

20 December 2024

Hon Penny Sharpe MP  
Minister for Climate Change  
Minister for Energy  
Minister for the Environment  
Minister for Heritage  
Leader of the Government in the Legislative Council

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Dear Penny

**RE: Comments and Issues on the FOGO Legislation**

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The Australian Sustainable Business Group (ASBG) supports the [Protection of the Environment Legislation Amendment \(FOGO Recycling\) Bill 2024](#) (FOGO Bill), especially as it is designed to extend the operational life of putrescible landfills across NSW. This lack of landfill space is acute in the Greater Sydney area, as one of its two putrescible landfills, Lucas Heights is expected to fill by 2032, with no replacement so far proposed, yet expected. ASBG also considers that 5 years is enough time for the issues with FOGO, such as odour and contamination, to be generally ironed out.

ASBG is also writing to you to provide a number of issues which should be taken into account to improve FOGO Bill and its implementation.

**Time for 'relevant premises' to comply**

ASBG also notes that Local Governments have until mid-2030 to have FOGO schemes up and running. This 5+ year time period is required to enable for the issues for FOGO to be corrected. Such issues include; odour and contamination at collection points and at existing and new compost facilities processing the FOGO wastes. 5 years appears a reasonable timeframe, though planning new FOGO facilities is expected to take 4+years. However, the 1+ year required for larger '*relevant premises*' businesses to reach this requirement appears unfair and sets a difficult timeframe, especially when compared to that given to Local Government, and should be extended to enable the odour and contamination issues more time for resolution.

***R1 ASBG recommends the minimum time period for 'relevant premises' in s78(1)(a) of the FOGO Bill be extended by at least 2 years and s78(1)(b) by 1 at least year.***

**Potentially Capturing Food Manufacturing sites**

Another issue is the meaning of '*relevant premises*'. ASBG members, which are in the food manufacturing sector, find the meaning under s170B rather broad and could lead to undermining higher levels of food recycling. Many food manufacturing sites have a canteen, or equivalent, so can be potentially captured as a '*relevant premises*' under s170B(1)(c):

*(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,*

ASBG considers that an in-house canteen can be deemed a *food court* or *food hall* quite easily, hence capturing many food manufacturing sites. It would help if a *food court* or *food hall* is also defined. This raises the question; will manufacturing sites with canteens be potentially captured as '*relevant premises*'?

***R2 ASBG recommends the Government to clarify in the FOGO Bill; would s170B(1)(c) just cover the site's canteen, or would the entire site be considered a 'relevant premises'?***

Capturing the entire premises as a '*relevant premises*', appears to potentially force all the food wastes, not just from the canteen, from the site to be managed as FOGO waste, via a FOGO collection and processing site i.e. composting site.

Many food manufacturing sites collect their food waste in various segregated ways to enable different recycling; e.g. as stock food, food donations or another higher orders of recycling. This is considered a much better environmental outcome than treating all such wastes under a FOGO system. ASBG considers food wastes, being recycled for their food properties, is a much higher form of recycling than using a FOGO composting process. Consequently, such higher level food recycling should be encouraged and prevented from being forced into a FOGO process.

Such higher recycling is recognised in the intent of the FOGO Bill. Section 170H of the Bill requires record keeping by large supermarkets of donated foods—to charities or other direct food use, where the waste food is recycled for its food properties— provides a clear distinction from food waste managed under FOGO. Consequently, the Bill and its implementation, regulation and provisions under s170B(2) needs to clarify the separation of higher food waste recycling from FOGO, which ASBG considers is at the lower end of recycling. Careful legislative, implementation and policy additions, are required to prevent FOGO being enforced over higher levels of recycling. Perhaps a rule of thumb, Recycling Hierarchy, is required to accompany this Bill to clarify its intent and shows where FOGO sits?

### **No Administrative Burden**

ASBG would also not want to see a requirement that sites provide EPA or other Government agency requirements for approval or proof that their food waste has a higher recycling level than FOGO. Making this an administrative requirement will likely see many sites simply choosing the FOGO route as it could be administratively easier. This can result in a worse environmental outcome.

***R3 ASBG recommends there is no administrative requirements for a site to demonstrate their food waste is recycled at a higher level than the FOGO process.***

### **Specific Exemptions from 'relevant premises'**

ASBG considers it is far more efficient to keep the legislation clear, precise and simple. ASBG would prefer if food manufacturing sites be specifically exempt from FOGO requirements. While there may be an argument to include food waste from their canteens, these are generally small in scale compared to the production volumes. Most food manufacturing sites are using their in house expertise to source separate their canteen food wastes to various and likely higher level recycling methods. Obviously improvements can also be made

to achieve an increase in higher level food recycling, but being captured as *'relevant premises'* enforces a FOGO approach, pushing higher level recycling away.

***R4 ASBG recommends that food manufacturing sites be generally exempt from being a 'relevant premises'.***

#### **Other Business Sites**

ASBG members who are not food manufacturers, but have in-house canteens, could be also be captured under s170B(1)(c). It would seem that if they are under the 1 x 660L bin size or 720L for any other combination, weekly collection they are exempt. ASBG assumes this bin volume threshold would be an ongoing measure and not resulting from a one off, where say a power failure results in a spike in food volumes.

Manufacturing sites, which have an-in-house canteen are generally large sites and likely hold and Environment Protection Licence (EPL). Consequently, will have in house environmental expertise to manage their canteen food wastes better than smaller sites. An EPL is already an effective method to require compliance.

***R5 ASBG recommends that sites holding Environment Protection Licence be generally exempt from being a 'relevant premises'.***

Should you require further details and clarification of the contents of this submission please contact me.

**Yours Sincerely**



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