

NSW Environment Protection Authority

Single-use plastic guidance for industry (food service ware items)

Plastic Reduction and Circular Economy Act 2021



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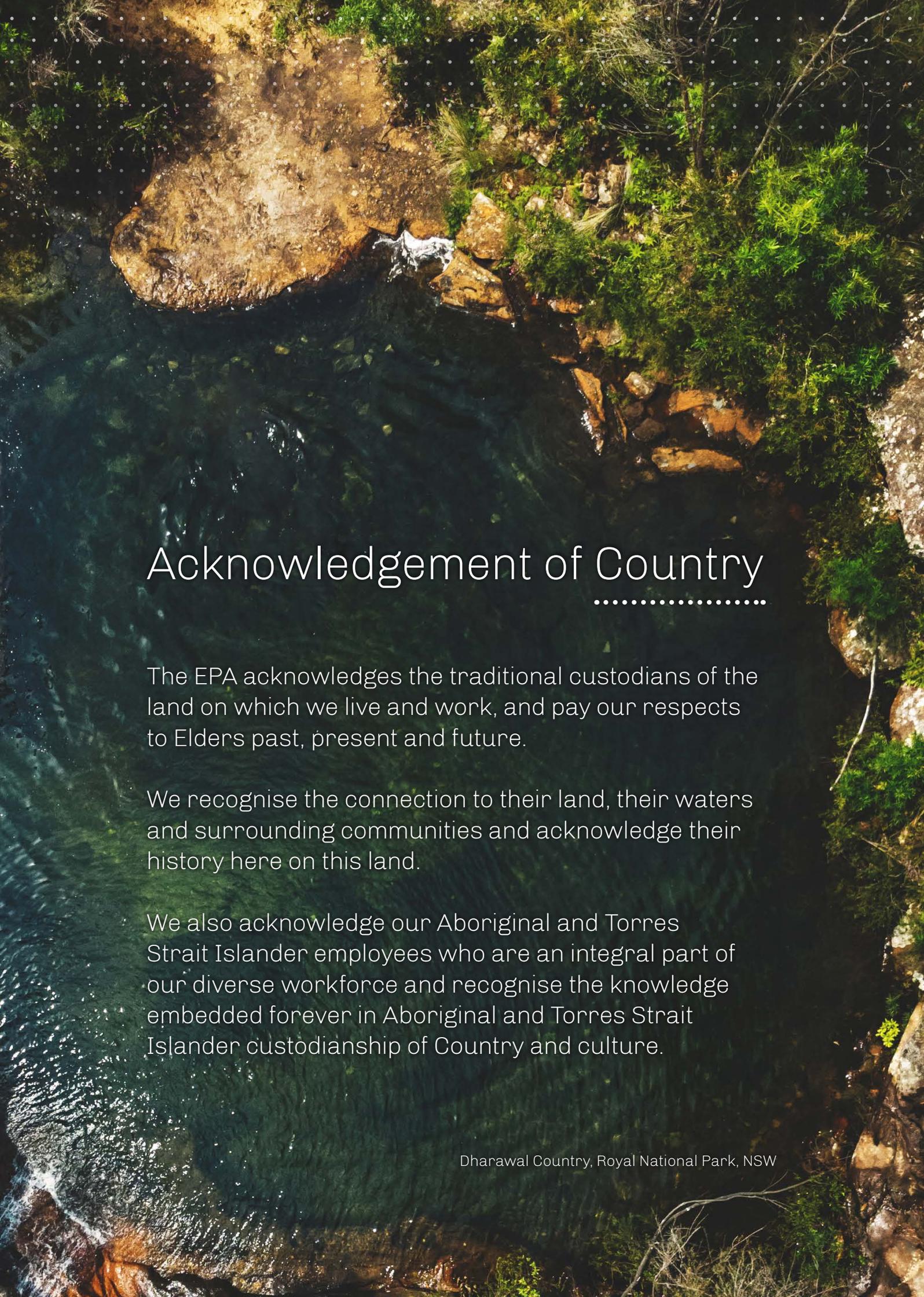
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The criteria and approach in this document are provided for information and guidance only. It is not definitive and is not legal or regulatory advice. The EPA reserves the right to use its discretion to determine whether an item is banned and to take regulatory action. You may wish to obtain your own advice if you are unsure whether your item is prohibited.

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An aerial photograph of a rocky stream flowing through a lush green forest. The water is dark and clear, reflecting the surrounding vegetation. The rocks are brown and jagged, creating a natural barrier for the water. The forest is dense with various shades of green, indicating a healthy ecosystem. The overall scene is serene and natural.

Acknowledgement of Country

The EPA acknowledges the traditional custodians of the land on which we live and work, and pay our respects to Elders past, present and future.

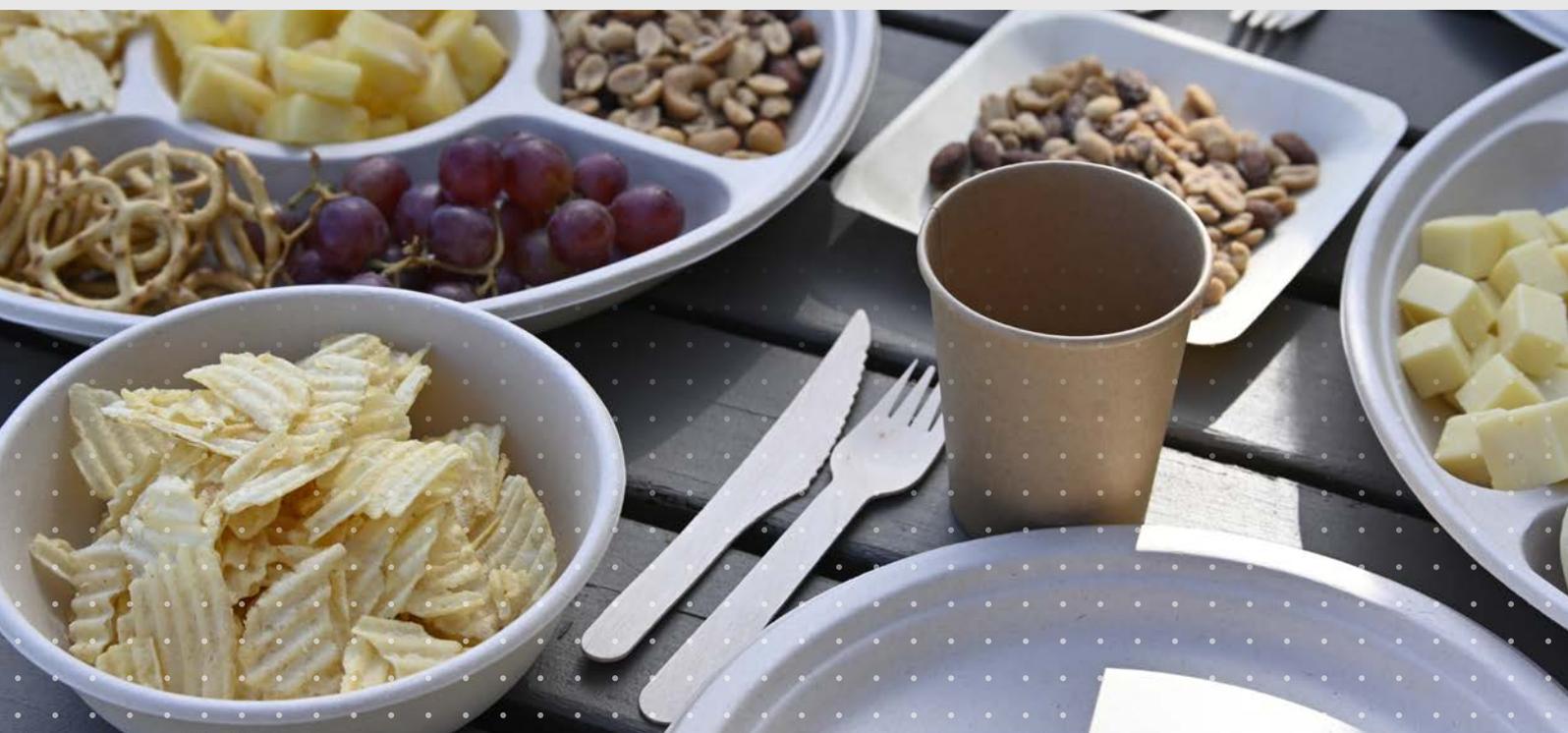
We recognise the connection to their land, their waters and surrounding communities and acknowledge their history here on this land.

We also acknowledge our Aboriginal and Torres Strait Islander employees who are an integral part of our diverse workforce and recognise the knowledge embedded forever in Aboriginal and Torres Strait Islander custodianship of Country and culture.

This guidance is intended to assist suppliers to assess whether a food service ware item listed under the NSW *Plastic Reduction and Circular Economy Act 2021* is likely to be a 'single-use' item, and therefore banned.

'Suppliers' includes manufacturers, designers, retail and wholesale vendors, and any other person or corporation involved in the supply of plastic items to another person or corporation in the course of carrying on a business – including an activity for commerce, charity, sport, education or community purposes.

If uncertain, take a precautionary approach when ordering and supplying items – for example, switch to non-plastic alternatives.



Introduction

The *Plastic Reduction and Circular Economy Act 2021* (PRCE Act) prohibits certain unnecessary or problematic plastic items, making it an offence to supply these items to another person while carrying on a business. This includes an activity for commerce, charity, sport, education or community purposes. These prohibitions come into force in two tranches.

On 1 June 2022, the supply of lightweight plastics bags with handles, other than a barrier bag, that are 35 microns or less was banned.

From 1 November 2022, the second stage of prohibitions start on the supply of single-use plastic:

- a. straws
- b. stirrers
- c. cutlery (including sporks and chopsticks)
- d. cotton buds
- e. bowls (not including bowls designed or intended to have a spill-proof lid whether separate or attached)
- f. plates

The supply of all expanded polystyrene food service items, and certain rinse-off personal care products containing plastic microbeads is also banned from 1 November 2022.

Other plastic items will be reviewed for future phase outs, such as bowls with lids, plastic cups (including lids), oxo-degradable plastics, fruit stickers (non-compostable), heavyweight plastic shopping bags and barrier/produce bags.

Please visit our website for more information about banned items.

Scope

This guidance is for suppliers to assess whether an item prohibited by the PRCE Act is likely to be considered 'single-use' and therefore banned. The guidance applies to straws, stirrers, cutlery (including sporks and chopsticks), bowls (not including bowls designed or intended to have a spill-proof lid whether separate or attached) and plates, except where a specific exemption applies. Exemptions include, for example, the supply of plastic straws for people with a disability or medical need. Further information on exemptions is available on the [EPA website](#).

Suppliers include:

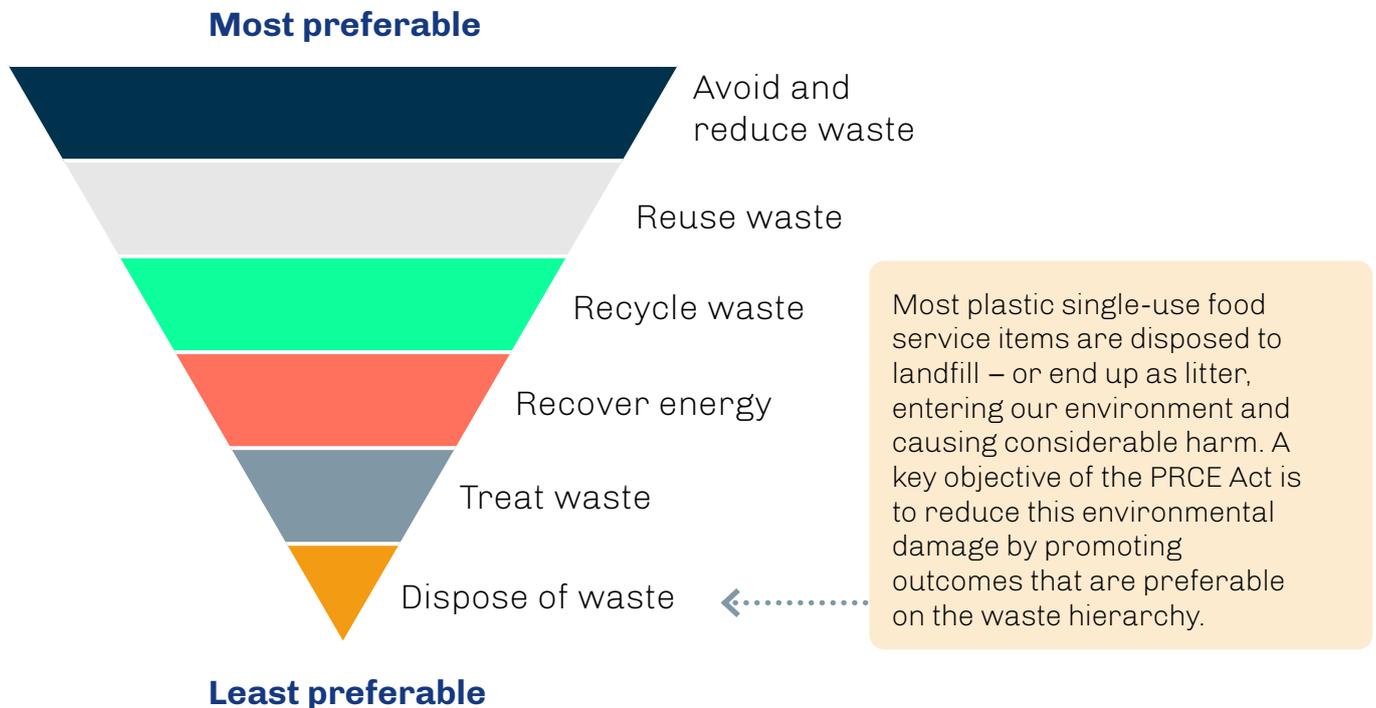
- retail and hospitality businesses
- manufacturers, designers, wholesale vendors and any other person or corporation supplying plastic items to another person or corporation carrying on a business
 - a business includes an activity for commerce, charity, sport, education or community purposes.

If uncertain, suppliers are encouraged to adopt a precautionary approach to achieving compliance with the Act when ordering and supplying items. This might include switching to non-plastic alternatives.

This guidance does not apply to:

- lightweight plastic bags
- plastic cotton buds
- expanded polystyrene food service items
- certain rinse-off personal care products containing plastic microbeads.

Figure 1: Waste hierarchy



Why some plastic items are banned

Banning the supply of single-use plastic items reduces plastic litter and waste, empowers consumers to use resources more sustainably and helps NSW to become a circular economy.

The objectives of the PRCE Act are to:

- protect the environment and human health
- promote and support the principles of a circular economy, including:
 - reducing the use of virgin materials and improving the way resources are valued
 - applying the waste hierarchy
- support material circularity through a product's lifecycle
- improve product stewardship
- reduce the impact, or potential impact, of waste, including litter.

What is 'single-use'?

The PRCE Act defines 'single-use' as:

'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 one purpose, or
- (iii) recycled...'

Regardless of your intentions and the item's design, the item will be considered single-use if it is ordinarily used once for a particular purpose. This means items marketed as 'reusable' may be single-use if consumers usually dispose of the product after a single use.

Criteria that can help indicate whether an item is single-use include:

- the setting where the item is supplied and used
- whether the item meets dishwashing standards, and
- how the item is marketed.

Other factors, such as whether the supplier has provided a warranty, may be considered in conjunction with these criteria.

The key criteria and additional considerations are outlined below and in the flow chart in **Figure 2** on page 11.

It is important that you consider all criteria when assessing whether an item is likely to be single use. At all times, the EPA retains the regulatory discretion to determine whether it considers an item is single-use, and to take regulatory action for the supply of such items.

The PRCE Act enables the making of Regulations. The EPA anticipates that in the near future the criteria outlined in this document may be incorporated into such a Regulation.

1. Settings where items are ordinarily used once



Items provided by takeaway shops, food courts and food trucks, for example, where consumers would ordinarily use them once, are single-use, regardless of the item's durability or marketing.

Items are single-use in settings where the supplier does not provide an easily accessible facility for the consumer to return the item for washing and reuse, and where any of the following applies:

- the item is provided alongside a food or beverage item

- the item is free or low-cost, or included in the purchase price of another item
- the item is not listed separately on a receipt
- the consumer has no practical option to decline the item when making a purchase.

You should consider the volume and frequency of supply of plastic items in your setting. If a low-cost item is supplied in high volumes that are frequently reordered, it is highly likely the item is used once by consumers.

Suppliers of plastic items should satisfy themselves that the setting into which they provide an item is not likely to lead to an item being used only once before completing a transaction. A retailer supplying items to end users in a single-use setting is liable under the Act. A wholesaler supplying such a retailer may also be held liable if they did not undertake due diligence to ensure a product would not be supplied in a single-use setting. Due diligence involves performing relevant checks and having mechanisms in place such as requiring a declaration or confirmation of the intended use before purchase.



Case study: Eating out

Rashid owns a takeaway fish and chip shop across from the beach. He supplies free plastic knives and forks with 'reusable' written on the packaging.

Most people eat at the beach or park across the road and put the items in the bin when they have finished eating.

The plastic cutlery supplied by the fish and chip shop is considered single-use:

- regardless of labelling that says the cutlery is 'reusable', and
- whether they were free or paid for as there is little chance of being reused.

2. Dishwashability



The more times an item can safely be washed and reused, the less likely that a consumer will dispose of it after a single use.

A plastic item is considered single-use unless it passes testing according to standard BS EN 12875-1:2005 Mechanical dishwashing resistance of utensils Reference test method for domestic articles. Until 30 April 2024, items must be tested:

- for a minimum of 125 washes
- under the conditions specified in the standard
- by a lab that complies with standard ISO/IEC 17025:2017

New South Wales aims to lead the world in eliminating problematic and unnecessary plastic items, including by setting strong minimum standards for reusability.

From 1 May 2024, plastic food service items will need to pass 780 wash cycles of the specified test method. All other conditions will remain the same.



Case study: Lunch at the food court

Ying orders a salad at the local food court. The shop serves her salad in an open plastic bowl and supplies her with plastic cutlery. No other options are available.

She eats her lunch seated in the food court. When finished, she looks at the bottom of the bowl to see if it is recyclable. She notes it is dishwasher safe to 780+ washes. She asks the shop if they want the bowl back, but they tell her to throw it away. She throws the bowl in the recycling

bin and everything else in the general waste bin and heads back to work.

All of these plastic items supplied by the shop are single-use (even if recyclable), as the shop does not collect the bowl or cutlery for re-use.

Had the food court supplied plastic bowls and cutlery that are collected for dishwashing and re-use (meeting the minimum 780 cycles criteria), the items would not be considered single-use.

3. Marketing



Marketing plays a key role in how consumers use items and suppliers of plastic items have a responsibility to ensure their marketing does not contradict the objectives of the PRCE Act.

The marketing of an item may include:

- the item's packaging or labelling
- listings or advertisements
- where the item is usually located in a store.

Suppliers are not obliged to market their items in any particular way, nor to include any specific text or claims on the packaging of their item or on the item itself. However, items marketed as disposable, single-use or any other term encouraging disposal after a single use may not be supplied after 1 November 2022.

Items marketed as disposable at any time prior to 1 November 2022 **that meet all other criteria in this document** may continue to be supplied if marketing, including packaging, is updated to comply with this criterion. In all other circumstances, the supply of items marketed as disposable at any time before 1 November 2022 is prohibited from that date.

Suppliers should be aware that marketing an item as 'reusable' or a similar term suggesting it might be able to be used more than once, is not sufficient on its own to demonstrate it is not single-use.

It is an offence under the PRCE Act for a person running a business to provide information in connection with the supply of an item that is false or misleading, regardless of whether that information is provided by act or omission.



Case study: Plates for a party

Sam buys plastic plates online for a big party he is hosting. The ones he bought from the same supplier previously now say they are reusable on the packaging.

When they arrive, the plates appear to be the same as those he received two years earlier for a similar price. He checks the new packet and there is no information about dishwasher use or why the plates are considered reusable.

He finds a few old plates he hadn't used up from two years ago, and sees they are the exact same plates that previously said 'disposable' on the website and packaging. He checks with the online store, who confirm that the manufacturer has not conducted any dishwasher testing.

Despite the new label saying the plates are 'reusable', the plates supplied by the online store are actually single-use because only the marketing appears to have changed. The supplier has not conducted any dishwasher testing and the plates are still ordinarily used once before being thrown away.

Additional considerations

In addition to the three criteria listed above the EPA may deem other factors relevant when assessing whether an item is single use.

For example, items that are considered durable and reusable might carry a guarantee from the supplier as to their practical lifespan.

A warranty, or equivalent representation, of at least one year from the date of purchase could help to demonstrate an expectation that item can safely be used multiple times. The absence of such a representation may indicate that the manufacturer does not expect the item to be in use a year after the date of issue and that it is ordinarily used only once.

While additional factors such as the provision of a warranty may be considered by the EPA, they are not sufficient in isolation to demonstrate that an item is not single-use. Even if a warranty is provided, an item will be considered single-use if consumers ordinarily use it once and/or if the other criteria in this guidance are not met.

Ongoing review

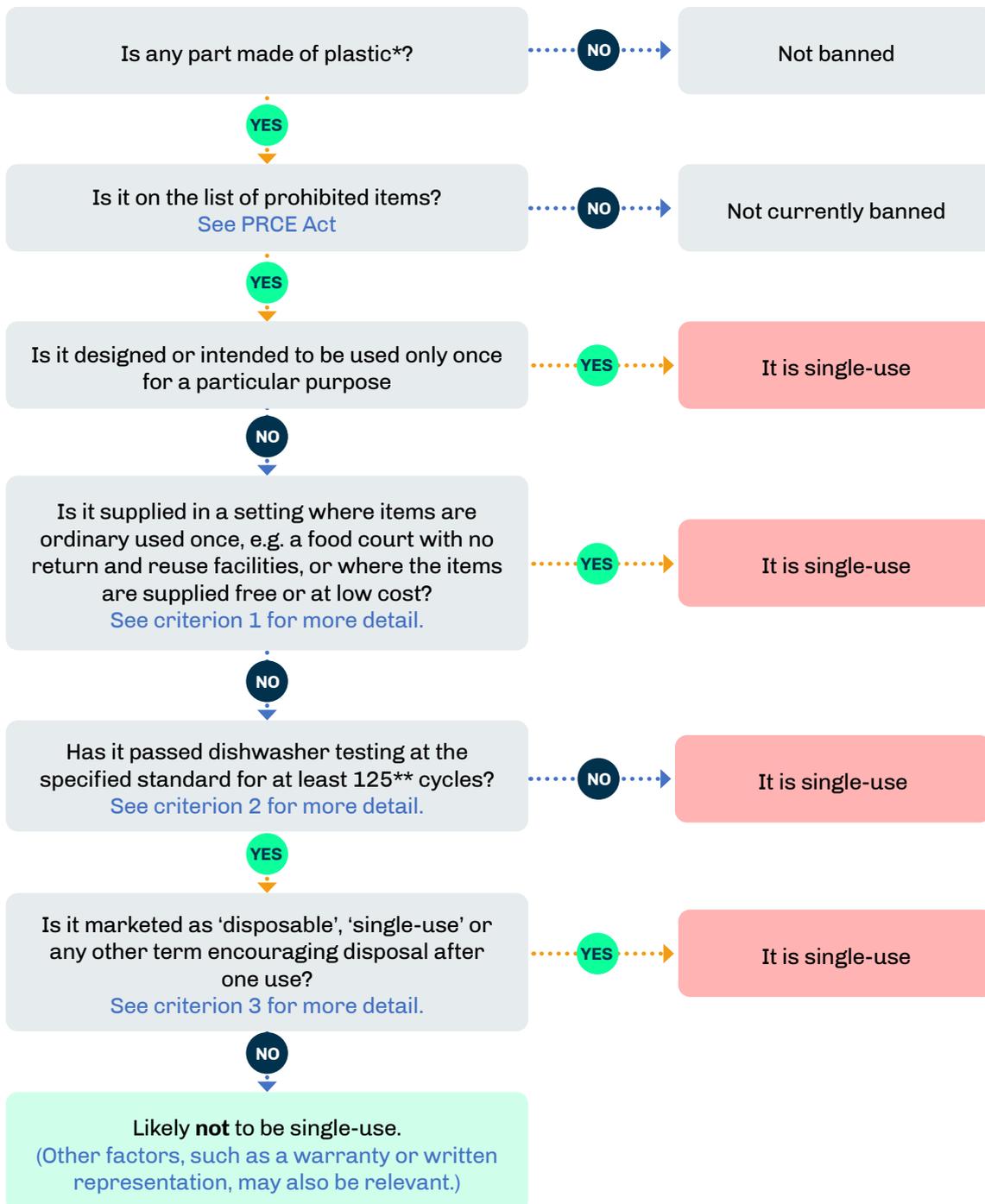
The EPA will monitor the effectiveness of the ban against the policy objectives from 1 November 2022. This assessment will draw on information from suppliers and retailers of plastic items, surveys of consumer use patterns (attitudes and behaviour change), and landfill and litter survey data.

Suppliers should take particular note that the plastic food service items subject to bans coming into force on 1 November 2022 were generally identified because they frequently appear in the litter and waste streams, with some being identified at a national meeting of environment ministers in April 2021 as 'problematic or unnecessary' items to be phased out by the end of 2025. A key indicator of the success of the PRCE Act will be whether these items appear less frequently as litter and landfill waste. These items continuing to appear as litter and waste will indicate a need to review the regulation of plastic food service items under the PRCE Act.

This guide will be reviewed and informed by data collected after the 1 November 2022 commencement of the prohibition and interjurisdictional efforts to harmonise single-use plastic requirements. The EPA will make any appropriate changes to the guidance after that review.

Meanwhile, the EPA retains discretion to make changes to this guidance at any time.

Figure 2: Is an item single-use?



***Plastic** is defined in the PRCE Act as:

- (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.

Note - it includes items that are made from biodegradable, compostable, or bio-plastics.

** From 1 November 2022 until 30 April 2024. From 1 May 2024 items must pass 780 cycles of testing.

Frequently Asked Questions

My items are dishwasher safe and reusable – can I still supply them?

If you have assessed your items as being reusable because:

- they are designed or intended to be used multiple times for the same purpose, and
- you can demonstrate this using the single-use criteria (including the dishwasherability criteria)

you can supply the item or items **only** if they are not ordinarily used once.

To help determine whether the item or items are ordinarily used once, also consider:

- the setting where the items are supplied (including factors like whether the item is free or low-cost), and
- the marketing.

If the items are not ordinarily used once, you can supply them.

Some people reuse my items, and some don't. How do I know if I can supply them when I don't know how people use them?

The setting is a good place to work out how the item is 'ordinarily' used.

Consider how most people would use it, its durability and:

- is it in a takeaway food setting where there are no arrangements for collection and reuse?
- is the item likely to be used away from home?
- is it provided free or at low cost?, and
- is it sold or supplied in large quantities?

Why has 780 washes been chosen as the dishwashing requirement?

The more durable an item, the less likely it is that consumers will ordinarily dispose of it after a single use. 780 washes is already in effect in the US state of California as part of its Reusable Food Service Packaging Criteria, meaning that an item can safely be washed three times a day, five days a week for a year. This makes the item suitable for reuse in a high-traffic food service setting and suitable to carry a one-year warranty. It is very unlikely that a consumer would dispose of such an item after only one use.

To help suppliers as they transition to this world-leading standard, an interim requirement of 125 wash cycles will apply until 30 April 2024.

What if I am still not sure if my item is single-use?

Adopt a precautionary approach so you'll comply with the PRCE Act when ordering and supplying items. This might include switching to non-plastic alternatives.

For further information contact the EPA's plastics enquiries mailbox at plastics@epa.nsw.gov.au

