

EXPLANATORY INFORMATION: REGULATIONS THAT IMPLEMENT EXEMPTIONS UNDER THE *SINGLE-USE AND OTHER PLASTIC PRODUCTS (WASTE AVOIDANCE) ACT 2020*

This document provides explanatory information on exemptions under the [Single-use and Other Plastic Products \(Waste Avoidance\) Act 2020](#) (the SUP Act).

The exemptions are implemented through regulations under the SUP Act - the [Single-use and Other Plastic Products \(Waste Avoidance\) Regulations 2021](#).

Summary

Exemptions under the SUP Act have been identified for the following purposes:

- [Single-use plastic drinking straws for disability or medical needs](#)
- [Pre-packed and attached products](#)
- [Single-use plastic spoons for clinical purposes](#)

Further information on each of these exemptions is provided below.

Commencement

The SUP Act commenced on 1 March 2021.

From this date (1 March 2021), and subject to exemptions, single-use plastic drinking straws, single-use plastic cutlery and single-use plastic beverage stirrers are prohibited from sale, supply or distribution in South Australia.

From 1 March 2022, expanded polystyrene cups, bowls, plates and clamshell containers, as well as oxo-degradable plastic products, are prohibited from sale, supply or distribution in South Australia. The prohibition on oxo-degradable plastic products includes the manufacture or production of these products.

Single-use plastic drinking straws

Alongside the option of not using a drinking straw to consume a beverage, a wide range of alternatives to single-use plastic drinking straws are available. However, the flexibility and other characteristics of plastic drinking straws are necessary to enable some members of the community to consume beverages and food.

The government is committed to inclusiveness and has implemented an exemption to allow single-use plastic drinking straws to be accessible to members of the community who rely on them due to disability and medical needs. The exemption is being implemented via regulations under section 16(2) of the SUP Act and allows:

1. the sale, supply or distribution of an individual single-use plastic drinking straw at any business on request, for disability or medical needs; and
2. the sale, supply or distribution of single-use plastic drinking straws (i.e. in packs) at prescribed businesses for disability or medical needs, and
3. the wholesale sale, supply or distribution of single-use plastic straws to businesses for the above purposes or direct to people for disability or medical needs.

Further information on the exemption is provided below.

1. Sale, supply and distribution of individual single-use plastic drinking straws on request

The exemption allows individual single-use plastic drinking straws to be supplied on request for disability or medical needs. For example, at food service establishments such as a café or restaurant, an individual single-use plastic drinking straw could be supplied on request to allow people with a disability or medical need to consume food and beverages, including in situations where the person may have forgotten to bring their own.

The exemption allows any business to stock single-use plastic drinking straws and supply them on request for disability or medical needs. It does not obligate businesses to stock and supply straws, and it would be an individual business' decision to maintain a supply of these products for people who request them.

The SUP Regulations outline this part of the exemption under *Regulation 5 – Exemption for single-use plastic drinking straws – sale, supply and distribution to designated person*.

The SUP Regulations refer to a **designated person** as someone who requires a single-use plastic straw due to a disability, or for medical purposes/reasons. This does not seek to define the disability or medical need, rather is an administrative way of not repeating these words throughout the Regulations.

The SUP Regulations (Regulation 5(1)) exempt the section of the SUP Act (section 7(1)) that prohibits the sale, supply or distribution of prohibited plastic products in respect of single-use plastic drinking straws if the sale, supply or distribution is an individual single-use plastic drinking straw to:

- i) a designated person or person who purports to be a designated person; or
- ii) a person acting on behalf of a designated person or a person who purports to be acting on behalf of a designated person;

The language 'or who purports to be a designated person' has been included to support the government's objective that no proof of the disability or medical need is required.

The supply of an individual single-use plastic drinking straw in these circumstances is to be 'on request' and therefore, they are to not to be on public display or freely accessible without assistance of an employee of the business. Regulation 5(1)(b) outlines this as a condition of the exemption.

To support the 'on request' part of the exemption, the SUP Regulations (Regulation 5(2)) outline that the sale, supply or distribution of a single-use plastic drinking straw is on the basis of:

- a) a statement or other indication that the person requires the straw because they are a designated person, or acting on behalf of a designated person; or
- b) that it is otherwise apparent that the straw is required for a designated person, or someone acting on behalf of a designated person.

Part a) implements the 'on request' aspect of the exemption for individual single-use plastic drinking straws. Part b) has been included for instances where it is apparent that a straw is required and does not need to be requested (e.g. certain medical and care arrangements).

The on request exemption for individual single-use plastic drinking straws maintains that no proof is required to be produced or to be sought regarding a person's disability or medical need. This is stated in Regulation 5(3) of the SUP Regulations.

Regulation 5(4) has been included to ensure that the exemption for individual single-use plastic drinking straws does not prevent someone from obtaining an additional straw, if required.

2. Sale, supply and distribution of single-use plastic drinking straws at prescribed businesses

The exemption allows the sale, supply and distribution of single-use plastic drinking straws (i.e. multiple straws, in packs) at prescribed businesses.

The government has identified the following businesses to be 'prescribed businesses', which are exempt from the prohibition on the sale, supply or distribution of single-use plastic drinking straws:

- **Pharmacy business** as per the *Health Practitioner Regulation National Law (South Australia) Act 2010*
- **Local Government council** under the *Local Government Act 1999*
- **Charitable organisation** registered under the *Australian Charities and Not-For-Profits Commission Act 2012 (Cth)*
- **Care facility** – nursing home, aged care facility, supported residential facility or other facility at which disability support, palliative care, respite care or rehabilitation services are provided
- **Medical or dental facility** – a facility at which medical or dental services (including treatment, care, research or diagnostic services) are provided

The exemption for prescribed businesses allows the sale, supply and distribution to occur. It does not obligate prescribed businesses to stock or supply plastic straws, and it would be an individual business' decision to maintain a supply of these products.

The SUP Regulations outline this part of the exemption under *Regulation 6 – Exemption for single-use plastic drinking straws – sale, supply and distribution by prescribed businesses*. Regulation 6(1) exempts the section of the SUP Act (section 7(1)) that prohibits the sale, supply or distribution of prohibited plastic products in respect of single-use plastic drinking straws if the person is a prescribed business.

The sale, supply and distribution of packs of single-use plastic drinking straws at prescribed businesses is not subject to 'on request' considerations.

The Regulation is being made under the section of the SUP Act (section 16(2)) that refers to exemptions due to a disability or medical requirement, and therefore refers to the sale, supply or distribution of single-use plastic drinking straws for the purpose of:

- a) use by designated persons; or
- b) enabling the sale, supply or distribution for use by designated persons.

To support that there is no 'on request' requirement in obtaining straws from prescribed businesses, Regulation 6(2)(a) and (b) clarifies that no evidence or verification is required to be produced or to be sought as to why the straws are being obtained.

At prescribed businesses, the sale, supply or distribution is not limited to individual straws, and there is no requirement for single-use plastic drinking straws to be stored behind counters and/or removed from public display/access. To remove any doubt, this is stated under Regulation 6(2)(c).

The exemption does not limit the sale, supply or distribution of single-use plastic straws to in-store transactions and therefore, prescribed businesses are able to sell these products online.

The government is continuing engagement with prescribed businesses to raise awareness of this part of the exemption.

3. Wholesale sale, supply and distribution of single-use plastic straws

This part of the exemption allows the sale, supply and distribution of single-use plastic straws by wholesalers and distributors for the purposes of the exemption.

The SUP Regulations outline this part of the exemption under *Regulation 7 – Exemption for single-use plastic drinking straws – sale, supply and distribution by wholesalers and distributors*.

Regulation 7(1)(a) exempts the section of the SUP Act (section 7(1)) that prohibits the sale, supply or distribution of prohibited plastic products in respect of single-use plastic drinking straws if the person is a wholesaler or distributor and they are satisfied, on reasonable grounds, that the sale, supply or distribution is to:

- i) a prescribed business; or
- ii) another person who, in the course of carrying on a business, requires the drinking straws for the purposes of sale, supply or distribution to a designated person;

The wording 'on reasonable grounds' has been included in Regulation 7(1)(a) to allow wholesalers and distributors to make a determination when selling, supplying and distributing single-use plastic drinking straws to customers for the purposes of the exemption.

Regulation 7(1)(b) allows the sale, supply or distribution of single-use plastic drinking straws from wholesalers and distributors to:

- i) a designated person or person who purports to be a designated person; or
- ii) a person acting on behalf of a designated person or a person who purports to be acting on behalf of a designated person;

This will allow people who require single-use plastic drinking straws for disability or medical needs, or people acting on their behalf, to access them direct from wholesalers or distributors.

The sale, supply and distribution of single-use plastic drinking straws from wholesalers or distributors to designated persons is subject to similar 'on request' conditions as Regulation 5. Therefore, Regulation 7(2) has been included to refer to the supply being on the basis of:

- a) a statement or other indication that the person requires the straw because they are a designated person, or acting on behalf of a designated person; or
- b) that it is otherwise apparent that the straw is required for a designated person, or someone acting on behalf of a designated person.

Similar to Regulation 5 (supply of individual single-use plastic straws), no proof is required to be produced or to be sought regarding a person's disability or medical need to enable the sale, supply or distribution of straws direct to designated persons by wholesalers and distributors. This is stated in Regulation 7(3).

Summary of exemption

The exemption to allow the sale, supply or distribution of single-use plastic drinking straws under section 16(2) of the SUP Act comprises all of the following elements:

1. Allowing (not mandating) any business to sell, supply or distribute an individual single-use plastic drinking straw on request due to disability or medical needs; and
2. Allowing (not mandating) prescribed businesses to sell, supply or distribute single-use plastic drinking straws; and
3. Allowing (not mandating) the wholesale sale, supply or distribution of single-use plastic straws for the above purposes, and on request, due to disability or medical needs.

Pre-packed / attached products

An exemption has been implemented for pre-packaged and attached products, recognising that a longer transitional period is required for the types of products included in manufacturing and packaging processes.

Examples of these products include:

- single-use plastic drinking straws attached to beverage cartons
- single-use plastic cutlery packaged within single-serve yoghurt containers
- expanded polystyrene cups and bowls comprising ready-to-eat noodles

The SUP Act (Section 6(1)) allows for products to be excluded from the definition of a prohibited plastic product via regulation.

The SUP Regulations implement this exemption through *Regulation 4 – Definition of prohibited plastic product*. It excludes the following from the definition of a prohibited plastic product:

- a) **single-use plastic drinking straws** or **single-use plastic cutlery** that form an integral part of a relevant food or beverage product (whether attached to or contained in the product) to enable or assist with consumption of the food or beverage
- b) **expanded polystyrene cups** or **expanded polystyrene bowls** that form part of the packaging of a relevant food or beverage product.

The draft SUP Regulations define **relevant food or beverage product** as:

A food or beverage product that is pre-packaged as a single-serve and is ready for

- a) immediate consumption; or
- b) consumption after cooling or heating the food or beverage

If you are unsure if a product that you sell, supply or distribute, or manufacture / produce, meets the definition of a pre-packaged or attached product, please contact sup@sa.gov.au for further information.

Single-use plastic spoons for clinical purposes

A temporary exemption has been implemented for single-use plastic spoons used for **clinical purposes** based on feedback from the healthcare sector that it requires additional time to transition to suitable alternatives. The exemption expires on 1 March 2022.

Clinicians have advised that the disposable alternatives to single-use plastic spoons are not suitable for certain clinical purposes such as administering medicine, and reusable or other disposable alternatives require assessment and testing prior to implementation.

The SUP Regulations implement this temporary exemption through *Regulation 8 – Exemption for single-use plastic spoons – medical, dental and care facilities* under Section 16(1) of the SUP Act.

The SUP Regulations (Regulation 8(1)) exempt the section of the SUP Act (section 7(1)) that prohibits the sale, supply or distribution of prohibited plastic products in respect of single-use plastic spoons if the **supply or distribution is by a medical or dental facility, or care facility**, for clinical purposes.

The definitions of 'medical or dental facility' and 'care facility' are listed in Regulation 3 of the SUP Regulations and are also used for the [single-use plastic drinking straws exemption](#).

The SUP Regulations (Regulation 8(2)) also allow the sale, supply and distribution of single-use plastic spoons by **wholesalers and distributors** to medical, dental and care facilities.

The wording 'on reasonable grounds' has been included in Regulation 8(2) to allow wholesalers and distributors to make a determination when selling, supplying and distributing single-use plastic spoons for the purposes of the exemption.

Regulation 8(3) explains that the exemption is for the purposes of the clinical care, management or treatment of a person's injury, disease, illness or other medical condition, including the clinical diagnosis, prognosis, assessment, prevention, management, treatment or palliation of the injury, disease, illness or other medical condition. This is to ensure that the exemption only applies to clinical purposes, and any single-use plastic spoons used for other purposes within a medical, dental or care facility (e.g. to serve food) still meet the definition of a prohibited plastic product.

The expiry date of the exemption, 1 March 2022, is stated at Regulation 8(4).