

Plastic single-use cutlery exemption 2022
Plastic Reduction and Circular Economy Act 2021

Notice granting an exemption under section 61

I, Tony Chappel, Chief Executive Officer, on behalf of the Environment Protection Authority (EPA) grant the following exemptions from section 9(1) of the *Plastic Reduction and Circular Economy Act 2021* for the supply of plastic single-use cutlery, under section 61 of the Act:

1. Exemption for the supply of plastic single-use cutlery – exempt facilities

A person is exempt from section 9(1) of the Act for the supply of plastic single-use **cutlery** if:

- (1) the supply occurs before 1 November 2024; and
- (2) the **cutlery** is supplied:
 - (a) to, by, or at an **exempt facility** where its use is required to help prevent violence, injury or harm; or
 - (b) to enable the supply to an **exempt facility** where its use is required to help prevent violence, injury or harm.

Notes:

- (1) Preventing harm does not extend to preventing infection.
- (2) In determining whether use of plastic single-use **cutlery** is required to help prevent violence, injury or harm, the focus is on the behaviour of individuals at an **exempt facility** and the ability to weaponise alternatives to plastic single-use **cutlery**.

Example where use may be required to help prevent violence, injury or harm:

Use of plastic single-use **cutlery** at an **exempt facility** during food service where individuals might engage in behaviour that is likely to cause violence, injury or harm. Such behaviour includes using, or threatening to use, alternatives to plastic single-use **cutlery** as weapons to cause injury to themselves or others.

The following conditions apply to this exemption:

- (1) A manufacturer, producer or wholesaler who supplies plastic single-use **cutlery** must undertake due diligence to ensure that supply will meet clause 1.
- (2) For the purposes of clause 1, a fee must not be charged for the supply of plastic single-use **cutlery** at an **exempt facility**.

2. Exemption for the supply of plastic single-use cutlery – public hospitals

A person is exempt from section 9(1) of the Act for the supply of plastic single-use **cutlery** if:

- (1) the supply occurs before 1 November 2023; and

- (2) the **cutlery** is supplied:
 - (a) to, by, or at a **public hospital**; or
 - (b) to enable the supply to a **public hospital**.

The following conditions apply to this exemption:

- (1) A manufacturer, producer or wholesaler who supplies plastic single-use **cutlery** must undertake due diligence to ensure that supply will meet clause 2.
- (2) For the purposes of clause 2, a fee must not be charged for the supply of plastic single-use **cutlery** at a **public hospital**.
- (3) Plastic single-use **cutlery** must only be supplied at a **public hospital** in exceptional or emergency situations when the **public hospital** is prevented from using alternative cutlery.
- (4) Condition 3 of this clause does not apply where the **public hospital** is an **exempt public hospital**.

Definitions

- (1) In this notice:

Act means the *Plastic Reduction and Circular Economy Act 2021*.

cutlery has the same meaning as in section 3 of Schedule 1 to the Act.

exempt facility means any of the following:

- (a) a correctional centre, correctional complex, residential facility or transitional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*;
- (b) a detention centre within the meaning of the *Children (Detention Centres) Act 1987*;
- (c) a facility, place or premises at which a person may be detained or held in custody according to law;
- (d) a facility at which residential care, within the meaning of the *Aged Care Act 1997* of the Commonwealth, is provided;
- (e) a group home or residential care facility within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006*;
- (f) a mental health facility within the meaning of the *Mental Health Act 2007*;
- (g) a public or private hospital, being only those areas used to provide professional health care services to people admitted as in-patients, or to patients in an emergency department, including ancillary accommodation facilities for persons receiving health care.

exempt public hospital means any of the following **public hospitals**:

- (a) Blacktown Hospital;
- (b) Campbelltown Hospital;
- (c) Liverpool Hospital;
- (d) Nepean Hospital;
- (e) Prince of Wales Hospital;
- (f) Royal Hospital for Women;
- (g) St George Hospital;
- (h) Sutherland Hospital;
- (i) Sydney Children's Hospital;
- (j) Westmead Hospital.

public hospital has the same meaning as in the *Health Services Act 1997*.

- (2) Words and expressions in this notice have the same meaning as in the Act, unless otherwise defined.
- (3) To avoid doubt, there is no limit on the number of plastic single-use **cutlery** that can be supplied under the clauses in this notice.

When this exemption commences

This exemption commences on 1 November 2022. The EPA may vary or revoke this exemption by a further notice published in the NSW Government Gazette.

Power under which this exemption is made

This exemption is granted under section 61 of the Act.



Tony Chappel
Chief Executive Officer
Environment Protection Authority

28 October 2022