



New South Wales

Protection of the Environment Legislation Amendment (FOGO Recycling) Bill 2024

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Protection of the Environment Operations Act 1997* (*the Act*) to provide for mandates for the source-separated collection of food organics and garden organics (*FOGO*) waste from households and businesses, including by requiring—

- (a) supermarkets, various institutions and hospitality premises that meet specified bin capacity limits to ensure the separate collection and transport of food organics waste from 1 July 2026, and
- (b) local councils to separately collect and transport FOGO waste from households that receive a residual waste collection service from 1 July 2030, and
- (c) large supermarkets to report monthly on surplus food donations from 1 July 2026.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Protection of the Environment Operations Act 1997 No 156

Schedule 1[1] sets out examples of actions the appropriate regulatory authority may, in a prevention notice, direct certain persons to perform when there is a reasonable suspicion that an activity has been or is being carried on in an environmentally unsatisfactory manner.

Schedule 1[2] provides that, if a corporation commits an offence under proposed section 170E, 170F or 170H, a director of the corporation, or an individual involved in the management of the corporation who is in a position to influence the conduct of the corporation in relation to the offence, may commit an offence attracting executive liability.

Schedule 1[3] prescribes the maximum penalty for an individual liable for executive liability under section 169A if an offence is committed by a local council under proposed section 170E(1), (2) or (3).

Schedule 1[4] inserts proposed Chapter 5A to provide for the collection and transportation of FOGO waste and certain record-keeping obligations.

Part 5A.1 of the proposed chapter defines certain terms used in the proposed chapter. The proposed part also sets out particular areas to which the proposed chapter does not apply.

Part 5A.2 of the proposed chapter sets out the obligations a local council has for the collection and transportation of FOGO waste. The proposed part also sets out the obligations occupiers of relevant premises have for the collection and transportation of food organics waste. The proposed part provides for offences for failing to comply with these obligations. The proposed part also provides that certain authorised officers under the *Food Act 2003* may exercise the functions of an authorised officer appointed under section 187(2) for proposed section 170F.

Part 5A.3 of the proposed chapter sets out record-keeping obligations for an operator of a large supermarket in relation to food donations across a number of food categories made from the large supermarket, including recording the organisation to which the food is donated. The proposed part provides for offences for failing to comply with these obligations.

Part 5A.4 of the proposed chapter allows the Environment Protection Authority (the *EPA*) to grant an exemption under the regulations from a provision of proposed Chapter 5A.

Schedule 1[5] allows regulations to be made for the provision of information relating to the collection, storage or transportation of waste.

Schedule 1[6] contains savings and transitional provisions consequent on the enactment of the proposed Act and sets out when certain provisions take effect.

Schedule 2 Amendment of Protection of the Environment Operations (General) Regulation 2022

Schedule 2[1] updates a reference following a machinery of government change.

Schedule 2[2] inserts proposed section 15A to provide that the EPA is the appropriate regulatory authority for a matter arising under the Act, proposed section 170H.

Schedule 2[3] provides that certain offences under the Act are penalty notice offences.

Schedule 3 Amendment of Protection of the Environment Operations (Waste) Regulation 2014

Schedule 3[1] allows the EPA, if authorised by the Act or the *Protection of the Environment Operations (Waste) Regulation 2014*, to grant an exemption under clause 91 from specified provisions of the Act or the regulation.

Schedule 3[2] allows the EPA or other regulatory authority to disclose information recorded under the Act, proposed Part 5A.3 relating to food donations made from large supermarkets, or information relating to that information, by publishing it in the way it considers appropriate.



New South Wales

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This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments



New South Wales

Protection of the Environment Legislation Amendment (FOGO Recycling) Bill 2024

No. _____, 2024

A Bill for

An Act to amend the *Protection of the Environment Operations Act 1997* and regulations under the Act to provide for the source-separated collection of food organics and garden organics waste from households and businesses and the reporting of supermarket food donations.

The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with/without amendment.

Legislative Assembly

Clerk of the Legislative Assembly

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Protection of the Environment Legislation Amendment (FOGO Recycling) Act 2024*.

3

4

2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Protection of the Environment Operations Act 1997 No 156	1
		2
[1]	Section 96 Preventive action	3
	Omit “activity.” from section 96(3)(j). Insert instead—	4
	activity,	5
	(k) actions in relation to the recording of food donations within the meaning of Chapter 5A,	6
	(l) other actions that must be taken to comply with this Act, the regulations, a licence or an exemption given under this Act or the regulations.	7
		8
		9
[2]	Section 169A Liability of directors etc for offences by corporation—offences attracting executive liability generally	10
	Insert after section 169A(1)(u)—	11
	(u1) section 170E(1), (2) or (3),	12
	(u2) section 170F(1), (2) or (3),	13
	(u3) section 170H(1) or (3),	14
		15
[3]	Section 169A(2), penalty	16
	Omit the penalty. Insert instead—	17
	Maximum penalty—	18
	(a) for an offence committed against section 170E(1), (2) or (3)—an amount equal to half the maximum penalty for the offence if committed by a local council, or	19
	(b) otherwise—the maximum penalty for the executive liability offence if committed by an individual.	20
		21
		22
		23
[4]	Chapter 5A	24
	Insert after Chapter 5—	25
	Chapter 5A Food organics and garden organics waste	26
	Part 5A.1 Preliminary	27
170A	Definitions	28
	In this chapter—	29
	correctional complex means premises declared to be a correctional complex by a proclamation in force under the <i>Crimes (Administration of Sentences) Act 1999</i> , section 224.	30
	FOGO waste means—	31
	(a) food organics waste, and	32
	(b) garden organics waste.	33
	food donation means the donation of food to an organisation if—	34
	(a) the food is intended for human consumption, or	35
	(b) it is intended the food will be distributed for human consumption.	36
	food organics collection bin means a bin or other container designated for the collection and storage of food organics waste separately from other waste.	37
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		39
		40

food organics waste means food waste within the meaning of Schedule 1, clause 50(1).	1 2
garden organics collection bin means a bin or other container designated for the collection and storage of garden organics waste separately from other waste.	3 4 5
garden organics waste means garden waste within the meaning of Schedule 1, clause 50(1).	6 7
hospital has the same meaning as in the <i>Public Health Act 2010</i> but does not include a nursing home.	8 9
household —	10
(a) means residential accommodation within the meaning of the standard instrument set out in the <i>Standard Instrument (Local Environmental Plans) Order 2006</i> , but	11 12 13
(b) does not include a place of residence for which a local council does not provide a residual waste collection service.	14 15
large supermarket means a supermarket with at least 1,000m ² of gross floor area.	16 17
local council —	18
(a) means a council within the meaning of the <i>Local Government Act 1993</i> , but	19 20
(b) does not include a council prescribed by the regulations as not being a local council for the purposes of this chapter.	21 22
non-organic waste means waste that is not—	23
(a) food organics waste, or	24
(b) garden organics waste.	25
occupier , of relevant premises, means—	26
(a) the person who controls or manages the relevant premises, or	27
(b) if the relevant premises are premises where seating is provided within a common food court or food hall for the immediate consumption of food or drink purchased at the premises—the person who controls or manages the building or other place in which the common food court or food hall is located.	28 29 30 31 32
operator , of a supermarket, means the person who controls or manages the supermarket.	33 34
organics collection bin means a bin or other container designated for the collection and storage of both food organics waste and garden organics waste separately from other waste.	35 36 37
relevant premises —see section 170B.	38
residual waste means waste other than the following—	39
(a) hazardous waste,	40
(b) waste that is to be reused or recycled.	41
Note — Residual waste is general rubbish that usually goes in household bins with a red lid or the equivalent for commercial premises.	42 43
residual waste bin capacity , for relevant premises, means the total volume of all bins designated for the collection of residual waste—	44 45
(a) in or on the relevant premises, or	46
(b) available for use by the relevant premises.	47

residual waste collection service means a service provided by a local council to households within the local council's area to collect each household's residual waste on a regular basis.

supermarket means premises used for the retail sale of grocery items and foodstuffs.

Note— See also section 170C, which provides that words used in this part and in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006* have the same meaning as in the standard instrument, unless otherwise defined in this part. For example, the standard instrument defines the terms centre-based child care facility, correctional centre, educational establishment, food and drink premises, hotel or motel accommodation, registered club, residential accommodation and seniors housing.

170B Meaning of “relevant premises”—business mandate

(1) In this chapter, **relevant premises** means the following—

- (a) supermarkets,
- (b) the following premises in which food or drink is prepared or provided—
 - (i) centre-based child care facilities,
 - (ii) correctional complexes, including correctional centres,
 - (iii) educational establishments,
 - (iv) food and drink premises,
 - (v) hospitals,
 - (vi) hotel or motel accommodation,
 - (vii) premises used for a mobile catering business within the meaning of the *Food Act 2003*, Part 8, Division 3, but excluding premises at which food prepared by the mobile catering business is served,
 - (viii) registered clubs,
 - (ix) seniors housing for which the local council does not provide a regular collection service for the transportation of residual waste,
 - (x) residential accommodation that receives a regular collection service for the transportation of residual waste by a person other than a council within the meaning of the *Local Government Act 1993*,
- (c) premises where seating is provided within a common food court or food hall for the immediate consumption of food or drink purchased at the premises,
- (d) other premises prescribed by the regulations.

(2) However, **relevant premises** does not include premises prescribed by the regulations, including the following—

- (a) particular premises or a class of premises,
- (b) premises in a particular area or a class of areas,
- (c) premises in certain land use zones in the areas of particular local councils,
- (d) all premises in the areas of particular local councils.

(3) In this section—

residential accommodation has the same meaning as in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006* but does not include seniors housing.

170C	Terms have same meaning as in standard instrument	1
	A term used in this part or Schedule 5, Part 21 and in the standard instrument set out in the <i>Standard Instrument (Local Environmental Plans) Order 2006</i> has the same meaning as in the standard instrument, unless otherwise defined in this part or Schedule 5, Part 21.	2 3 4 5
170D	Application of chapter to particular areas	6
(1)	This chapter does not apply to—	7
(a)	Lord Howe Island, or	8
(b)	a part of the Western Division that is not within the area of a local council.	9 10
(2)	In this section—	11
	<i>Lord Howe Island</i> means the Island within the meaning of the <i>Lord Howe Island Act 1953</i> .	12 13
	<i>Western Division</i> has the same meaning as in the <i>Crown Land Management Act 2016</i> .	14 15
	Part 5A.2 Collection and transportation of FOGO waste— household and business mandates	16 17
	Note— This part provides for matters relating to the collection and transportation of FOGO waste. Other provisions of this Act and the regulations impose certain obligations on persons transporting waste, including, for example, section 143, which creates an offence for transporting waste to a place that cannot lawfully be used as a waste facility for that waste.	18 19 20 21
170E	Collection and transportation of FOGO waste—household mandate	22
(1)	A local council must provide each household in the local council’s area with—	23
(a)	an organics collection bin or bins of sufficient size to hold the average amount of food organics waste and garden organics waste generated on site by a household of that type, or	24 25 26
(b)	both a food organics collection bin or bins and a garden organics collection bin or bins of sufficient size to hold the average amount of food organics waste and garden organics waste generated on site by a household of that type.	27 28 29 30
	Maximum penalty—\$500,000 and, for each day the offence continues, \$50,000.	31 32
(2)	A local council must ensure—	33
(a)	food organics waste in food organics collection bins or organics collection bins provided for the collection of food organics waste generated by households in the local council’s area is collected for transportation away from each household at least once each week, and	34 35 36 37
(b)	garden organics waste in garden organics collection bins or organics collection bins provided for the collection of garden organics waste generated by households in the local council’s area is collected for transportation away from each household at the intervals the local council considers appropriate.	38 39 40 41 42
	Maximum penalty—\$500,000 and, for each day the offence continues, \$50,000.	43 44
(3)	A local council must ensure food organics waste and garden organics waste generated by households in the local council’s area and collected for	45 46

transportation are not mixed with non-organic waste during their transportation.

Maximum penalty—\$500,000.

Editorial note— Schedule 5, clause 77 provides that this provision applies only from 1 July 2030.

170F Collection and transportation of food organics waste from relevant premises—business mandate

- (1) An occupier of relevant premises must ensure a sufficient number of food organics collection bins or organics collection bins are provided for the collection of food organics waste generated by persons using the relevant premises in each area in which food organics waste is generated.

Maximum penalty—

- (a) for an individual—\$250,000 and, for each day the offence continues, \$25,000, or
(b) otherwise—\$500,000 and, for each day the offence continues, \$50,000.

Example— Areas in which food organics waste is generated may include kitchens, food courts, food service counters and other areas in which food products are stored or displayed.

- (2) An occupier of relevant premises must ensure food organics waste from a food organics collection bin or an organics collection bin provided for the collection of food organics waste generated by persons using the relevant premises is collected for transportation away from the relevant premises at least once each week.

Maximum penalty—

- (a) for an individual—\$250,000 and, for each day the offence continues, \$25,000, or
(b) otherwise—\$500,000 and, for each day the offence continues, \$50,000.

- (3) An occupier of relevant premises must ensure food organics waste collected from a food organics collection bin or an organics collection bin provided for the collection of food organics waste generated by persons using the relevant premises is not mixed with non-organic waste during its transportation.

Maximum penalty—

- (a) for an individual—\$250,000, or
(b) otherwise—\$500,000.

- (4) This section does not apply to relevant premises with a weekly residual waste bin capacity of less than—

- (a) 1 x 660L bin, or
(b) 3 x 240L bins, or
(c) 720L for any other combination of bins.

Editorial note— Schedule 5, clause 78 provides that subsections (1)–(3) apply only from particular dates.

170G Certain authorised officers under Food Act 2003 may exercise functions for s 170F

- (1) A person appointed by a relevant local council as an authorised officer for the *Food Act 2003* may exercise the functions of an authorised officer appointed by a local council under this Act, section 187(2).

- (2) A person mentioned in subsection (1)—

- (a) is taken to be an authorised officer appointed under section 187(2) for section 170F, and 1
2
 - (b) may exercise the functions of an authorised officer appointed by the relevant council under section 187(2) only for section 170F, and 3
4
 - (c) does not need to be provided with an identification card under section 189(1) for section 170F, and 5
6
 - (d) sufficiently complies with section 189(2) if, in exercising functions for section 170F, the person produces the person's card as an authorised officer for the purposes of the *Food Act 2003*. 7
8
9
- (3) In this section— 10
relevant local council means a local council that is an enforcement agency under the *Food Act 2003*. 11
12

Part 5A.3 Record keeping—large supermarkets 13

170H Mandatory record keeping—food donations 14

- (1) The operator of a large supermarket must keep a record of the following in relation to food donations made from the large supermarket— 15
16
- (a) the weight in kilograms of each of the following categories of food donated in each calendar month and the organisation to which the food is donated— 17
18
19
 - (i) baked goods, 20
 - (ii) meat and fish, 21
 - (iii) fruit and vegetables, 22
 - (iv) chilled food, 23
 - (v) frozen food, 24
 - (vi) non-perishable food, 25
 - (vii) another category of food prescribed by the regulations, 26
 - (b) if no food is donated in a calendar month in a category of food specified in paragraph (a)—that the amount of food donated in the calendar month for the category of food is nil. 27
28
29
- Maximum penalty— 30
- (a) for an individual—\$125,000, or 31
 - (b) otherwise—\$250,000. 32
- (2) A failure to record a food donation under subsection (1) constitutes a separate offence for each category of food to which the failure relates. 33
34
- (3) The operator must— 35
- (a) make the record in the form and way approved by the EPA, and 36
 - (b) make the record by the end of the calendar month following the month in which the donation was made, and 37
38
 - (c) ensure the record is kept for at least 6 years following the calendar month to which the record relates, and 39
40
 - (d) if requested by an authorised officer appointed by the EPA under section 187(1)—do either of the following in the way requested by the authorised officer— 41
42
43
 - (i) make the record available for inspection, or 44
 - (ii) provide a copy of the record. 45

Maximum penalty—	1
(a) for an individual—\$125,000, or	2
(b) otherwise—\$250,000.	3
Editorial note — Schedule 5, clause 79 provides that this provision applies only from 1 July 2026.	4 5
Part 5A.4 Miscellaneous	6
170I Exemptions	7
The EPA may grant an exemption under the regulations from a provision of this chapter.	8 9
[5] Schedule 2 Regulation-making powers	10
Insert “collection, storage or” before “transportation” in clause 5(5).	11
[6] Schedule 5 Savings, transitional and other provisions	12
Insert after Part 20—	13
Part 21 Provisions consequent on enactment of Protection of the Environment Legislation Amendment (FOGO Recycling) Act 2024	14 15 16
77 Collection and transportation of FOGO waste—household mandate	17
A local council is not required to comply with section 170E, and an offence is not committed against section 170E for a failure to comply with the section, before 1 July 2030.	18 19 20
78 Collection and transportation of food organics waste from relevant premises—business mandate	21 22
(1) An occupier of relevant premises, other than residential accommodation, is not required to comply with section 170F, and does not commit an offence against section 170F for a failure to comply with the section, before—	23 24 25
(a) 1 July 2026, if the weekly residual waste bin capacity for the relevant premises is equal to or more than—	26 27
(i) 6 x 660L bins, or	28
(ii) 16 x 240L bins, or	29
(iii) 3,960L for any other combination of bins, or	30
(b) 1 July 2028, if the weekly residual waste bin capacity for the relevant premises is equal to or more than—	31 32
(i) 3 x 660L bins, or	33
(ii) 8 x 240L bins, or	34
(iii) 1,980L for any other combination of bins, or	35
(c) 1 July 2030, if the weekly residual waste bin capacity for the relevant premises is equal to or more than—	36 37
(i) 1 x 660L bin, or	38
(ii) 3 x 240L bins, or	39
(iii) 720L for any other combination of bins.	40

- (2) An occupier of relevant premises that are residential accommodation is not required to comply with section 170F, and does not commit an offence against section 170F for a failure to comply with the section, before 1 July 2030 if the weekly residual waste bin capacity for the relevant premises is equal to or more than—
- (a) 1 x 660L bin, or
 - (b) 3 x 240L bins, or
 - (c) 720L for any other combination of bins.
- (3) In this clause—
residential accommodation has the same meaning as in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006* but does not include seniors housing.
- 79 Food donation reporting requirements**
- An operator of a large supermarket is not required to comply with section 170H, and does not commit an offence against section 170H for a failure to comply with the section, before 1 July 2026.

Schedule 2 Amendment of Protection of the Environment Operations (General) Regulation 2022

[1] Section 7, heading

Omit “**Planning Secretary**”. Insert instead “**Secretary of DCCEEW**”.

[2] Section 15A

Insert after section 15—

15A EPA—reporting about food donations

The EPA is declared to be the appropriate regulatory authority for a matter arising under the Act, section 170H.

[3] Schedule 6 Penalty notice offences

Insert in appropriate order in the table under the heading **Protection of the Environment Operations Act 1997**—

Section 170E(1)	2	For a first offence—\$1,000 For a second or subsequent offence—\$1,500	For a first offence—\$5,000 For a second or subsequent offence—\$7,500
Section 170E(2)	2	For a first offence—\$1,000 For a second or subsequent offence—\$1,500	For a first offence—\$5,000 For a second or subsequent offence—\$7,500
Section 170E(3)	2	For a first offence—\$1,000 For a second or subsequent offence—\$1,500	For a first offence—\$5,000 For a second or subsequent offence—\$7,500
Section 170F(1)	1, 2	For a first offence—\$1,000 For a second or subsequent offence—\$1,500	For a first offence—\$5,000 For a second or subsequent offence—\$7,500
Section 170F(2)	1, 2	For a first offence—\$1,000 For a second or subsequent offence—\$1,500	For a first offence—\$5,000 For a second or subsequent offence—\$7,500
Section 170F(3)	1, 2	For a first offence—\$1,000 For a second or subsequent offence—\$1,500	For a first offence—\$5,000 For a second or subsequent offence—\$7,500
Section 170H(1)	2	For a first offence—\$500 For a second or subsequent offence—\$750	For a first offence—\$2,500 For a second or subsequent offence—\$3,750
Section 170H(3)	2	For a first offence—\$500 For a second or subsequent offence—\$750	For a first offence—\$2,500 For a second or subsequent offence—\$3,750

Schedule 3	Amendment of Protection of the Environment Operations (Waste) Regulation 2014	1
		2
[1] Clause 91	General provisions relating to exemptions	3
	Insert “the Act or” after “authorised to do so by” in clause 91(1).	4
[2] Clause 114B		5
	Insert after clause 114A—	6
114B	Disclosure of information—the Act, s 319	7
	For the Act, section 319(3)(d), the following information is prescribed—	8
	(a) information recorded under the Act, Part 5A.3,	9
	(b) information relating to information referred to in paragraph (a).	10
	Example for paragraph (b) — the name of the operator of a large supermarket	11
	or the location of a large supermarket, whether by reference to a region or	12
	otherwise	13