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Western Australia

## Environmental Protection (Cost Recovery) Regulations 2021

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## **Environmental Protection (Cost Recovery) Regulations 2021**

SL 2021/217

Made by the Governor in Executive Council.

### **Part 1 — Preliminary**

**1. Citation**

These regulations are the *Environmental Protection (Cost Recovery) Regulations 2021*.

**2. Commencement**

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

**3. Terms used**

In these regulations —

***accredited assessment process*** means a process under Part IV of the Act that the Commonwealth Minister has, under the EPBC Act section 87(1), decided to use for an assessment for the purposes of the EPBC Act;

***agency*** has the meaning given in the *Public Sector Management Act 1994* section 3(1);

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**Commonwealth Minister** means the Minister referred to in the EPBC Act;

**compliance priority rating**, for an approved proposal, has the meaning given in regulation 12;

**costs**, of the Department —

(a) means —

- (i) costs of employing Departmental staff who assess proposals; and
- (ii) costs of employing Departmental staff, to the extent that they manage or support staff referred to in subparagraph (i); and
- (iii) indirect costs of the Department; and
- (iv) costs of funding staff of another agency for the purposes of the other agency assisting, or providing advice, in relation to the Department assessing proposals;

but

(b) does not include external costs of the Department;

**Departmental staff** means persons referred to in section 22 or 24 of the Act;

**Department's website** means a website maintained by or on behalf of the Department;

**ecological community** has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

**EMP** means an environmental management plan, environmental management system or environmental improvement plan;

**environmental offset** means a requirement intended to offset the impact of the implementation of a proposal on the environment, including a requirement of the kind referred to in section 45A(1)(b), (c) or (d) of the Act;

**EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth);

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***external costs***, of the Department, means —

- (a) costs of acquiring services in the nature of advice; and
- (b) costs (including of meals and accommodation) of Departmental staff travelling to the site of a proposal or a related site;

***fee*** includes charge;

***indirect costs***, of the Department, means costs that are not directly attributable to the performance of a particular function, including —

- (a) costs relating to office accommodation, motor vehicles and equipment; and
- (b) costs of licensing, including of equipment and intellectual property; and
- (c) depreciation;

***scoping document*** means a document in which the Authority determines the form, content, timing and procedure of an environmental review, under section 40(3) of the Act;

***species*** has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1).

**Environmental Protection (Cost Recovery) Regulations 2021****Part 2** Fees for Part IV of Act**Division 1** General fees**r. 4****Part 2 — Fees for Part IV of Act****Division 1 — General fees****4. General fees for referral, assessment and implementation of proposals**

- (1) The fees set out in the Table to this regulation are, subject to regulations 6(3) and (4) and 7(2), payable in the circumstances, in relation to the referral, assessment or implementation of a proposal, set out in the Table.
- (2) The proponent of a proposal is liable to pay a fee payable under subregulation (1) in relation to the proposal.
- (3) When a fee is payable is determined in accordance with the Table.

**Fees**

<b>Item</b>	<b>Circumstance</b>	<b>Fee</b>	<b>When payable</b>
1.	Referral of proposal, under s. 38	\$32 000	In accordance with r. 6
2.	Request by proponent for approval to amend proposal, under s. 38C	\$16 000	On the day on which the request is made
3.	Request by proponent to declare proposal a derived proposal, under s. 38E	\$16 000	On the day on which the request is made

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**Part 2**

General fees

**Division 1****r. 4**

Item	Circumstance	Fee	When payable
4.	Request by Authority for additional information, under s. 38F	\$16 000	In accordance with r. 7
5.	Assessment of proposal, under Part IV Division 1	\$16 000 plus the amount, determined by the CEO under r. 5, for costs of the Department in assessing the proposal  Note: costs of the Department do not include external costs	In accordance with r. 8
6.	Requirement by Authority for information, under s. 40(2)(a)	\$16 000	In accordance with r. 7
7.	Request by proponent for consent to minor or preliminary works, under s. 41A(3)	\$16 000	On the day on which the request is made

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Item	Circumstance	Fee	When payable
8.	Request by proponent for approval of assessment of amended proposal, under s. 43A	\$16 000	On the day on which the request is made
9.	Request by proponent for approval of amendment to, or amendment of conditions relating to, approved proposal, or both, under s. 45C	\$48 000	On the day on which the request is made
10.	Request by Minister for additional information, under s. 45C(2)	\$16 000	In accordance with r. 7



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General fees

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<b>Item</b>	<b>Circumstance</b>	<b>Fee</b>	<b>When payable</b>
11.	The submission of an EMP for confirmation, endorsement or approval (however described) under implementation conditions applying in relation to proposal	\$16 000	On the day on which the EMP is submitted
12.	Inquiry by Authority into implementation conditions relating to approved proposal, under s. 46	\$64 000	In accordance with r. 9
13.	Issue by Minister of interim conditions and procedures, under s. 46A	\$16 000	Within the period of 28 days after the day on which the proponent is given notice of the interim conditions and procedures

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**5. Assessment fees for proposals**

- (1) The CEO must, when determining an amount for the purposes of item 5 of the Table to regulation 4, do so in accordance with the method most recently published under subregulation (2) prior to the day on which the proposal is referred.
- (2) The CEO must publish a method for determining amounts for the purposes of item 5 on the Department's website.
- (3) The method may take into account any or all of the following matters —
  - (a) whether the proposal is a strategic proposal;
  - (b) whether the proposal, or an aspect of the proposal, is dealt with as a bilateral matter under Part VIIIA of the Act;
  - (c) whether the proposal, or an aspect of the proposal, is assessed under an accredited assessment process;
  - (d) whether an environmental review is undertaken under section 40(2)(b) of the Act;
  - (e) whether a scoping document is prepared for an environmental review under section 40(2)(b) of the Act and whether it is prepared by the Department or the proponent;
  - (f) whether a public inquiry under section 40(2)(c) of the Act is conducted;
  - (g) whether, and the number of times that, the proposal is made available for public comment;
  - (h) whether information or a report is made available for public review under section 40(5) of the Act;

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Fees for Part IV of Act

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General fees

**Division 1****r. 5**

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- (i) the extent of the public response to the following —
    - (i) the proposal, when made available for public comment;
    - (ii) a scoping document made available for public comment;
    - (iii) any other information or report made available for public comment or review;
  - (j) the number of key environmental factors identified in the Authority's assessment report under section 44 of the Act;
  - (k) whether the Authority engaged in consultation on conditions recommended in the Authority's assessment report under section 44 of the Act;
  - (l) whether the Authority's assessment report under section 44 of the Act recommends 1 or more conditions imposing environmental offsets;
  - (m) the size of the development envelope;
  - (n) the size of the disturbance footprint;
  - (o) the number of species or ecological communities in relation to which assessment of the impact of implementing the proposal, or assessment of ongoing investigation or management requirements, is needed.

Examples for paragraph (o):

1. Threatened species or threatened ecological communities, as defined in the *Biodiversity Conservation Act 2016* section 5(1), or listed threatened species or listed threatened ecological communities, as defined in the EPBC Act.
2. New or undescribed species.
3. Species or ecological communities categorised as Priority 1 or 2 under the Conservation Codes at <<https://www.dpaw.wa.gov.au/images/documents/plants-animals/threatened-species/Listings/Conservation%20code%20definitions.pdf>>.
4. Vegetation units of regional significance.
5. Stygofaunal or troglofaunal communities.

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- (4) A method may use units of costs that are applied cumulatively, according to the matters in subregulation (3), to produce an aggregate amount.

Note for this subregulation:

A unit of costs may, for example, be an amount that represents the average cost to the Department of a unit of staff time associated with assessing proposals.

- (5) If a proposal was referred in compliance with a requirement under section 38A(1) of the Act, then, for the purposes of subregulation (1), the proposal is taken to have been referred on the day on which the requirement was made.

**6. Referral of proposal: payment of fee**

- (1) This regulation has effect for the purposes of item 1 of the Table to regulation 4.
- (2) If the proposal is referred by the proponent, the fee is payable on the day on which the proposal is referred.
- (3) If the proposal is referred other than by the proponent, the fee —
- (a) is payable if, and only if, the Authority decides to assess the proposal; and
  - (b) in that case, is payable within the period of 28 days after the day on which the proponent is given notice of the decision.
- (4) However, if the proponent refers the proposal in compliance with a requirement under section 38A(1) of the Act, subregulation (3), rather than subregulation (2), applies in relation to the referral of the proposal.

***Environmental Protection (Cost Recovery) Regulations 2021***

Fees for Part IV of Act

**Part 2**

General fees

**Division 1****r. 7****7. Request for further information: payment of fee**

- (1) This regulation has effect for the purposes of items 4, 6 and 10 of the Table to regulation 4.
- (2) A fee is only payable under item 4, 6 or 10 if the request or requirement is made of the proponent.
- (3) A fee payable under item 4, 6 or 10 is payable within the period of 28 days after the day on which the request or requirement is made of the proponent.

**8. Assessment of proposal: payment of fee**

- (1) This regulation has effect for the purposes of item 5 of the Table to regulation 4.
- (2) The CEO must determine the fee for the assessment of the proposal (the *assessment fee*) as soon as practicable after —
  - (a) the report on the outcome of the assessment of the proposal is given to the Minister; or
  - (b) the assessment is terminated (under section 40A of the Act).
- (3) The CEO must, as soon as practicable after the Authority decides to assess the proposal, determine an estimate of the assessment fee based on the information set out in the Authority's decision to assess.
- (4) 80% of the estimate of the assessment fee is payable within the period of 28 days after the day on which the proponent is given an invoice by the CEO for the amount payable.
- (5) The amount by which the assessment fee exceeds the amount paid under subregulation (4) is payable within the period of 28 days after the day on which the proponent is given an invoice by the CEO for the amount payable.

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- (6) If the amount paid under subregulation (4) exceeds the assessment fee, the proponent must be refunded the difference.
- (7) An invoice must set out how the assessment fee, or the estimate of the assessment fee, was determined.

**9. Inquiry into implementation conditions: payment of fee**

- (1) This regulation has effect for the purposes of item 12 of the Table to regulation 4.
- (2) The CEO may, on receipt by the Authority of a request under section 46(1) of the Act to carry out the inquiry, give the proponent an invoice for the fee.
- (3) The fee is payable within the period of 28 days after the day on which the proponent is given the invoice.

**Division 2 — Fees for external costs****10. Fees for external costs incurred by the Department**

- (1) If the Department incurs external costs for the purposes of receiving or assessing a proposal, the CEO may give the proponent an invoice for a fee of an amount not exceeding the costs.
- (2) The fee is payable by the proponent within the period of 28 days after the day on which the proponent is given the invoice.
- (3) An invoice must set out the purposes for which the costs were incurred.
- (4) The CEO must give the proponent a copy of the original invoices for the costs if the proponent requests that the CEO do so.

***Environmental Protection (Cost Recovery) Regulations 2021***

Fees for Part IV of Act

**Part 2**

Annual compliance fees

**Division 3****r. 11****Division 3 — Annual compliance fees****11. Annual compliance fees**

- (1) A fee is payable for each financial year for each approved proposal in effect immediately before the commencement of the financial year.
- (2) The proponent of an approved proposal is liable to pay a fee payable under subregulation (1) in respect of the proposal.
- (3) The amount of a fee is the amount set out in the Table according to the compliance priority rating for the approved proposal in effect immediately before the commencement of the financial year.

**Amount of fee**

<b>Compliance priority rating</b>			
Low	Medium	High	Very high
\$3 500	\$7 000	\$14 000	\$21 000

- (4) If there is no compliance priority rating for an approved proposal in effect immediately before the commencement of a financial year then, for the purposes of this regulation, the compliance priority rating for the proposal for the year is Low.
- (5) A fee is payable within the period of 28 days after the day on which the proponent is given an invoice by the CEO for the fee.
- (6) An invoice must set out —
  - (a) the compliance priority rating for the approved proposal; and
  - (b) how it was determined; and
  - (c) when it was last determined.

***Environmental Protection (Cost Recovery) Regulations 2021*****Part 2** Fees for Part IV of Act**Division 4** Miscellaneous provisions**r. 12**

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**12. Compliance priority rating**

- (1) The ***compliance priority rating*** for an approved proposal is the rating determined from time to time by the CEO for the purposes of monitoring the implementation of the proposal under Part IV Division 2 of the Act.
- (2) The rating determines the priority of a proposal in relation to compliance activity.
- (3) The rating is based on the following —
  - (a) the risk to the environment of implementing the proposal;
  - (b) the complexity of the proposal;
  - (c) the level of ongoing compliance by the proponent.

**Division 4 — Miscellaneous provisions****13. Fee waiver, reduction or refund**

The CEO may, on a case by case basis, refund, reduce or waive, in whole or in part, a fee paid or payable under this Part if the CEO considers it appropriate to do so.

**14. Extension of time within which to pay fee**

- (1) The CEO may, on a case by case basis —
  - (a) postpone the day on which a fee is payable; or
  - (b) extend the period within which a fee is payable.
- (2) If the CEO grants a postponement or extension —
  - (a) these regulations have effect accordingly; and
  - (b) the CEO must give written notice of the postponement or extension to the proponent as soon as practicable.



***Environmental Protection (Cost Recovery) Regulations 2021***Fees for Part IV of Act  
Miscellaneous provisions**Part 2**  
**Division 4**  
**r. 15**

- (3) The CEO may grant a postponement or extension even if the fee has become payable. In that case, these regulations have effect as if the CEO granted the postponement or extension before the fee became payable.

**15. Interest on outstanding amounts**

- (1) If a proponent does not pay a fee in full on the day, or within the period, for payment, interest on any outstanding amount is payable at the prescribed rate.
- (2) The ***prescribed rate***, for an outstanding amount, is the interest rate that is 3% higher than the cash rate target, as determined and published by the Reserve Bank of Australia, in effect on the 1<sup>st</sup> day the amount became outstanding.
- (3) Interest does not accrue on interest that becomes payable under subregulation (1).

**16. Recovery of unpaid amounts**

- (1) The CEO may recover a fee that is unpaid in whole or in part, together with any interest payable, from the proponent, as a debt in a court of competent jurisdiction.
- (2) The CEO may, in a certificate —
  - (a) specify an amount as being all or part of a particular fee;
  - (b) specify an amount as being interest payable under regulation 15(1);
  - (c) specify a proponent as being liable to pay the specified amounts;
  - (d) state that the specified amounts are unpaid.
- (3) In proceedings under subregulation (1), a certificate is, without proof of the appointment of the CEO or of the authenticity of the signature, sufficient evidence of the matters specified or stated.

***Environmental Protection (Cost Recovery) Regulations 2021*****Part 2** Fees for Part IV of Act**Division 5** Transitional provisions**r. 17**

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**Division 5 — Transitional provisions****17. Term used**

In this Division —

***commencement day*** means 1 January 2022.

**18. Pre-commencement circumstances, costs and fees**

- (1) A fee under these regulations is not payable in relation to —
  - (a) a circumstance set out in the Table to regulation 4 that occurs before commencement day; or
  - (b) an external cost of the Department incurred before commencement day.
- (2) The fee in item 5 of the Table to regulation 4 does not apply in relation to a proposal in relation to which a decision to assess was made before commencement day.
- (3) The fee in item 12 of the Table to regulation 4 does not apply in relation to an inquiry the request for which was made before commencement day.
- (4) Subregulations (2) and (3) do not limit the generality of subregulation (1).

**19. Assessments commenced, but not completed, pre-commencement**

- (1) This regulation applies in relation to a proposal if, before commencement day —
  - (a) a decision to assess the proposal was made; and
  - (b) a report on the outcome of the assessment of the proposal had not been given to the Minister; and
  - (c) the assessment of the proposal was not terminated.

***Environmental Protection (Cost Recovery) Regulations 2021***

Fees for Part IV of Act

**Part 2**

Review of fees

**Division 6****r. 20**

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- (2) If a report on the outcome of the assessment of the proposal is given to the Minister, the proponent is liable to pay a fee of \$48 000.
  - (3) Subject to subregulation (4), the fee is payable within the period of 28 days after the day on which the proponent is given an invoice by the CEO for the fee.
  - (4) A fee that would otherwise be payable under subregulation (3) before 1 July 2022, is payable on 1 July 2022.

**20. Application of regulation 11**

Regulation 11 does not apply in relation to a financial year that commences before 1 July 2023.

**Division 6 — Review of fees****21. Review of fees under Division 1**

- (1) The CEO must, as soon as practicable after 1 July 2023, review the fees under Division 1.
- (2) The review must address the extent that the fees under Divisions 1 and 2 recover the costs incurred by the Department in receiving and assessing proposals.
- (3) The CEO must prepare a report based on the review and give the report to the Minister as soon as practicable after it is prepared.

V.MOLAN, Clerk of the Executive Council.

**Environmental Protection (Cost Recovery) Regulations 2021****Part 2** Fees for Part IV of Act**Division 6** Review of fees**r. 21****Defined terms***[This is a list of terms defined and the provisions where they are defined.**The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
accredited assessment process .....	3
agency .....	3
assessment fee .....	8(2)
commencement day .....	17
Commonwealth Minister .....	3
compliance priority rating .....	3, 12(1)
costs .....	3
Departmental staff.....	3
Department's website.....	3
ecological community .....	3
EMP .....	3
environmental offset .....	3
EPBC Act.....	3
external costs.....	3
fee .....	3
indirect costs .....	3
prescribed rate .....	15(2)
scoping document .....	3
species .....	3

# **Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021**

**SL 2021/215**

Made by the Governor in Executive Council.

## **Part 1 — Preliminary**

### **1. Citation**

These regulations are the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021*.

### **2. Commencement**

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) Part 2 — on 1 January 2022;
- (c) Part 3 — on 1 July 2022;
- (d) the rest of the regulations — on 1 October 2022.

## Part 2 — Amendments commencing on 1 January 2022

### Division 1 — *Environmental Protection (Plastic Bags) Regulations 2018* amended

#### 3. Regulations amended

This Division amends the *Environmental Protection (Plastic Bags) Regulations 2018*.

#### 4. Regulation 1 amended

In regulation 1 delete “(Plastic Bags)” and insert:

*(Prohibited Plastics)*

#### 5. Regulation 3 amended

In regulation 3 insert in alphabetical order:

**accreditation authority** means the National Association of Testing Authorities Australia (ACN 004 379 748) or another body (whether in Australia or another country) that the CEO considers performs substantially equivalent accreditation functions;

**AS 4736-2006** means Australian Standard 4736-2006 *Biodegradable plastics - Biodegradable plastics suitable for composting and other microbial treatment* published by Standards Australia, as in effect from time to time;

**AS 5810-2010** means Australian Standard 5810-2010 *Biodegradable plastics - Biodegradable plastics suitable for home composting* published by Standards Australia, as in effect from time to time;

**bowl** includes a container that —

- (a) is designed to contain food; and
- (b) has a round rim and a flat base; and
- (c) tapers towards the base; and
- (d) holds at least 1 serve of food;

**cup** does not include a lid for a cup;

**cutlery** —

- (a) means utensils used for eating food; and
- (b) includes knives, forks, spoons, chopsticks, splayds and sporks;

***disposable plastic item*** means an item made wholly or partly out of plastic if —

- (a) the item is designed to be disposed of after a single use or several uses; or
- (b) the design and construction of the item is not sufficiently durable to enable the item to be kept and reused on an ongoing basis;

***food container*** —

- (a) means a container (with or without a lid) that is designed to contain food; but
- (b) does not include a cup or bowl;

***plastic*** —

- (a) means a material made from or comprising organic polymers of plant or fossil fuel origin; and
- (b) includes expanded polystyrene;

***prescribed drinking straw*** means a drinking straw that is a disposable plastic item;

***prescribed plastic item*** has the meaning given in regulation 3A;

## **6. Regulation 3A inserted**

At the end of Part 1 insert:

### **3A. Prescribed plastic item**

- (1) A disposable plastic item is a ***prescribed plastic item*** if it is any of the following —
  - (a) an item of cutlery;
  - (b) a drink stirrer;
  - (c) a plate;
  - (d) a food container (made from plastic that is not expanded polystyrene) without a lid;
  - (e) a food container made from expanded polystyrene;
  - (f) a lid made from expanded polystyrene for a food container;
  - (g) a tray made from expanded polystyrene;
  - (h) a bowl without a lid.

- (2) Without limiting subregulation (1), ***prescribed plastic item*** includes an item referred to in that subregulation that is —
  - (a) made wholly or partly of degradable, oxo-degradable, biodegradable or compostable plastic; or
  - (b) made from plastic-laminated paper or plastic-laminated cardboard.
- (3) Despite subregulations (1) and (2), a disposable plastic item that is any of the following is not a ***prescribed plastic item*** —
  - (a) a reusable cooler box made from expanded polystyrene;
  - (b) a lid made from expanded polystyrene for a reusable cooler box;
  - (c) a food container or bowl that is made from paperboard and certified as biodegradable.
- (4) For the purposes of subregulation (3)(c), an item is ***certified as biodegradable*** if —
  - (a) a person accredited by an accreditation authority has issued a certificate verifying that the item complies with AS 4736-2006 or AS 5810-2010; and
  - (b) the certificate's period of validity has not expired.

## 7. Regulation 6 inserted

At the end of Part 2 insert:

### 6. Reference to prescribed plastic bag before commencement of *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 Pt. 3*

In the period beginning on 1 January 2022 and ending on 30 June 2022, a reference in regulation 5 to a prescribed plastic bag includes a reference to a bag that will be a prescribed plastic bag for the purposes of these regulations immediately after the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 Part 3* comes into operation.



**8. Part 3 replaced**

Delete Part 3 and insert:

**Part 3 — Offence relating to plastic items**

**7. Offence to give false or misleading information about prescribed plastic item or prescribed drinking straw**

A person who supplies or manufactures prescribed plastic items or prescribed drinking straws must not give any information that the person knows is false or misleading to another person about —

- (a) the composition of a prescribed plastic item or prescribed drinking straw; or
- (b) whether or not a plastic item is a prescribed plastic item.

Penalty: a fine of \$5 000.

**8. Reference to prescribed plastic item before commencement of *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021* Pt. 4**

In the period beginning on 1 January 2022 and ending on 30 June 2022, a reference in regulation 7 to a prescribed plastic item includes a reference to an item that will be a prescribed plastic item for the purposes of these regulations immediately after the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021* Part 4 comes into operation.

**Division 2 — *Environmental Protection Regulations 1987***  
**amended**

**9. Regulations amended**

This Division amends the *Environmental Protection Regulations 1987*.

**10. Schedule 6 amended**

In Schedule 6 delete:

*Environmental Protection  
(Plastic Bags)  
Regulations 2018*

1.	regulation 4	250	500
2.	regulation 5	250	500

and insert:

*Environmental Protection  
(Prohibited Plastics)  
Regulations 2018*

1.	regulation 4	250	500
2.	regulation 5	250	500
3.	regulation 7	250	500

## **Part 3 — Amendments commencing on 1 July 2022**

### **Division 1 — *Environmental Protection (Prohibited Plastics) Regulations 2018* amended**

#### **11. Regulations amended**

This Division amends the *Environmental Protection (Prohibited Plastics) Regulations 2018*.

#### **12. Regulation 1 amended**

In regulation 1 delete “(*Prohibited Plastics*)” and insert:

*(Prohibited Plastics and Balloons)*

#### **13. Regulation 3 amended**

- (1) In regulation 3 delete the definitions of:

*medical care provider*

*prescribed plastic bag*

- (2) In regulation 3 insert in alphabetical order:

*adult* means a person who has reached 18 years of age;

*authorised business or undertaking* means —

- (a) a pharmacy the premises of which are registered under the *Pharmacy Act 2010* section 39(1); or
- (b) a business that supplies products used for medical or dental care; or
- (c) a local government customer service centre; or
- (d) a library or visitor information centre operated by a local government; or
- (e) a charitable organisation licensed under the *Charitable Collections Act 1946* section 11(3);

***care facility*** means —

- (a) a private hospital as defined in the *Private Hospitals and Health Services Act 1927* section 2(1); or
- (b) a public hospital as defined in the *Health Services Act 2016* section 8(6); or
- (c) a facility at which residential care (as defined in the *Aged Care Act 1997* (Commonwealth) section 41-3) is provided; or
- (d) a specialist disability accommodation dwelling enrolled under the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* (Commonwealth) Part 3; or
- (e) a medical or dental clinic; or
- (f) a school as defined in the *School Education Act 1999* section 4; or
- (g) a place at which community health services are provided; or
- (h) a facility at which disability support, palliative care, respite care or rehabilitation services are provided;

***community health service*** means —

- (a) any residential medical, paramedical, nursing or palliative service; or
- (b) any service relating to, or associated with, the provision of a service referred to in paragraph (a);

***conduct a business or undertaking*** has a meaning affected by regulation 3C;

***Department's website*** means a website maintained by or on behalf of the Department;

***medical care provider*** means —

- (a) an individual who practises any of the following health professions as defined in the *Health Practitioner Regulation National Law (Western Australia)* section 5 —
  - (i) Aboriginal and Torres Strait Islander health practice;
  - (ii) dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
  - (iii) medical;
  - (iv) medical radiation practice;
  - (v) midwifery;

- (vi) nursing;
- (vii) occupational therapy;
- (viii) paramedicine;
- (ix) physiotherapy;

or

- (b) a speech pathologist;

***pre-packaged food or drink product*** means a food or drink product that —

- (a) arrives at the premises from which it is to be supplied to a consumer in a container or packaging in, or by which, the food or drink is wholly enclosed, whether or not it is also in an outer container or packaging that contains multiple units of the food or drink; and
- (b) is not designed to be removed from its container or packaging, other than any outer container or packaging, before it is supplied to the consumer;

***prescribed plastic bag*** has the meaning given in regulation 3B;

#### **14. Regulations 3B to 3D inserted**

At the end of Part 1 insert:

##### **3B. Prescribed plastic bag**

- (1) A ***prescribed plastic bag*** is a carry bag with handles that is made wholly or partly from plastic and is designed to convey goods purchased from a retailer.
- (2) Without limiting subregulation (1), ***prescribed plastic bag*** includes a bag referred to in that subregulation that is —
  - (a) made wholly or partly of degradable, oxo-degradable, biodegradable or compostable plastic; or
  - (b) made from plastic-laminated paper or plastic-laminated cardboard.

- (3) Despite subregulations (1) and (2), ***prescribed plastic bag*** does not include —
- (a) a barrier bag; or
  - (b) a bag that is, or is an integral part of, the packaging in which goods are sealed for sale; or
  - (c) a shopping bag that is made from 1 or more of the following fabrics (whether or not mixed with a fabric that is not made from plastic) —
    - (i) woven polypropylene (whether or not it is insulated for the purpose of keeping items cold);
    - (ii) nylon;
    - (iii) recycled polyethylene terephthalate;or
  - (d) a shopping bag that is made from non-woven polypropylene (whether or not mixed with a fabric that is not made from plastic) if —
    - (i) the bag has sewn, rather than heat-welded, seams; and
    - (ii) the fabric has a minimum weight of 90 grams per square metre measured as a single layer of fabric.

**3C. Conducting business or undertaking**

Without limitation, a person ***conducts a business or undertaking*** —

- (a) whether the person conducts the business or undertaking alone or with others; and
- (b) whether or not the business or undertaking is conducted for profit or gain.

**3D. Regulations apply to supplies that occur wholly in the State**

These regulations apply to the supply of a prescribed plastic bag, prescribed plastic item or prescribed drinking straw only if both the supplier and the person supplied are in the State.

**15. Part 3 replaced**

Delete Part 3 and insert:

**Part 3 — Offences relating to plastic items**

**Division 1 — Prescribed plastic items**

**7. Offence to supply prescribed plastic item**

- (1) A person must not, in the course of conducting a business or undertaking, supply a prescribed plastic item.

Penalty for this subregulation: a fine of \$5 000.

- (2) Subregulation (1) does not apply to the supply of a prescribed plastic item if the item —
- (a) forms part of, is attached to, or is inside the sealed packaging of, a pre-packaged food or drink product; or
  - (b) is a tray made from expanded polystyrene that is used solely as packaging for raw meat or seafood.

Note for this subregulation:

The following are examples for paragraph (a):

- (a) a spoon attached to, or sealed inside, a pre-packaged yoghurt container;
  - (b) a fork attached to, or sealed inside, a pre-packaged instant noodle packet;
  - (c) a bowl that forms part of a pre-packaged instant noodle packet;
  - (d) a plate sealed inside a pre-packaged frozen meal.
- (3) Subregulation (1) does not apply to the supply of a prescribed plastic item in connection with the service or consumption of food or drink on an aircraft.
- (4) Subregulation (1) does not apply to the wholesale supply of a prescribed plastic item if the wholesale supplier believes on reasonable grounds that the person to whom the item is supplied by the wholesale supplier, or another person to whom the item is subsequently to be supplied, will use the item —
- (a) to prepare a pre-packaged food or drink product; or
  - (b) in the case of a prescribed plastic item that is a tray made from expanded polystyrene — as packaging for raw meat or seafood; or

- (c) in the case of a prescribed plastic item that is a bowl without a lid or a food container (made from plastic other than expanded polystyrene) without a lid — in conjunction with a lid; or
- (d) in connection with the service or consumption of food or drink on an aircraft.

## **Division 2 — Prescribed drinking straws**

### **8. Offence to supply prescribed drinking straw**

- (1) A person must not, in the course of conducting a business or undertaking, supply a prescribed drinking straw.

Penalty for this subregulation: a fine of \$5 000.

- (2) Subregulation (1) does not apply if the supply is permitted under regulation 9, 10, 11, 12, 13, 14 or 15.

### **9. Permitted supply: straw supplied as part of pre-packaged food or drink product**

A person may supply a prescribed drinking straw if the straw forms part of, is attached to, or is inside the sealed packaging of, a pre-packaged food or drink product.

Example for this regulation:

A drinking straw attached to a juice box.

### **10. Permitted supply: straw supplied by medical care provider**

A medical care provider may supply a prescribed drinking straw (either as a single straw or as part of a pack) in the course of conducting their practice as a medical care provider.

### **11. Permitted supply: straw supplied on aircraft**

A person may supply a single prescribed drinking straw to a person if the supply occurs in connection with the service or consumption of food or drink on an aircraft.



**12. Permitted supply: straw supplied at care facility**

- (1) A person (the *supplier*) may supply a prescribed drinking straw (either as a single straw or as part of a pack) to a person being cared for at a care facility if —
  - (a) before the supply, the straw or pack of straws is not kept where it is generally available to be taken by persons at the care facility; and
  - (b) either —
    - (i) the person being cared for has requested the straw or pack of straws; or
    - (ii) the supplier reasonably believes that the straw or pack of straws is required for medical, disability or therapeutic purposes.
- (2) For the purposes of subregulation (1), there is no requirement for the supplier to request or obtain any information or evidence in relation to any medical, disability or therapeutic purposes for which the straw or pack of straws is required.

**13. Permitted supply: straw supplied on request with food or drink**

A person may supply a single prescribed drinking straw to a person in the course of conducting a business or undertaking (other than a retail business) as part of which food or drink is supplied if —

- (a) before the supply, the straw is not kept on display or where it is generally available to be taken by persons at the place where the supply occurs; and
- (b) the straw is supplied —
  - (i) at the request of a person; and
  - (ii) for use with food or drink.

**14. Permitted supply: pack of straws supplied by authorised business or undertaking**

- (1) A person (the *supplier*) may supply a pack of prescribed drinking straws to a person in the course of conducting an authorised business or undertaking if —
  - (a) before the supply, the pack of straws is not kept on display or where it is generally available to be taken by persons at the place where the supply occurs; and
  - (b) the person requests the pack of straws; and
  - (c) either —
    - (i) the supplier communicates to the person that prescribed drinking straws can only be supplied for medical, disability or therapeutic purposes; or
    - (ii) the person states that the pack of straws is required for medical, disability or therapeutic purposes.
- (2) For the purposes of subregulation (1), there is no requirement for the supplier to request or obtain any information or evidence in relation to any medical, disability or therapeutic purposes for which the pack of straws is required.

**15. Permitted supply: straw supplied on wholesale basis**

A person (the *wholesale supplier*) may supply a prescribed drinking straw on a wholesale basis if the wholesale supplier believes on reasonable grounds that the person to whom the straw is supplied by the wholesale supplier, or another person to whom the straw is subsequently to be supplied —

- (a) will use the straw to prepare a pre-packaged food or drink product; or
- (b) will use the straw in connection with the service or consumption of food or drink on an aircraft; or
- (c) is a medical care provider; or
- (d) conducts, or is involved in conducting, a business or undertaking that is —
  - (i) a care facility; or
  - (ii) a business or undertaking (other than a retail business) as part of which food or drink is supplied to persons; or
  - (iii) an authorised business or undertaking.

### **Division 3 — General**

#### **16. CEO may grant exemption**

- (1) If the CEO considers that it is reasonably necessary to do so, the CEO may, by notice published on the Department's website, exempt a person or class of persons from regulation 7(1) in relation to —
  - (a) all supplies of prescribed plastic items; or
  - (b) supplies of prescribed plastic items of specified kinds, or in specified circumstances, or both.
- (2) If the CEO considers that it is reasonably necessary to do so, the CEO may, by notice published on the Department's website, exempt a person or class of persons from regulation 8(1) in relation to —
  - (a) all supplies of prescribed drinking straws; or
  - (b) supplies of prescribed drinking straws of specified kinds, or in specified circumstances, or both.
- (3) The CEO may grant an exemption under subregulation (1) or (2) subject to conditions specified in the notice.
- (4) If the CEO grants an exemption under subregulation (1) or (2), the CEO must specify in the notice the period for which the exemption applies.
- (5) The CEO may, by notice published on the Department's website, revoke or vary an exemption granted under subregulation (1) or (2).

#### **17. Application for exemption**

- (1) A person may apply to the CEO for an exemption under regulation 16(1) or (2).
- (2) Before determining the application, the CEO may require the applicant to provide any further information the CEO requires in any particular case.

**18. Effect of exemption**

- (1) Regulation 7(1) does not apply to —
  - (a) the supply of a prescribed plastic item by a person if an exemption under regulation 16(1) applies to the person in relation to the supply; or
  - (b) the wholesale supply of a prescribed plastic item if the wholesale supplier believes on reasonable grounds that an exemption under regulation 16(1) applies to any of the following persons in relation to the supply of prescribed plastic items of that kind —
    - (i) the person to whom the item is supplied by the wholesale supplier;
    - (ii) another person to whom the item is subsequently to be supplied.
- (2) Regulation 8(1) does not apply to —
  - (a) the supply of a prescribed drinking straw by a person if an exemption under regulation 16(2) applies to the person in relation to the supply; or
  - (b) the wholesale supply of a prescribed drinking straw if the wholesale supplier believes on reasonable grounds that an exemption under regulation 16(2) applies to any of the following persons in relation to the supply of prescribed drinking straws of that kind —
    - (i) the person to whom the straw is supplied by the wholesale supplier;
    - (ii) another person to whom the straw is subsequently to be supplied.

**19. Offence to give false or misleading information about prescribed plastic item or prescribed drinking straw**

A person who supplies or manufactures prescribed plastic items or prescribed drinking straws must not give any information that the person knows is false or misleading to another person about —

- (a) the composition of a prescribed plastic item or prescribed drinking straw; or
- (b) whether or not a plastic item is a prescribed plastic item.

Penalty: a fine of \$5 000.

**20. Reference to prescribed plastic item before commencement of *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 Pt. 4***

In the period beginning on 1 July 2022 and ending on 30 September 2022, a reference in regulation 19 to a prescribed plastic item includes a reference to an item that will be a prescribed plastic item for the purposes of these regulations immediately after the *Environmental Protection Regulations Amendment (Prohibited Plastics and Balloons) Regulations 2021 Part 4* comes into operation.

**Part 4 — Offences relating to the release of balloons**

**21. Offences relating to release of balloons**

- (1) A person must not release, or cause or permit the release of, a balloon inflated with gas that causes it to rise in the air.

Penalty for this subregulation: a fine of \$5 000.

- (2) An adult commits an offence if a child in the adult's care releases a balloon inflated with gas that causes it to rise in the air.

Penalty for this subregulation: a fine of \$5 000.

- (3) It is a defence to a charge under subregulation (2) to prove that the adult took steps that were reasonable in the circumstances to ensure that the child did not release the balloon.

- (4) Subregulations (1) and (2) do not apply if the balloon is —

- (a) released for scientific (including meteorological) purposes; or
- (b) released inside a building or structure and does not make its way into the open air; or
- (c) a hot air balloon that is designed to —
  - (i) carry persons; or
  - (ii) be recovered after landing.

**Division 2 — *Environmental Protection Regulations 1987***  
**amended**

**16. Regulations amended**

This Division amends the *Environmental Protection Regulations 1987*.

**17. Schedule 6 amended**

In Schedule 6 delete:

*Environmental Protection  
(Prohibited Plastics)  
Regulations 2018*

1.	regulation 4	250	500
2.	regulation 5	250	500
3.	regulation 7	250	500

and insert:

*Environmental Protection  
(Prohibited Plastics and  
Balloons) Regulations 2018*

1.	regulation 4	250	500
2.	regulation 5	250	500
3.	regulation 7(1)	250	500
4.	regulation 8(1)	250	500
5.	regulation 19	250	500
6.	regulation 21(1)	250	500
7.	regulation 21(2)	250	500

## **Part 4 — Amendments commencing on 1 October 2022**

### **18. Regulations amended**

This Part amends the *Environmental Protection (Prohibited Plastics and Balloons) Regulations 2018*.

### **19. Regulation 3 amended**

In regulation 3 insert in alphabetical order:

*hot drink or soup* means a drink or soup at a temperature higher than the ambient temperature;

### **20. Regulation 3A amended**

(1) In regulation 3A(1):

(a) in paragraph (h) delete “lid.” and insert:

lid;

(b) after paragraph (h) insert:

(i) a cup.

(2) In regulation 3A(3):

(a) in paragraph (c) delete “biodegradable.” and insert:

biodegradable;

(b) after paragraph (c) insert:

(d) a cup made from expanded polystyrene.

### **21. Regulation 7 amended**

(1) In regulation 7(2):

(a) in paragraph (b) delete “seafood.” and insert:

seafood; or

(b) after paragraph (b) insert:

(c) is a cup that contains a hot drink or soup when it is supplied.

(2) After regulation 7(4) insert:

- (5) Subregulation (1) does not apply to the wholesale supply of a prescribed plastic item if the item is a cup of a kind that is suitable to be used to contain a hot drink or soup.

V.MOLAN, Clerk of the Executive Council.