Food and Garden Organics mandates

Proposal paper
Acknowledgement of Country

The NSW Environment Protection Authority acknowledges the Traditional Custodians of the land on which we live and work, honours the ancestors and the Elders both past and present and extends that respect to all Aboriginal people.

We recognise Aboriginal peoples’ spiritual and cultural connection and inherent right to protect the land, waters, skies and natural resources of NSW. This connection goes deep and has since the Dreaming.

We also acknowledge our Aboriginal and Torres Strait Islander employees who are an integral part of our diverse workforce and recognise the knowledge embedded forever in Aboriginal and Torres Strait Islander custodianship of Country and culture.
Every year, households in NSW generate 1.2 million tonnes of food and garden waste and business over 500,000 tonnes. This waste emits harmful greenhouse gases when it breaks down in landfill. Halving organics, including food waste, going to landfill are key priorities for the NSW Government to achieve net zero emissions from organics in landfill from 2030. One of the most effective ways of achieving this is by separating food organics and garden organics (FOGO) at the source to create a clean organics waste stream for recycling into compost.

The NSW Government is proposing to mandate source-separated FOGO collection services through legislation. The mandates will apply to businesses (large supermarkets, the hospitality industry and institutions) from 1 July 2025 and to households from 1 July 2030. The NSW Government is also intending to mandate the reporting of surplus food donations by supermarkets to food charities.

This paper sets out details of the proposed mandates so that stakeholders can understand what their obligations and responsibilities will be.

We want your feedback on the proposals so we can refine these before introducing the legislation into Parliament.
Why mandate FOGO collection?

Under the *Waste and Sustainable Materials Strategy 2041*, the NSW Government has set out goals of halving organics (including food waste) going to landfill and achieving net zero emissions from organics in landfill by 2030.

To help achieve this, NSW proposes to mandate food organics (FO) collections for certain businesses from 1 July 2025 and food and garden organics (FOGO) for households from 1 July 2030. It will also mandate reporting requirements for large supermarkets of surplus food donations to food charities. Mandating FO or FOGO collection will provide certainty to the waste industry, businesses and councils. It will allow for investment in infrastructure such as processing facilities and transfer stations.

The mandates will need a legislative amendment to the *Protection of the Environment Operations Act 1997*. This paper provides details of the proposed mandates, and the EPA is seeking your comments to help it in refining these.

**Business mandate**

It is proposed that the business mandate will apply to the following premises:

- Large supermarkets (premises that retail grocery foodstuffs with a gross floor area of at least 1,000m²)
- Institutions being:
  - correctional complexes/centres
  - centre-based childcare facilities
  - educational establishments
  - hospitals as defined under the *Public Health Act 2010*
  - seniors’ housing for which the council does not provide a regular collection service for the transport of residual waste.
- The hospitality industry being:
  - food and drink premises
  - hotel or motel accommodation
  - registered clubs
  - mobile catering business premises excluding premises at which the food is served
    - premises with seating in a common food court for the consumption of food or drink bought at the premise.

Start dates will be staggered based on residual bin capacity, so the largest waste generators will transition first:

- Premises with ≥3,800L of residual waste bin capacity to start on 1 July 2025
  - Premises with ≥1,900L of residual waste bin capacity to start on 1 July 2027
  - Premises with ≥660L of residual waste bin capacity to start on 1 July 2029.

For building complexes, the requirements will be placed on whoever is in charge of management and control of residual waste collection services (e.g. building complex owner, not individual tenants).

The requirements that will need to be met include:

- enough organics collection bins are provided for the collection of food waste
- organic and non-organic waste must not be mixed during transportation.
The legislation will set out offences for non-compliance and penalties, including:

- maximum court penalties
- executive liability
- fines for corporations and for individuals to deter non-compliance, with added penalties for continuing offences – these are consistent with similar existing penalties.

Local councils will be the appropriate authorities to monitor and enforce compliance with the business mandate, unless exemptions apply under section 6(2) of the *Protection of the Environment Operations Act 1997* (e.g. the EPA would be the appropriate regulatory authority for activities carried on by the State or a public authority).

It is proposed that the EPA may grant part or full exemptions from the business mandate on a discretionary basis.

**Household mandate**

It is proposed that the household mandate will start on 1 July 2030 and apply as follows:

- councils will have to make sure all relevant residential accommodation in their local government area is provided with enough organics collection bins for food waste and garden waste generated by residents in that accommodation
- organic waste collected must not be mixed with other waste during its transportation.

It is proposed that it will apply to all local government areas within NSW (i.e. it would apply to all councils across NSW but would not apply to Lord Howe Island or the Unincorporated Area of NSW).

Other options being considered are:

- the requirement applies state-wide but exemptions are provided for towns below a certain population size and density, and/or a certain distance from processing facilities in the non-regulated area
- whether the requirement should be restricted to the Metropolitan Levy Area and the Regional Levy Area (Sydney metropolitan area, the Illawarra and Hunter regions, the central and north coast local government areas to the Queensland border as well as the Blue Mountains, Wingecarribee and Wollondilly local government areas).

There will be court imposed maximum penalties and fines for councils to deter non-compliance with added penalties for continuing offences.

It is proposed that the EPA will have discretion to grant exemptions from the mandates whether generally or in specified circumstances and whether from the entire mandate or certain parts of it.

The EPA will be the appropriate regulatory authority for enforcing compliance by councils.

**Food donation reporting mandate**

The requirement to report on surplus food donations to food charities will apply to large supermarkets (premises that retail grocery foodstuffs with gross floor area of at least 1,000m²) with a start date of 1 July 2025.

Supermarkets will be required to make and keep a record of the weight (kg) of the following food donated from the business each calendar month and the organisation it was donated to:
• baked goods
• meat and fish
• fruit and vegetables
• chilled food
• frozen food
• non-perishable food.

There will be court imposed maximum penalties, executive liability and fines for corporations and individuals to deter non-compliance, with added penalties for continuing offences.

Records will have to:
• be made by the end of the month after the month in which the food was donated
• be kept for six years after it is made
• be available for inspection by, and/or provided to, an authorised officer on request.

Food donation will only include the food that is distributed for human consumption.

It is proposed that the EPA will be:
• authorised to publish the records
• have the discretion to grant exemptions
• the appropriate regulatory authority to enforce compliance with this mandate.