



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.