

Environment Protection Authority

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

Plastic Reduction and Circular Economy Act 2021

CONSULTATION DRAFT – OFFICIAL



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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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This guidance is intended to assist suppliers assess whether a food service ware item listed under the *NSW Plastics 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 out a business – including an activity for charity, 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 charity, education, or community purposes. These prohibitions come into force in two tranches.

On 1 June 2022, the supply of lightweight plastics bags with a handle and thickness of 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
- g. the supply of all expanded polystyrene food service items, and
- h. rinse-off personal care products containing plastic microbeads.

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

Please see '[Let's Stop It and Swap It](#)' at the Department of Planning and Environment website for more information about the items listed above.

Scope

This guidance is for suppliers to assess whether an item the PRCE Act lists as prohibited is likely to be considered 'single-use' and therefore banned. It applies to straws, stirrers, cutlery (including sporks and chopsticks), bowls and plates, except where it is the subject of a specific exemption. This includes, 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 running a business
 - a business includes an activity for charity, 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.

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.

This guidance does not apply to:

- lightweight plastic bags

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

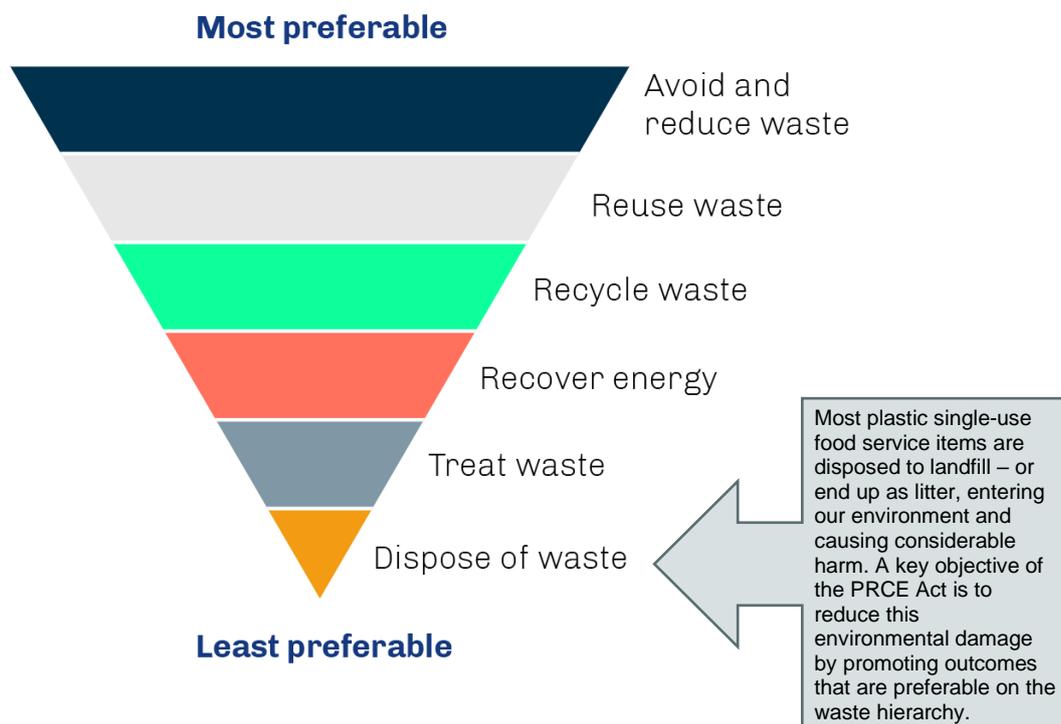
Why some plastic items are banned

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.

Waste hierarchy



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
- how the item is marketed, and
- whether the supplier has provided a warranty or equivalent representation for the practical lifespan of the item.

These key criteria are outlined below and in the flow chart in **Figure 1** on page 7.

It is important that you consider **all** criteria when assessing whether an item is likely to be single use. Meeting just one is unlikely to be sufficient to demonstrate that the item is ordinarily used more than once.

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 the item 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 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.

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.

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 or not they were free or paid for

as there is little chance of being reused again.

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.

An item is less likely to be considered single-use if it maintains its original shape, structure, function and aesthetics (e.g. not stained) when:

- lab tested to be washed **780 times**
- at a minimum temperature of 80°C
- using a dishwasher certified to Australian Standard 4674-2004

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 single-use.

3. Marketing



Items marketed as disposable or single-use are highly likely to be used in that way by consumers and would be prohibited.

The marketing of 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.

The EPA considers the supply of a plastic item is likely to be banned if they were marketed as disposable or single-use **before 29 November 2021** (the date of assent of the PRCE Act), or since then, and have not had formulation changes to enhance durability.

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.

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 in two weeks. The ones he bought from the same supplier previously now say they are reusable on the packaging. The plates are a similar price as he paid two years earlier.

When they arrive, the plates appear to be the same as those he received two years earlier. 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.

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, and the plates are still ordinarily used once before being thrown away.

4. Supplier responsibility



Items that are considered durable and reusable may carry some guarantee from the supplier about its practical lifespan.

A warranty, or equivalent representation, of **at least one year** from the date of purchase demonstrates an expectation that the item can safely be used multiple times.

The absence of such a warranty suggests the manufacturer does not expect the item will be in use a year after the date of issue.

Items that do not carry at least a one-year written warranty may be single-use items. Even if a warranty is provided, an item may be single-use if consumers ordinarily use it once.

A warranty is distinct from the automatic consumer guarantees provided for under Australian law.

Case study: Reusable food ware for children



Maria is setting up a small home-based family day care centre which will provide breakfast and lunch for children.

She needs to buy unbreakable reusable plates and bowls to provide this food service safely.

Maria wants them to last, so she buys some with a manufacturer's warranty of two years. The packaging says they are dishwasher safe on a top shelf but doesn't have any other details.

Given the items are supplied with a warranty that is for more than one year, it's likely the items are intended to be reused multiple times, and are not single-use.

Ongoing review

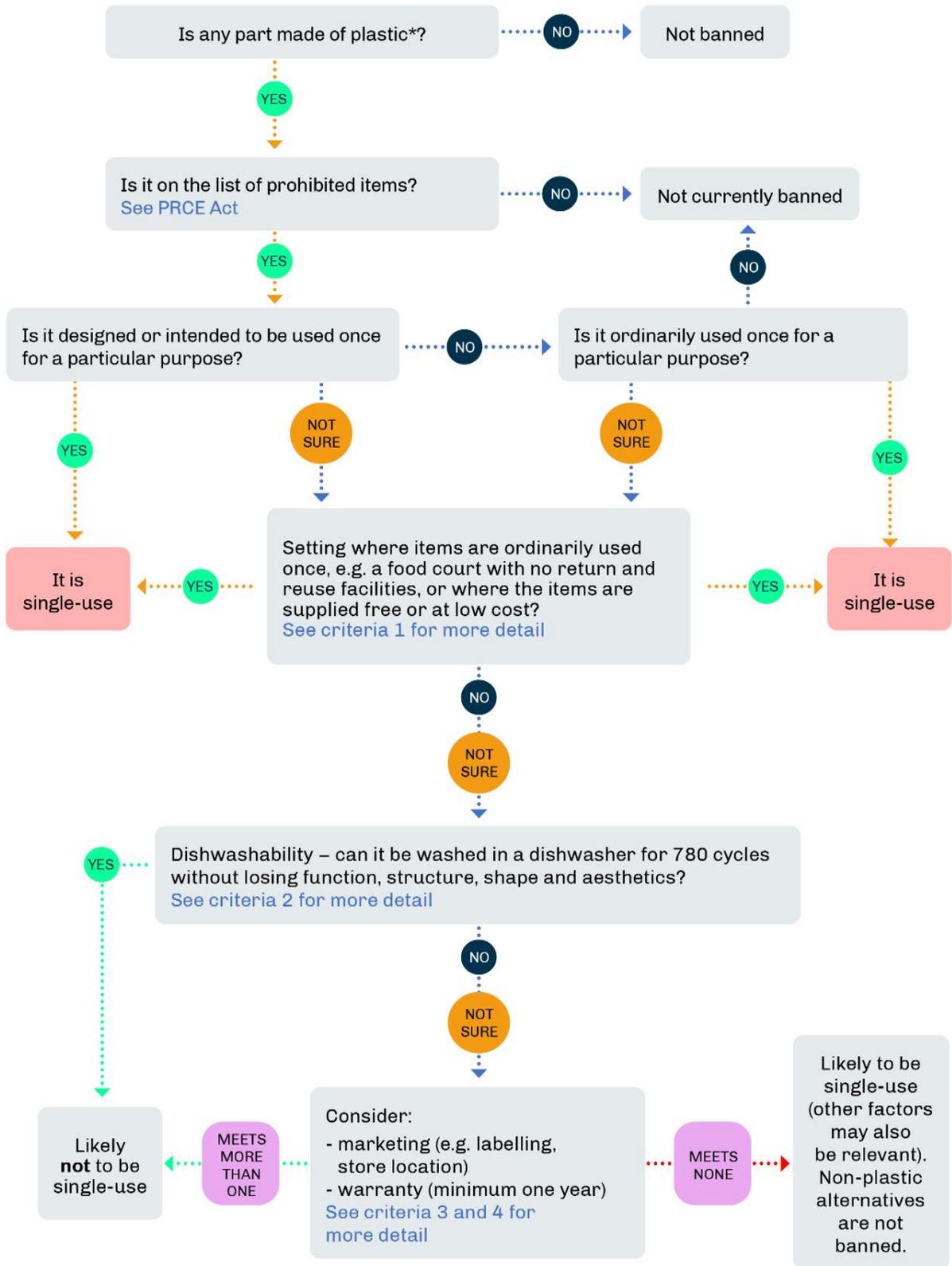
The EPA will monitor the effectiveness of the ban against the policy objectives from 1 November 2022. This assessment will draw on information from suppliers and retailers of plastic items, surveys of consumer use patterns (attitudes and behaviour change), and landfill and litter survey data.

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 1: 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.

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, consider:

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

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. California has cleaning and sanitising processes that must be conformed with, including surface temperature, cleaning solution composition and mechanical machine washing with testing to meet the washing and durability requirements having to be conducted by an accredited ISO/IEC 17025:2017 laboratory.

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 [email to be finalised]