

What part of the Pasteurised Garden Organic Order and Exemption applies to Council and what requirements are expected from Council?

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The *Mulch Order 2016* applies to unpasteurised/raw mulch which by virtue of the nature and source of the plant material, poses minimal risk of the presence of physical and chemical contaminants and does not include plant material obtained from kerbside waste collection.

Whilst the need for pasteurisation may be dispensed with on the tree clippings obtained from Council's tree maintenance operations and as such this mulch will only be subject to the provisions in the *Mulch Order 2016* and *Mulch Exemption 2016* [**Click here to see our article: "How do the new Mulch Order and Exemption 2016 impact on Councils' tree maintenance operations?"**

<https://www.matthewsfolbigg.com.au/news/local-government/new-mulch-order-exemption-2016-impact-councils-tree-maintenance-operations/>]. However, if the plant material

used for mulch also contains kerbside waste collection or tree material that has a significant risk of contaminants, mulch processed from such a mixed source may pose a risk of the presence of contaminants and therefore falls outside the definition of mulch in the *Mulch Order 2016*. Mulch of this kind is regulated by *Pasteurised Garden Organic Order 2016* (**PGOO**) and *Pasteurised Garden Organic Exemption 2016* (**PGOE**).

Pursuant to clause 6 of the PGOO, plant material obtained from kerbside waste collection or tree material that has a significant risk of contaminants will be classified as "garden organics". We are aware that some councils undertake a pasteurisation process which involves stockpiling the leaf and woodchip in concrete bays, turning the piles over every month and hosing the piles etc. From our recent enquiries with the Environment Protection Authority (**EPA**), the PGOO and the PGOE apply to garden organics that are treated this way.

As effective from 25 April 2016, the PGOO applies to Council as a supplier of mulch that has undergone the process of pasteurisation as a minimum and the PGOE applies to consumers or the land applicators of such pasteurised mulch. The PGOO imposes additional standards and procedures in which pasteurisation is to be undertaken as well as other processing requirements for generation and supply of pasteurised garden organics (**PGO**).

Accordingly, Council in supplying pasteurised garden organics is now required to comply with the "Processor Requirements" of the PGOO summarised below:-

1. **General conditions** – Council must undertake the process of pasteurisation as a minimum (cl 5.1); ensure the PGO does not contain certain substances and are ready for land application (cl 5.2); must not mechanically size-reduce the PGO (cl 5.3)
2. **Sampling requirements** – On or before supplying, Council must prepare a written sampling plan including description of sample preparation and storage procedures (cl 5.4.1) and to ensure the level of attributes in the PGO do not exceed a certain limit (cl

5.4.2).

3. **Test methods** – Council must ensure any testing method and analytical methods of samples meet the standards specified in the order (cl 5.5, 5.6).
4. **Record keeping and reporting** – Council must keep a written record of the sampling plan, all test results, documentation on the pasteurisation process, the quantity of any PGO supplied for 6 years (cl 5.7); must provide on request the most recent test results (cl 5.8) and must notify the EPA within 7 days of becoming aware of any non-compliance (cl 5.9).

Whilst these requirements may be onerous for Council to comply, these requirements are mandatory only if Council generates and supplies pasteurised mulch/garden organics to the general public as the PGOO only applies to the “supplier” of the mulch. However if Council only uses the pasteurised mulch on Council’s own land and refrains from “supplying” to the general public, in our view, Council is not acting as a “supplier” and therefore the PGOO does not apply to Council.

Exemption

The PGOE only applies to the mulch (cl 1.1), the person who will apply the mulch (cl 2.1) and the land in which the mulch will be applied (cl 4.1) and does not apply to Council as a supplier.

If you have any specific questions or require further advice in relation to the *Pasteurised Garden Organic Orders* and *Pasteurised Garden Organic Exemption 2016* or other recycling and operational issues, please contact our experienced environment planning lawyers on 9635 7966.