



NSW Environment Protection Authority
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To whom it may concern,

Food and Garden Organics mandates

Thank you for the opportunity to provide feedback on the development of *the Food and Garden Organics (FOGO) mandates proposal*. The NSW Small Business Commission (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy, and affordable dispute resolution services across NSW.

The Commission encourages further consideration and analysis of logistical factors, including the estimated compliance costs to those impacted by FOGO mandates. For example, small businesses that operate in limited spaces may struggle to find room for additional bins and storage required for separated organic waste. Others may require the installation of necessary infrastructure to prevent odour and pest issues, while some might require more frequent collection services. These requirements may prove logistically challenging and costly for some businesses and may be further complicated by other factors, such as additional by-laws and requirements for businesses operating from mixed-use strata schemes.

New regulatory requirements of this nature can have the potential to disproportionately impact small businesses due to their limited capacity to absorb compliance costs, interpret and implement requirements, and keep up with regulatory changes. There are likely to be additional cost burdens associated with the transport and disposal of organic waste or if processing facilities are located far away. The costs involved with amending or switching existing waste management contracts may also need to be considered. While the EPA may grant part or full exemptions, the specific nature and accessibility of these exemptions are unclear at this stage.

The Proposal paper also mentions mandating reporting requirements for large supermarkets regarding surplus food donations to food charities. It offers no rationale, problem, or objective to support this proposal, and the Commission encourages further work in this area. A potential concern is the flow-on effects on food charities that rely on donations. For example, if the administrative burden becomes too severe, supermarkets or others subject to the reporting requirements may be deterred from donating surplus food.

Some small businesses may be concerned about the potential for penalties for non-compliance. The Commission encourages caution, with penalties only considered for systemic or egregious breaches.

Best Practice Regulation

The Commission notes the Proposal paper presents FOGO mandates as supporting the objective of halving organic waste to landfill, as outlined in the *Waste and Sustainable Materials Strategy 2041*.

The Commission encourages broader consideration of possible alternative options, including non-regulatory alternatives, and a more precise statement of the problem to assist policy development. The NSW Guide to Better Regulation generally encourages a range of options to be considered, including the consideration of the status quo and any non-regulatory alternatives, as part of the policy development process (Principle 3 of the Better Regulation Principles refers to consideration of alternative options). A clear articulation of the problem and objectives of government action also assists in benchmarking options against their ability to achieve intended outcomes without undue impacts. Alternative options could include voluntary schemes or incentive-based approaches. Further detail of this nature would also assist to inform stakeholder feedback, including those in remote and regional areas, on the potential impacts.

While the Proposal paper is a useful first step to solicit early feedback on the proposed mandates, there can be significant barriers to obtaining small business perspectives. Many small businesses are disengaged from government consultation channels and only become aware of new requirements and raise concerns after they have been enacted. This can lead to businesses feeling unsupported if their specific needs were not contemplated during the policy design stage.

For this reason, consultation should be complemented with proactive consideration of how proposals may impact different groups of stakeholder groups, including small businesses, even if they are not anticipated by stakeholders who engage in this consultation. This could be achieved through the preparation of a 'Small Business Impact Statement' prepared as part of regulatory impact assessment.

The Commission recommends future consultation processes engage small businesses with specific details regarding the specific impacts of the mandates. Genuine consultation which allows stakeholders to influence policy design also assists in building support for initiatives and is critical to identifying options that mitigate impacts and risks.

Thank you for the opportunity to make a submission. If you require further information, please contact my Executive Officer Megan Bennett, at either megan.bennett@smallbusiness.nsw.gov.au or (02) 93728767.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission

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