-use and other plastic products; and
- (b) promote and support better waste management practices including the reduction of marine litter; and
- (c) promote and support the principles of the waste management hierarchy; and
- (d) promote and support the principles of the circular economy.

Part 2—Prohibited plastic products

6—Prohibited plastic products

- (1) For the purposes of this Act, *prohibited plastic product* means the following plastic products:
- (a) a single-use plastic drinking straw;
 - (b) single-use plastic cutlery;
 - (c) a single-use plastic beverage stirrer;
 - (d) *an expanded polystyrene cup*;
 - (e) *an expanded polystyrene bowl*;
 - (f) *an expanded polystyrene plate*;
 - (g) *an expanded polystyrene clamshell container*;
 - (h) a product, or product of a class, brought within the ambit of this definition by the regulations,

but does not include a product, or product of a class, excluded from the ambit of this definition by the regulations.

Note—

Section 6(1)(d) to (g) will come into operation on 1.3.2022.

- (2) Before a regulation is made pursuant to subsection (1)(h), the Minister must undertake public consultation on the proposal to bring a product, or product of a class, within the ambit of the definition of *prohibited plastic product* in accordance with the following:
- (a) the Minister must prepare a notice of the proposal that includes—
 - (i) the proposed product or class of product; and
 - (ii) information regarding the reasons the product or class of product is proposed; and
 - (iii) information regarding the availability of alternative products; and
 - (iv) any potential exemptions that may be required in relation to the product;
 - (b) the notice must be published on a website determined by the Minister, and may be published in such other manner as the Minister determines to be appropriate;
 - (c) the notice must invite submissions to be made by interested persons in the manner, and within the period (which must be at least 8 weeks), specified in the notice;
 - (d) the Minister must give consideration to any submissions made in response to the invitation.

7—Person must not sell, supply or distribute prohibited plastic products in course of carrying on a business

- (1) A person who, in the course of carrying on a business, sells, supplies or distributes a prohibited plastic product to another person is guilty of an offence.

Maximum penalty:

- (a) in the case of a prescribed person—\$20 000;
- (b) in any other case—\$5 000.

Expiation fee:

- (a) in the case of a prescribed person—\$1 000;
- (b) in any other case—\$315.

- (2) Subsection (1) does not apply to a person who sells, supplies or distributes a prohibited plastic product if the person is the manufacturer, producer or distributor of the product and the product is supplied or distributed to a person outside this State.
- (3) It is a defence to a charge of an offence under subsection (1) if the person is not a prescribed person and proves that they believed on reasonable grounds that the product was not a prohibited plastic product.
- (4) This section applies whether or not a fee is charged for the supply or distribution of the prohibited plastic product, or the sale, supply or distribution of the prohibited plastic product is incidental to, or forms part of, the sale, supply or distribution of other products.
- (5) For the purposes of this section, *business* includes an enterprise, association, organisation or other body regardless of whether the activities it carries on are of a commercial, charitable, sporting, educational or community nature.
- (6) The regulations may specify the following:
- (a) that a business, or business of a class, may be taken to be, or not to be, a business for the purposes of this section;
 - (b) the circumstances in which a business, or business of a class, may be taken to be, or not to be, a business for the purposes of this section.
- (7) In this section—

prescribed person, in relation to a prohibited plastic product, means a person who is a manufacturer or producer of the product, or who sells, supplies or distributes the product in the course of carrying on a business as a wholesaler or distributor.

8—Person must not represent that product is not a prohibited plastic product

A person who—

- (a) sells, supplies or distributes a prohibited plastic product to another person; and
- (b) prior to, or in the course of, selling, supplying or distributing the product, represents to the other person that the product is not a prohibited plastic product,

is guilty of an offence.

Maximum penalty: \$20 000.

Expiation fee: \$1 000.

Part 3—Oxo-degradable plastic products

Note—

Part 3 will come into operation on 1.3.2022.

9—Person must not manufacture or produce oxo-degradable plastic products

A person who, in the course of carrying on a business, manufactures or produces a product comprised, in whole or in part, of oxo-degradable plastic is guilty of an offence.

Maximum penalty: \$20 000.

Expiation fee: \$1 000.

10—Person must not sell, supply or distribute oxo-degradable plastic products in course of carrying on a business

- (1) *A person who, in the course of carrying on a business, sells, supplies or distributes a product comprised, in whole or in part, of oxo-degradable plastic to another person is guilty of an offence.*

Maximum penalty:

- (a) *in the case of a prescribed person—\$20 000;*
(b) *in any other case—\$5 000.*

Expiation fee:

- (a) *in the case of a prescribed person—\$1 000;*
(b) *in any other case—\$315.*

- (2) *It is a defence to a charge of an offence under subsection (1) if the person is not a prescribed person and proves that they believed on reasonable grounds that the product was not comprised, in whole or in part, of oxo-degradable plastic.*
- (3) *This section applies whether or not a fee is charged for the supply or distribution of the product, or the sale, supply or distribution of the product is incidental to, or forms part of, the sale, supply or distribution of other products.*
- (4) *For the purposes of this section, **business** includes an enterprise, association, organisation or other body regardless of whether the activities it carries on are of a commercial, charitable, sporting, educational or community nature.*
- (5) *The regulations may specify the following:*
- (a) *that a business, or business of a class, may be taken to be, or not to be, a business for the purposes of this section;*
- (b) *the circumstances in which a business, or business of a class, may be taken to be, or not to be, a business for the purposes of this section.*

(6) *In this section—*

prescribed person, in relation to a product comprised, in whole or in part, of oxo-degradable plastic, means a person who is a manufacturer or producer of the product, or who sells, supplies or distributes the product in the course of carrying on a business as a wholesaler or distributor.

11—Provision of manufacturer's or producer's certification as to oxo-degradable plastic content of plastic products

(1) *A person who, in the course of carrying on a business, manufactures or produces a plastic product, must, at the written request of an authorised officer, provide to the Authority in accordance with this section, certification as to whether or not the product contains oxo-degradable plastic, unless the person has a reasonable excuse for not doing so.*

Maximum penalty: \$20 000.

(2) *A person who, in the course of carrying on a business, distributes a plastic product or sells or supplies a plastic product by wholesale, must, at the written request of an authorised officer, provide to the Authority in accordance with this section, certification of the manufacturer or producer of the product as to whether or not the product contains oxo-degradable plastic, unless the person has a reasonable excuse for not doing so.*

Maximum penalty: \$20 000.

(3) *Certification under this section must—*

(a) *be in the manner and form, and contain the information, determined by the Authority; and*

(b) *be provided to the Authority within 30 days of the making of the request.*

12—Person must not represent that product is not comprised of oxo-degradable plastic

A person who—

(a) *knows, or who ought reasonably to have known or suspected, that a product sold, supplied or distributed by the person to another person is comprised, in whole or in part, of oxo-degradable plastic; and*

(b) *prior to, or in the course of, selling, supplying or distributing the product, represents to the other person that the product is not comprised, in whole or in part, of oxo-degradable plastic,*

is guilty of an offence.

Maximum penalty: \$30 000.

Part 4—Miscellaneous

13—Delegation

(1) The Minister may delegate a function or power under this Act (other than a prescribed function or power) to a specified body or person (including a person for the time being holding or acting in a specified office or position).

- (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the delegator to act in any matter; and
 - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

14—Annual report by Minister

- (1) The Minister must, on or before 30 September in each year (other than in the year in which this section comes into operation), prepare a report on the operation of the provisions of this Act for the financial year ending on the preceding 30 June that includes the following:
 - (a) information regarding the extent to which the Act has achieved the objects set out in section 5;
 - (b) information regarding consideration given to including additional plastic products within the ambit of the definition of *prohibited plastic product* by regulation pursuant to section 6(1)(h);
 - (c) the number of reports or complaints received from members of the public in relation to breaches or purported breaches of the Act;
 - (d) information regarding the measures taken by authorised officers in relation to monitoring compliance with the Act;
 - (e) information regarding any enforcement action taken by authorised officers under the Act including—
 - (i) the number of persons issued with expiation notices for the purposes of the Act and the general nature of the notices; and
 - (ii) the number of persons charged with an offence against the Act and the general nature of the charges;
 - (f) the Authority's assessment of the impact of any exemption granted under this Act on the goal of reducing single-use plastics in this State.
- (2) The initial report prepared under subsection (1) must include information regarding consideration given to including the following additional plastic products within the ambit of the definition of *prohibited plastic product* by regulation pursuant to section 6(1)(h):
 - (a) single-use plastic cups (including coffee cups);
 - (b) single-use plastic food containers;
 - (c) single-use plastic bowls;
 - (d) single-use plastic plates;
 - (e) plastic lids of single-use coffee cups;
 - (f) plastic balloon sticks;
 - (g) plastic balloon ties;

- (h) plastic-stemmed cotton buds;
 - (i) plastic bags.
- (3) The Minister must, within 12 sitting days after completing the report under subsection (1), cause copies of the report to be laid before both Houses of Parliament and published on a website determined by the Minister.

15—Interaction with Environment Protection Act

- (1) This Act (as in force from time to time) and the *Environment Protection Act 1993* (as in force from time to time) will be read together and construed as if the 2 Acts constituted a single Act.
- (2) Without derogating from subsection (1), authorised officers may exercise their powers under the *Environment Protection Act 1993* for the purposes of the administration and enforcement of this Act.
- (3) For the purposes of the operation of this Act, in the event of an inconsistency between the provisions of this Act and the provisions of the *Environment Protection Act 1993*, the provisions of this Act prevail.

16—Exemptions from Act

- (1) The Governor may, by regulation, exempt or empower the Minister to exempt, a person, or person of a class, or a product, or product of a class, from the operation of this Act or any specified provision of this Act (whether generally or in specified circumstances).
- (2) Without limiting the operation of subsection (1), the Governor may, by regulation, exempt the sale, supply or distribution of single-use plastic drinking straws by a person, or person of a class, from the operation of Part 2 or a specified provision of that Part (whether generally or in specified circumstances) to, or in respect of, persons who require them due to a disability or medical requirement, or in order for such persons to otherwise access or obtain them.
- (3) A regulation under subsection (1) or (2) may operate subject to such limitations and conditions as may be specified in the regulation.

17—Evidentiary provision

In proceedings for an offence against this Act, an allegation in an information that a specified product was a prohibited plastic product will be accepted as proved in the absence of proof to the contrary.

18—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) The regulations may—
- (a) be of general or limited application; and
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the making of regulations under this Act; and

- (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or a specified person or body; and
 - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or a specified person or body.
- (3) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
 - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

19—Review of Act

- (1) The Minister must, as soon as practicable after the third anniversary of the commencement of this Act, appoint a person to prepare a report on—
- (a) the effect on the community of Part 2 and Part 3 of the Act; and
 - (b) any public information campaigns conducted by or on behalf of the Government on reducing the use of plastic products and increasing the recycling of plastics; and
 - (c) any other matters determined by the Minister to be relevant to the review of this Act.
- (2) The person must report to the Minister within 6 months after the person's appointment.
- (3) The Minister must, within 12 sitting days after receiving the report under this section, cause copies of the report to be laid before both Houses of Parliament.

Legislative history

Notes

- In this version provisions that are uncommenced appear in italics.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act

| Year | No | Title | Assent | Commencement |
|------|----|---|-----------|--|
| 2020 | 27 | <i>Single-use and Other Plastic Products (Waste Avoidance) Act 2020</i> | 17.9.2020 | 1.3.2021 except s 6(1)(d) to (g) & Pt 3—1.3.2022 (<i>Gazette 25.2.2021 p647</i>) |