

# AUSTRALIA AND NEW ZEALAND BIOSOLIDS LEGAL REGISTER

## NEW SOUTH WALES

### Introduction

This chapter of the *Legal Register* deals with legislation in New South Wales. Biosolids producers, users or retailers in New South Wales are also subject to regulation by the Commonwealth and to the common law. Thus, in identifying laws which may be relevant to biosolids, readers are encouraged to also examine Section 1 of the *Legal Register* which deal with Commonwealth regulation and the common law. Readers might also examine the key points set out in the boxes below.

### Commonwealth

#### Key Points

- In the production, using and selling of biosolids, Commonwealth legislation will be applicable and therefore needs to be strictly adhered to.
- Commonwealth legislation is applicable to all states and territories. If there is a conflict between Commonwealth and State legislation then the Commonwealth provision prevails.
- In supplying biosolids to a corporation or person, a producer or seller of Biosolids will need to ensure that it does not act unconscionably in contractual negotiations, misleadingly or deceptively and must refrain from making false representations in regards to their product.
- Biosolids which are being sold by a producer or seller of biosolids must be fit for the agreed purpose, of merchantable quality and corresponding to the supply or description in which they were purchased.
- A producer or seller of Biosolids may be liable to pay compensation or damages if the Biosolids cause injury to individuals or goods because of a defect in the product.

See section one – *Introduction* for more information.

## Common Law – Key Points

Common law is law which has been derived from cases heard and decided in the Australian and other courts. Common law decisions based on their particular facts establish law, however, they may be subsequently modified by later decisions or by legislation. The two major types of common law most relevant to bodies involved in the production, treatment, or supply of biosolids are negligence and nuisance.

### Negligence

Negligence involves a failure to foresee a reasonably foreseeable risk of harm coupled with a wrongful act or omission. In relation to biosolids, negligence could arise in circumstances where biosolids give rise to some injury, damage or harm which is reasonably foreseeable.

### Nuisance

Nuisance is the substantial and unreasonable interference with another person's use and enjoyment of land. The produce or use of biosolids may give rise to liability in nuisance if it substantially and unreasonably interferes with the use and enjoyment of land of another person.

## New South Wales

- New South Wales legislation establishes various obligations that a producer, supplier or user of biosolids must consider when dealing with biosolids products.
- An organisation receiving untreated sewage in order to process biosolids products must obtain works approval and/or licenses from the EPA to undertake such operations. See *Protection of the Environment Operations Act 1997* (NSW).
- Biosolids suppliers and end-users engaged in other stages of biosolids production or the application of biosolids to land, must comply with the EPA's 'Environmental Guidelines: Use and Disposal of Biosolids Products' (1997) (**Biosolids Guidelines**). The guidelines specify for what beneficial uses various grades of biosolids products can be used, environmental factors to be taken into account and requirements for environmental management practices. See 'Environmental Guidelines: Use and Disposal of Biosolids Products (1997).
- A producer or end-user of biosolids must not cause a nuisance, unlawfully discharge biosolids, or pollute waters, land or the atmosphere. They must comply with the relevant Regulations, State Environment Protection Policies and Waste Management Policies. See common law nuisance, *Protection of the Environment Operations Act 1997* (NSW) and the various policy documents and Regulations.
- A biosolids product must correspond to any description or sample of it, must be fit for the purpose it was sold and of merchantable quality. See *Trade Practices Act 1974* (Cth), *Fair Trading Act 1987* (NSW), *Sale of Goods Act 1923* (NSW)
- A duty of care is imposed upon employers dealing with biosolids to ensure their employees work in a safe and healthy environment and have the requisite training in the produce, storage, transport and use of biosolids. See *Occupational Health and Safety Act 2000* (NSW).

- Only biosolids of a certain grade (specified in the Guidelines) can be applied to land upon which crops or livestock are grown or grazed. See *Food Act 2003* (NSW), *Agricultural and Veterinary Chemicals Act 1994* (NSW), *Fertilisers Act 1985* (NSW).

### **Key Liabilities**

A party dealing with biosolids may face liability in relation to the following:

- Pollution of land, water and air
- Odour emissions
- Release of dust and airborne particles
- Defective goods
- Injury to people
- Workplace safety
- Food safety

### ***Protection of the Environment Operations Act 1997***

The *Protection of the Environment Operations Act 1997* (NSW) (**POEO Act**) is a key piece of legislation administered by the Department of Environment, Climate Change and Water (**DECCW**). The POEO Act provides a licensing regime relating to air pollution, water pollution, noise pollution and waste management.

Under the POEO Act, an activity defined as a 'scheduled activity' requires a licence. Licences are issued by the Environment Protection Authority (**EPA**) and are usually subject to conditions. Generally, an activity defined as a 'non-scheduled' activity is regulated by the local council through notice and enforcement powers in their local government area. The EPA can also issue a licence to regulate water pollution from a non-scheduled activity. If it does, the EPA becomes the regulator for all environmental impacts from the activity under the POEO Act instead of the local council.

There are a number of scheduled activities which may be applicable to the production or use of biosolids. These include:

- Clause 12 - Composting
- Clause 15 - Contaminated soil treatment
- Clause 18 - Energy recovery
- Clause 34 - Resource recovery
- Clause 36 - Sewage treatment
- Clause 39 - Waste disposal

- Clause 40 - Waste disposal (thermal treatment)
- Clause 41 - Waste processing (non-thermal treatment)
- Clause 42 - Waste storage

Each scheduled activity sets out threshold limits that will trigger the requirement to obtain a licence.

Under s 45 of the POEO Act, the appropriate regulatory authority must consider the following factors when deciding if a licence is to be granted:

- any protection of the environment policies;
- the objectives of the EPA in s 6 of the *Protection of the Environment Administration Act 1991*, including ecologically sustainable development principles which have been redefined;
- the impact on the environment of any pollution likely to be caused by an activity or work;
- the practical measures that could be undertaken to avoid pollution and protect the environment from pollution;
- any relevant environmental impact statement or other statement of environmental effects received under the *Environmental Planning and Assessment Act 1979*.

The POEO Act provides a regime of environment protection notices including clean-up notices, prevention notices and prohibition notices. There are three tiers of penalties under the POEO Act with Tier 1 offences attracting penalties up to \$5 million or 7 years imprisonment to Tier 3 penalties which include issuing penalty notices in the form of 'on the spot fines' or 'penalty infringement notices'. Authorised officers under the POEO Act have broad powers of enforcement and are able to compel a person to provide information or records, exercise the power of entry and search and exercise the power to question and identify a person.

Where a person is aggrieved by the decision of the appropriate regulatory body in relation to a licence application, that person may appeal to the Land and Environment Court. In addition, any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the POEO Act or the regulations, regardless of whether there is any environmental harm.

### **Exemption from licensing requirements**

Under the POEO Act exemptions may be granted from licensing requirements. Such an exemption has been granted in relation to the land application of biosolids under clause 51 of the *Protection of the Environment Operations (Waste) Regulation 2005*. This exemption was issued on 20 June 2008. The exemption is subject to the condition that the biosolids comply with the Biosolids Guidelines. Accordingly, a person who applies biosolids to land, is not required to comply with the POEO Act's licensing regime, but must comply with the Biosolids Guidelines. Exemptions are granted in relation to the scheduled activities set out in clauses 34, 39, 41, and 42 (see above).

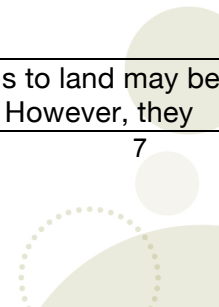
**EPA Environmental Guidelines: Use and Disposal of Biosolids Products 1997**

The objectives of the Biosolids Guidelines is to facilitate planners, designers and operators of sewerage systems with the processing and end-use of biosolids products, by establishing requirements for the beneficial use and disposal of biosolids products to land. The Biosolids Guidelines establish a system of classification of biosolids on the basis of contaminant stability and concentration. The classification then determines the permissible beneficial uses available to the biosolids. In addition the Biosolids Guidelines sets out considerations and procedures relevant to the application of biosolids to land and the disposal of biosolids, including, the local environmental factors to be taken into account, permissible concentrations and application rates, and management practices. Prior to commencing to produce or use biosolids, users should consult the Biosolids Guidelines. Environmental testing and auditing may be required to determine classifications, suitability of areas for application and monitoring of environmental management plans to ensure compliance with the Biosolids Guidelines.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>43 Types of licences</b>	<p>Environment protection licences may be issued for the following purposes:</p> <ul style="list-style-type: none"> <li>(a) to authorise the carrying out of scheduled development work at any premises, as required under section 47;</li> <li>(b) to authorise the carrying out of scheduled activities at any premises, as required under section 48;</li> <li>(c) to authorise the carrying out of scheduled activities not related to premises, as required under section 49;</li> <li>(d) to control the carrying out of non-scheduled activities for the purpose of regulating water pollution resulting from any such activity, as referred to in section 122.</li> </ul>	<p>The use or production of biosolids may be treated as scheduled activities under schedule 1, Part 1 of the Act which declares that the carrying out of activities for agriculture, fertiliser or composting will require a license.</p> <p>The treatment of sewage is also classified as scheduled activities, where it involves the discharge or likely discharge of waste or by-products to land or waters. To be a scheduled activity under this Act the producer or users must have a processing capacity that exceeds:</p> <ul style="list-style-type: none"> <li>(a) 2,500 persons equivalent, as determined in accordance with guidelines established by the EPA; or</li> <li>(b) 750 kilolitres per day.</li> </ul> <p>The production and use of biosolids may also be</p>

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		<p>scheduled activities under the following clauses:</p> <ul style="list-style-type: none"> <li>• Clause 34: Resource recovery</li> <li>• Clause 39: Waste disposal</li> <li>• Clause 41: Waste processing (non-thermal treatment)</li> <li>• Clause 42: Waste storage</li> </ul>
<b>48 Licensing requirements - scheduled activities premised based</b>	<p>(1) Application of section This section applies to scheduled activities where Schedule 1 indicates that a licence is required for premises at which the activity is carried on.</p> <p>(2) Offence A person who is the occupier of any premises at which any such scheduled activity is carried on is guilty of an offence, unless the person is, at the time that activity is carried on, the holder of a licence that authorises that activity to be carried on at those premises.</p> <p>Maximum penalty:</p> <p>(a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or</p> <p>(b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.</p>	<p>Producers and users of biosolids must be licensed to carry out a scheduled activity at a premise if Schedule 1 requires the premises to be licensed. Failure to obtain a licence under these circumstances may lead to heavy penalties.</p>
<b>49 Licensing requirement—scheduled</b>	<p>(1) Application of section This section applies to scheduled activities where Schedule 1 indicates that a licence is required to carry on the activity, but not for the premises</p>	<p>Producers and users of biosolids must be licensed to carry out an activity identified in Schedule 1 of the POEO Act. Failure to obtain a licence under these</p>

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<b>activities not premises-based</b>	<p>at which the activity is carried on.</p> <p>(2) Offence A person who carries on any such scheduled activity is guilty of an offence, unless the person is, at the time that activity is carried on, the holder of a licence that authorises that activity to be carried on.</p> <p>Maximum penalty:</p> <p>(a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or</p> <p>(b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.</p>	<p>circumstances may lead to heavy penalties.</p>
<b>53 Application for issue of licence</b>	<p>a. An application may be made to the appropriate regulatory authority for the issue of a licence.</p> <p>b. An application must:</p> <p>(a) be made in or to the effect of a form approved by the appropriate regulatory authority; and</p> <p>(b) contain or be accompanied by such information as is required by the appropriate regulatory authority (as indicated in the form or in material accompanying the form); and</p> <p>(c) be accompanied by the fee prescribed by the regulations.</p>	<p>Producers or users of biosolids will need to apply for a license where they are carrying out scheduled development work or scheduled activities (explained above in s.43) where they are not exempt activities (see discussion of exemption above).</p> <p>The EPA takes into account the requirements listed in the Guidelines when granting approval for licenses for the application of biosolids to land. Prospective applications should consult the Biosolids Guidelines which specify where users of biosolids need to apply for a Pollution Control Approval or a Pollution Control License.</p>
<b>Exemption</b>	<p>The licensing requirements relating to the application of biosolids to land are relaxed to some degree. A licence is not required for:</p>	<p>Persons intending to apply biosolids to land may be exempt from licensing procedures. However, they</p>



<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>from licensing (clause 51 of Protection of the Environment Operations (Waste) Regulation 2005</b>	<p>(a) the carrying out of scheduled development work (usually required under s 47)</p> <p>(b) the carrying out of scheduled activities including resource recovery, waste disposal, waste processing and waste storage, at any premises, as required under section 48 (when related to the application of biosolids to land).</p> <p>The exemption is granted subject to compliance with the Guidelines.</p>	should consult the Biosolids Guidelines to ensure that they comply.
<b>55 Grant or refusal of application</b>	(1) The appropriate regulatory authority may grant or refuse an application for the issue or transfer of a licence. An application is granted by the issue or transfer of the licence concerned.	Applicants for licenses may have their applications refused by the relevant authority if they deem the applicant unfit.
<b>63 Conditions</b>	<p>(1) A licence may be issued subject to conditions or unconditionally.</p> <p>(2) A condition cannot be attached to a licence if compliance with the condition would result in a breach of a requirement made by or under this Act.</p> <p>(3) If the holder of a licence cannot meet any requirement made by or under this Act without contravening a condition of the licence, the holder is, by meeting the requirement, taken to comply with the condition.</p>	Authorities may issue licences which are subject to conditions.
<b>64 Failure to comply with condition</b>	<p>(1) Offence - If any condition of a licence is contravened by any person, each holder of the licence is guilty of an offence.</p> <p>Maximum penalty:</p> <p>(a) in the case of a corporation-\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the</p>	<p>If any conditions that have been attached to licenses are not complied with then the licensee will be guilty of an offence unless they can establish that:</p> <ul style="list-style-type: none"> <li>- Another person caused the contravention; and</li> </ul>



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	<p>offence continues, or</p> <p>(b) in the case of an individual-\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.</p> <p>(2) Defence - The holder of a licence is not guilty of an offence against this section if the holder establishes that:</p> <p>(a) the contravention of the condition was caused by another person, and</p> <p>(b) that other person was not associated with the holder at the time the condition was contravened, and</p> <p>(c) the holder took all reasonable steps to prevent the contravention of the condition.</p> <p>A person is associated with the holder for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.</p>	<ul style="list-style-type: none"> <li>- That other person was not associated with the licence holder; and</li> <li>- The holder of the license took all reasonable steps to prevent the contravention</li> </ul>
<b>68 Conditions requiring pollution studies and reduction programs</b>	<p>(1) The conditions of a licence may require the holder of the licence to undertake and submit to the appropriate regulatory authority studies into any aspect of the environmental impact of the activity or work authorised or controlled by the licence.</p> <p>(2) The conditions of a licence may require the holder of the licence:</p> <p>(a) to develop and submit to the appropriate regulatory authority a pollution reduction program and to comply with the program as approved by the appropriate regulatory authority, or</p> <p>(b) to comply with a pollution reduction program determined by the appropriate regulatory authority.</p>	<p>The conditions contained in a license may require producers and users of biosolids to undertake regulatory studies into the impact of the authorised work.</p> <p>Where the conditions of a licence require, corporations and individuals may be required to conduct and submit a pollution reduction program.</p> <p>Pollution reductions programs are recommended even where users and producers of biosolids are not applying for a licence so as to prevent pollution</p>

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	<p>(3) A pollution reduction program may include but is not limited to requirements to carry out works or to install plant for the purpose of preventing, controlling, abating or mitigating pollution.</p> <p>(4) The appropriate regulatory authority may approve a pollution reduction program with or without alterations.</p>	incidents.
<b>79 Suspension or revocation of licence by appropriate regulatory authority</b>	<p>(1) The appropriate regulatory authority may suspend or revoke a licence during its currency.</p> <p>(2) A suspension or revocation of a licence is effected by notice in writing given to the holder of the licence.</p> <p>(3) A suspension may be for a specified period, or until the fulfilment of specified conditions, or until further order of the appropriate regulatory authority.</p> <p>(3A) A licence may be revoked during the currency of a suspension.</p> <p>(4) The appropriate regulatory authority must not suspend or revoke a licence unless before doing so:</p> <p>(a) it has given notice to the holder of the licence that it intends to do so; and</p> <p>(b) it has specified in that notice the reasons for its intention to do so; and</p> <p>(c) it has given the holder of the licence a reasonable opportunity to make submissions in relation to the proposed revocation or suspension; and</p> <p>(d) it has taken into consideration any such submissions by the holder of the licence.</p> <p>(5) The reasons for suspending or revoking a licence may include (but are not limited to) the following:</p>	<p>A regulatory authority may suspend or revoke licences by means of notice in writing given to the holder of the licence, specifying the reasons for the revocation, where the holder of the licence has been given reasonable opportunity to make submissions in relation to the proposed revocation, and it has taken into account any submissions.</p> <p>Reasons for a regulatory authority to suspend or revoke a licence may include (but are not limited to):</p> <ul style="list-style-type: none"> <li>- The holder of the licence obtaining the license improperly.</li> <li>- A condition has been contravened.</li> <li>- Scheduled development work has not been started or finished and the authority is of the opinion it is no longer appropriate for the work to be completed.</li> <li>- Annual licence fees have not been paid.</li> <li>- The holder is no longer a fit and proper person.</li> </ul>

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	<ul style="list-style-type: none"> <li>(a) the holder of the licence has obtained the licence improperly;</li> <li>(b) a condition of the licence has been contravened;</li> <li>(c) the scheduled development work to which the licence relates has not been commenced or completed and the appropriate regulatory authority is of the opinion that it is no longer appropriate that the work be carried out or completed;</li> <li>(d) the activities covered by the licence are completed or no longer being carried on;</li> <li>(e) the holder has failed to pay the annual licence fee by the due date for its payment;</li> <li>(e1) the holder is liable to pay a contribution in respect of waste under section 88 and has failed to pay the contribution by the due date for its payment;</li> <li>(f) in the opinion of the appropriate regulatory authority, the holder of the licence is no longer a fit and proper person (as referred to in section 83).</li> </ul> <p>(6) No fees are refundable on the suspension or revocation of a licence.</p>	

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<b>82 Minister may suspend or revoke licence if holder convicted of major pollution offence</b>	<p>(1) If the holder of a licence is convicted of a major pollution offence, the Minister may, by notice in writing given to the holder:</p> <p>(a) revoke the licence, or</p> <p>(b) suspend the licence for such period as the Minister thinks fit.</p> <p>(2) In this section:</p> <p><b>major pollution offence</b> means an offence the commission of which has caused or is likely to cause harm to the environment, being an offence punishable by a fine of \$1,000,000 or more (in the case of a corporation) or \$250,000 or more (in the case of an individual)</p>	<p>If producers or users of biosolids are convicted of a major pollution offence, it is likely that the Minister will revoke or suspend their licence, It is recommended that users and producers of biosolids establish procedures to prevent major pollution offences from occurring.</p>
<b>91 Clean-up by occupiers or polluters</b>	<p>(1) The appropriate regulatory authority may, by notice in writing, do either or both of the following:</p> <p>(a) direct an occupier of premises at or from which the authority reasonably suspects that a pollution incident has occurred or is occurring;</p> <p>(b) direct a person who is reasonably suspected by the authority of causing or having caused a pollution incident,</p> <p>to take such clean-up action as is specified in the notice and within such period as is specified in the notice.</p>	<p>Regulatory authorities may issue notices to compel an occupier of premises or persons who are reasonably suspected of having caused a pollution incident to take clean-up action as the authority specifies.</p>
<b>95 Meaning of environmentally unsatisfactory manner</b>	<p>For the purposes of this Part (Part 4.3) an activity is carried on in an environmentally unsatisfactory manner if:</p> <p>(a) it is carried on in contravention of, or in a manner that is likely to lead to a contravention of, this Act, the regulations or a condition attached to an environment protection licence (including a condition of a surrender of a licence) or an exemption given under this Act or the regulations, or</p>	<p>Producers and users of biosolids should ensure that their activities are not environmentally unsatisfactory. Therefore before carrying out activities that may be deemed environmentally unsatisfactory they should adopt procedures to ensure that all actions are carried out in an environmentally satisfactory manner.</p>

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	<p>(b) it causes, or is likely to cause, a pollution incident, or</p> <p>(c) it is not carried on by such practicable means as may be necessary to prevent, control or minimise pollution, the emission of any noise or the generation of waste, or</p> <p>(d) it is not carried on in accordance with good environmental practice.</p>	Users and producers of biosolids are therefore recommended to establish procedures to prevent themselves for acting in an environmentally unsatisfactory manner.
<b>96 Preventive action</b>	<p>(1) This section applies when the appropriate regulatory authority reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner at any premises or by any person (otherwise than at premises).</p> <p>(2) Prevention notices The appropriate regulatory authority may, by notice in writing, do either or both of the following:</p> <p>(a) direct the occupier of the premises,</p> <p>(b) direct the person carrying on the activity (whether or not at premises),</p> <p>to take such action, as is specified in the notice and within such period (if any) as is specified in the notice, to ensure that the activity is carried on in future in an environmentally satisfactory manner.</p>	Where producers or users of biosolids receive a prevention notice, it is recommended that the recipient complies with all actions required by the notice. Following a prevention notice, it is also recommended that producers and users of biosolids establish procedures to avoid the issues addressed by the notice.
<b>115 Disposal of waste-harm to environment</b>	<p>(1) Offence - If a person wilfully or negligently disposes of waste in a manner that harms or is likely to harm the environment:</p> <p>(a) the person, and</p> <p>(b) if the person is not the owner of the waste, the owner,</p> <p>are each guilty of an offence.</p> <p>(2) Defence of lawful authority - It is a defence in any proceedings against a person for an offence under this section if the person</p>	<p>Producers and users of biosolids must ensure that they do not dispose of waste, either wilfully or negligently, in a manner that harms or is likely to harm the environment.</p> <p>To prevent contravention, procedures and guidelines for disposing of waste should be established. For further assistance the New South Wales guidelines should be consulted.</p>

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	establishes that the waste was disposed of with lawful authority.	
<b>116 Leaks, spillages and other escapes</b>	<p>(1) If a person wilfully or negligently causes any substance to leak, spill or otherwise escape (whether or not from a container) in a manner that harms or is likely to harm the environment:</p> <p>(a) the person, and</p> <p>(b) if the person is not the owner of the substance, the owner.</p> <p>are each guilty of an offence.</p>	<p>Producers and users of biosolids must ensure that they do not cause, either wilfully or negligence, any substance to leak, spill or otherwise escape in a manner that harms or likely to harm the environment.</p> <p>Biosolids users and producers must be diligent in ensuring that none of their product or waste is allowed to escape so as to harm or likely harm the environment.</p>
<b>119 Maximum penalty for tier 1 offences</b>	<p>A person who is guilty of an offence under this Part (sections 115 &amp; 116 above) is liable, on conviction:</p> <p>(a) in the case of a corporation—to a penalty not exceeding \$5,000,000 for an offence that is committed wilfully or \$2,000,000 for an offence that is committed negligently, or</p> <p>(b) in the case of an individual—to a penalty not exceeding \$1,000,000 or 7 years’ imprisonment, or both, for an offence that is committed wilfully or \$500,000 or 4 years’ imprisonment, or both, for an offence that is committed negligently.</p>	<p>Given the severity of the penalties available for Tier 1 offences, it is paramount that biosolids users and producers are confident that all disposal procedures and pollution prevent procedures are adhered to consistently.</p>
<b>120 Prohibition of pollution of waters</b>	<p>(1) A person who pollutes any waters is guilty of an offence.</p>	<p>Producers and users of biosolids must ensure that in the production or application process any waters (either rivers, ponds, catchments or other forms) are not polluted.</p>
<b>123 Maximum penalty for water pollution offences</b>	<p>A person who is guilty of an offence under this Part (section 120 above) is liable, on conviction:</p> <p>(a) in the case of a corporation-to a penalty not exceeding \$1,000,000 and, in the case of a continuing offence, to a further penalty not exceeding \$120,000 for each day the offence continues, or</p>	<p>It is paramount that biosolids users and producers are confident that their procedures do not risk water pollution incidents.</p>

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	in the case of an individual-to a penalty not exceeding \$250,000 and, in the case of a continuing offence, to a further penalty not exceeding \$60,000 for each day the offence continues.	
<b>129 Emission of odours from premises licensed for scheduled activities</b>	<p>(1) The occupier of any premises at which scheduled activities are carried on under the authority conferred by a licence must not cause or permit the emission of any offensive odour from the premises to which the licence applies.</p> <p>(2) It is a defence in proceedings against a person for an offence against this section if the person establishes that:</p> <p>(a) the emission is identified in the relevant environment protection licence as a potentially offensive odour and the odour was emitted in accordance with the conditions of the licence directed at minimising the odour, or</p> <p>(b) the only persons affected by the odour were persons engaged in the management or operation of the premises.</p> <p>(3) A person who contravenes this section is guilty of an offence.</p>	<p>Offensive odour should not be emitted from premises at which biosolids are produced or used. If an offensive odour is released it may contravene statute and common law nuisance.</p> <p>Odour is only permissible where it complies with a condition within a license or only affects those responsible for the odour.</p>
<b>132 Maximum penalty for air pollution offences</b>	<p>A person who is guilty of an offence under this Division (section 129 above) is liable, on conviction:</p> <p>(a) in the case of a corporation-to a penalty not exceeding \$1,000,000 and, in the case of a continuing offence, to a further penalty not exceeding \$120,000 for each day the offence continues, or</p> <p>(b) in the case of an individual-to a penalty not exceeding \$250,000 and, in the case of a continuing offence, to a further penalty not exceeding \$60,000 for each day the offence continues.</p>	<p>A person or producer of biosolids is liable to be convicted if they pollute the air. Given the likelihood of odour emissions from producers and users of biosolid processes, it is recommended that licence conditions permitting offensive odours are clearly articulated.</p>

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>142A Pollution of land</b>	<p>(1) A person who pollutes land is guilty of an offence. Maximum penalty:</p> <p>(a) in the case of a corporation-\$1,000,000, and in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or</p> <p>(b) in the case of an individual-\$250,000, and in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.</p> <p>(2) In this section: "pollute land" includes cause or permit any land to be polluted.</p>	<p>A person or producer of biosolids is liable to be convicted if they pollute land. Where land is polluted the responsible persons should ensure it is abated as soon as reasonably practicable to prevent persecution.</p>
<b>142D Defences relating to pesticides and fertilisers and other substances</b>	<p>(1) It is a defence in proceedings for an offence under this Division (section 142A above) if the person establishes that the substance placed in or on, or otherwise introduced into or onto, land is any of the following:</p> <p>(a) a pesticide (within the meaning of the <i>Pesticides Act 1999</i>) placed in or on, or otherwise introduced into or onto the land, in the course of being used within the meaning of that Act,</p> <p>(b) a fertiliser, liming material or trace element product within the meaning of the <i>Fertilisers Act 1985</i> that may lawfully be sold as such,</p> <p>(c) non-hazardous agricultural or crop waste, including stock feed made solely from such waste,</p> <p>(d) manure,</p> <p>(e) virgin excavated natural material,</p> <p>(f) biosolids or any other substances prescribed by the regulations for</p>	<p>If a producer or user of biosolids is prosecuted under this Division, a defence is available if it is established that the substance was prescribed in accordance with the Regulations.</p> <p>It is recommended that a producer or user of biosolids maintains records of activities and the relevant legal instruments relied on when performing the activity in the event proceedings are commenced.</p>



<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	<p>the purposes of this section.</p> <p>(2) Words and expressions used in this section have the meanings prescribed by the regulations.</p>	
<b>143 Unlawful transporting or depositing of waste</b>	<p>(1) Offence - If a person transports waste to a place that cannot lawfully be used as a waste facility for that waste, or causes or permits waste to be so transported:</p> <p>(a) the person; and</p> <p>(b) if the person is not the owner of the waste, the owner, are each guilty of an offence.</p> <p><b>Maximum penalty:</b></p> <p>(a) in the case of a corporation-\$1,000,000; or</p> <p>(b) in the case of an individual-\$250,000.</p>	Ensure that the waste facility is licensed. A person who transports waste to a place not authorised to receive that waste may be liable.
<b>144 Use of land as waste facility without lawful authority</b>	<p>(1) A person who is the owner or occupier of any land and who uses the land, or causes or permits the land to be used, as a waste facility without lawful authority is guilty of an offence.</p> <p>Maximum penalty:</p> <p>(a) in the case of a corporation-\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues; or</p> <p>(b) in the case of an individual-\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.</p> <p>(2) In any proceedings for an offence under this section the defendant bears the onus of proving that there is lawful authority to use the</p>	Persons who are the owner or occupiers of land used as a waste facility without lawful authority are liable to be convicted of an offence.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	land concerned as a waste facility.	
<b>144AA False or misleading information about waste</b>	<p>(1) A person who supplies information, or causes or permits information to be supplied, that is false or misleading in a material respect about waste to another person in the course of dealing with the waste is guilty of an offence.</p> <p>Maximum penalty:</p> <p>(a) in the case of a corporation-\$250,000; or</p> <p>(b) in the case of an individual-\$120,000.</p> <p>(2) It is a defence in any proceedings against a person for an offence under this section if the person establishes that the person took all reasonable steps to ensure that the information was not false or misleading in a material respect.</p>	Any information that is supplied in the course of dealing with waste must not be false or misleading in regards to waste.
<b>147 Meaning of material harm to the environment</b>	<p>(1) For the purposes of this Part (section 148 below):</p> <p>(a) harm to the environment is material if:</p> <p>(i) it involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial, or</p> <p>(ii) it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (or such other amount as is prescribed by the regulations), and</p> <p>(b) loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment.</p> <p>(2) For the purposes of this Part, it does not matter that harm to the environment is caused only in the premises where the pollution incident occurs.</p>	It is recommended that users and producers of biosolids establish procedures to ensure that material harm to the environment does not occur.
<b>148 Pollution</b>	(1) <b>The types of incidents to be notified</b> this Part applies where a	Where material harm to the environment is caused or

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<p><b>incidents causing or threatening material harm to be notified</b></p>	<p>pollution incident occurs in the course of an activity so that material harm to the environment is caused or threatened.</p> <p>(2) <b>Duty of person carrying on activity to notify</b> a person carrying on the activity must, as soon as practicable after the person becomes aware of the incident, notify the appropriate regulatory authority of the incident and all relevant information about it.</p> <p>(3) <b>Duty of employee engaged in carrying on activity to notify</b> a person engaged as an employee in carrying on an activity must, as soon as practicable after the person becomes aware of the incident, notify the employer of the incident and all relevant information about it. If the employer cannot be contacted, the person is required to notify the appropriate regulatory authority.</p> <p>(3A) <b>Duty of employer to notify</b> without limiting subsection (2), an employer who is notified of an incident under subsection (3) or who otherwise becomes aware of a pollution incident which is related to an activity of the employer, must, as soon as practicable after being notified or otherwise becoming aware of the incident, notify the appropriate regulatory authority of the incident and all relevant information about it.</p> <p>(4) <b>Duty of occupier of premises to notify</b> the occupier of the premises on which the incident occurs must, as soon as practicable after the occupier becomes aware of the incident, notify the appropriate regulatory authority of the incident and all relevant information about it.</p> <p>(5) <b>Duty on employer and occupier to ensure notification</b> an employer or an occupier of premises must take all reasonable steps to ensure that, if a pollution incident occurs in carrying on the activity of the employer or occurs on the premises, as the case may</p>	<p>threatened then the person carrying out the activity must notify the appropriate regulatory authority of the incident or in the case of an employee, must notify the employer.</p>

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	<p>be, the persons engaged by the employer or occupier will, as soon as practicable, notify the employer or occupier of the incident and all relevant information about it.</p> <p>(6) <b>Extension of duty to agents and principals</b> this section extends to a person engaged in carrying on an activity as an agent for another. In that case, a reference in this section to an employee extends to such an agent and a reference to an employer extends to the principal.</p> <p>(7) <b>Odour not required to be reported</b> this section does not extend to a pollution incident involving only the emission of an odour.</p>	
<b>152 Offence</b>	<p>A person who contravenes this Part is guilty of an offence.</p> <p>Maximum penalty:</p> <p>(a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or</p> <p>(b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.</p>	<p>Where a producer or user of biosolids fails to notify the relevant authority in accordance with section 148, severe penalties may apply.</p> <p>It is recommended that all operations adopt best practice and have a system in place to notify pollution incidents as substantial penalties apply for failing to notify when required..</p>

### Sale of Goods Act 1923

The *Sale of Goods Act 1923 (SOG Act)* is a consumer protection Act which relates to contracts of sale and excludes contracts for services. The key provisions are duplicated in the *Trade Practices Act 1974 (Cth)* and the *Fair Trading Act 1987 (NSW)*. Organisations dealing with biosolids must ensure that any contract of sale meets the provisions contained in the SOG Act. Specifically, the act the goods must comply with their description, all goods should be reasonably fit for their purpose and all goods should be of merchantable quality.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>17 Implied undertaking as to title etc</b>	<p>In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is:</p> <ol style="list-style-type: none"> <li>(1) an implied condition on the part of the seller that in the case of a sale the seller has a right to sell the goods, and that in the case of an agreement to sell the seller will have a right to sell the goods at the time when the property is to pass.</li> <li>(2) an implied warranty that the buyer shall have and enjoy quiet possession of the goods.</li> <li>(3) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.</li> </ol>	<p>Sellers of biosolids must ensure that they have the right to sell the goods before they enter into contracts and negotiations for the sale of biosolids.</p> <p>The buyer of biosolids must have and enjoy quiet possession of the goods which are also free of any encumbrance. This will mean that sellers of biosolids must ensure there are no third party claims to their goods and that they will have no further claim over their product once sold.</p>
<b>18 Sale by description</b>	<p>Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.</p>	<p>Where sellers of biosolids provide a description to buyers they must ensure that the description is accurate and corresponds to the biosolids supplied.</p>
<b>19 Implied condition as to quality or</b>	<p>Subject to the provisions of this Act, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:</p> <ol style="list-style-type: none"> <li>(1) Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to</li> </ol>	<p>Where the buyer of biosolids makes known the particular purpose for which the biosolids have been acquired and relies on the skill and judgement of the seller, then there is an implied condition that the goods are fit for such purpose. To ensure this implied</p>

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>fitness</b>	<p>show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether the seller be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.</p> <p>(2) Where goods are bought by description from a seller who deals in goods of that description (whether the seller be the producer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed.</p> <p>(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.</p> <p>(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.</p>	<p>condition is not contravened unintentionally, sellers should ensure they are aware of what purposes biosolids are reasonably fit for. In addition where sellers of biosolids are unsure as to whether the biosolids will be fit for the required purpose they should make this known to the buyer.</p> <p>Further there is an implied condition that biosolids will be of merchantable quality. Biosolids will be deemed to be merchantable if they are fit for the purposes they were acquired and are fit for purposes for which it is reasonable to expect them to be suitable having regard to any price, descriptions and relevant circumstances</p>
<b>20 Sale by sample</b>	<p>(1) A contract of sale is a contract for sale by sample where there is a term in the contract express or implied to that effect.</p> <p>(2) In the case of a contract for sale by sample:</p> <p>(a) There is an implied condition that the bulk shall correspond with the sample in quality;</p> <p>(b) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;</p> <p>(c) There is an implied condition that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.</p>	<p>There is an implied condition that where there is a contract for sale by sample that the bulk of the biosolids will correspond with the sample in quality in addition to being free of any defect which would render them unmerchantable; that is not of proper and sound quality.</p>

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>21 Goods must be ascertained</b>	Subject to section 25A, where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.	
<b>22 Property passes when intended to pass</b>	<p>(1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.</p> <p>(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.</p>	Property in ascertained goods is to be transferred when the contracting parties intended them to be passed, with intention to be ascertained with regards to the terms of the contract, conduct of the parties and the circumstances of the case.
<b>25 Risk prima facie passes with property</b>	<p>Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk, whether delivery has been made or not:</p> <p>Provided that where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.</p> <p>Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.</p>	<p>Unless the parties have otherwise agreed, the goods remain at the risk of the seller until the property is transferred to the buyer.</p> <p>If delivery has been delayed through either the fault of the buyer or seller, then the party whose fault it is for the delay will bear liability.</p>

### **Fair Trading Act NSW 1987**

The *Fair Trading Act 1987* (NSW) (**FTA**) is used for consumer protection in New South Wales. Many of the provisions in the Act mirror the provisions of the *Trade Practices Act 1974* (Cth) (**TPA**). The Act regulates the supply of goods and services. In particular, the Act prohibits the supply of products which fail to comply with the safety standards contained in the Act. As with the TPA, under the FTA, any biosolid products must comply with any description, all goods should be reasonably fit for their purpose and all goods should be of merchantable quality. Further, the Act establishes penalties for corporations breaching their obligations.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>26 Safety standards</b>	<p>(1) The regulations may prescribe a product safety standard for a specified kind of goods.</p> <p>(2) A product safety standard for goods shall consist of such requirements as to:</p> <ul style="list-style-type: none"> <li>(a) performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods;</li> <li>(b) the testing of the goods during, or after the completion of, manufacture or processing;</li> <li>(c) the form and content of markings, warnings or instructions to accompany the goods or be placed on a vending machine for the goods or a display stand or sign adjacent to the goods, and</li> <li>(d) equipment or accessories to be supplied with the goods</li> </ul> <p>as are reasonably necessary to prevent or reduce risk of injury to a person.</p>	<p>Product safety standards apply to the production and use of biosolids. Corporations or individuals should consult the NSW Guidelines.</p>
<b>27 Prohibition on supply of goods not complying with safety standards</b>	<p>(1) A person shall not, in trade or commerce, supply goods:</p> <ul style="list-style-type: none"> <li>(a) that are intended to be used, or are of a kind likely to be used, by a consumer; and</li> <li>(b) in relation to which there is a product safety standard</li> </ul>	<p>Before supplying biosolids sellers must ensure that the goods comply with necessary and requisite product safety standards.</p> <p>If a person suffers loss or damage because of a defect in goods which have product safety</p>



<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>(TPA s 65C)</b>	<p>unless the goods comply with the standard.</p> <p>(2) If:</p> <ul style="list-style-type: none"> <li>(a) A person supplies goods in contravention of subsection (1), and</li> <li>(b) Another person suffers loss or damage because of a defect in, or a dangerous characteristic of, the goods, or by not having particular information in relation to the goods, but would not have suffered it if the goods had complied with the product safety standard</li> </ul> <p>the person who suffers the loss or damage shall be deemed, for the purposes of this Act, to have suffered it by the supplying of the goods.</p>	<p>standards, and the person would not have suffered had there not been a defect in the goods, then the person who suffered loss shall be compensated.</p>
<b>40U Actions in respect of unsuitable goods (TPA s 74B)</b>	<p>(1) If:</p> <ul style="list-style-type: none"> <li>(a) A person ("the supplier"), in trade or commerce, supplies goods manufactured by the supplier to another person who acquires the goods for re-supply, and</li> <li>(b) A person (whether or not the person who acquired the goods from the supplier) supplies the goods (otherwise than by way of sale by auction) to a consumer, and</li> <li>(c) The goods are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the supplier, either directly, or through the person from whom the consumer acquired the goods or a person by whom any negotiations in connection with the acquisition of the goods were conducted; and</li> <li>(d) The goods are not reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, and</li> </ul>	<p>If a purchaser makes known to the supplier the particular purpose for which the goods are acquired then the supplier must ensure that the biosolids reasonably fit that purpose.</p> <p>To avoid potential liability suppliers should ensure that they are aware of all potential purposes which biosolids are fit for and where they are unsure they should raise this issue with the buyer.</p> <p>The seller will be absolved from liability where the goods are not reasonably fit for the purpose because of an:</p> <ul style="list-style-type: none"> <li>- Act or default of any person not being the supplier.</li> <li>- Or a cause outside human control occurred after the goods have left the control of the supplier.</li> </ul>

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	<p>(e) The consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not reasonably fit for that purpose,</p> <p>The supplier is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the supplier in a court of competent jurisdiction.</p> <p>(2) Subsection (1) does not apply:</p> <p>(a) if the goods are not reasonably fit for the purpose referred to in that subsection by reason of:</p> <p>(i) an act or default of any person (not being the supplier or an employee or agent of the supplier), or</p> <p>(ii) a cause independent of human control;</p> <p>occurring after the goods have left the control of the supplier; or</p> <p>(a) if the circumstances show that the consumer did not rely, or that it was unreasonable for the consumer to rely, on the skill or judgment of the supplier</p>	<p>- Where it would be unreasonable for the consumer to rely on the skill or judgement of the supplier.</p>
<b>40V Actions in respect of false descriptions</b>	See section 74C of the Trade Practices Act above.	See action policy for section 74C of the Trade Practices Act in the Commonwealth section earlier.
<b>40W Actions in respect of goods of</b>	See section 74D of the Trade Practices Act above.	See action policy for section 74D of the Trade Practices Act in the Commonwealth section earlier.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>unmerchantable quality</b>		
<b>40X Actions in respect of non-correspondence with samples etc</b>	See section 74E of the Trade Practices Act above.	See action policy for section 74E of the Trade Practices Act in the Commonwealth section earlier.
<b>42 Misleading or deceptive conduct</b>	See section 52 of the Trade Practices Act above.	See action policy for section 52 of the Trade Practices Act in the Commonwealth section earlier.
<b>44 False representations</b>	See section 53 of the Trade Practices Act above	See action policy for section 53 of the Trade Practices Act in the Commonwealth section earlier.
<b>49 Certain misleading conduct in relation to goods</b>	See section 55 of the Trade Practices Act above	See action policy for section 55 of the Trade Practices Act in the Commonwealth section earlier.

### **Fertilisers Act 1985**

The objectives of the *Fertilisers Act 1985* (NSW) (**FA**) is to regulate the sale of soil improving agents and trace element products to protect human health by preventing such trace element products from entering into the human food chain. The Act also aims to facilitate international trade by ensuring that agricultural products comply with requirements regarding the presence of any contaminants.

Biosolids are classified as fertilisers for the purpose of this Act as a soil improving agent and source of trace elements. Therefore, the obligations imposed by the FA are relevant to producers and suppliers of biosolids and associated products. The FA imposes certain restrictions on concentrations of certain components in fertiliser and also puts in place certain reporting and labelling requirements.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>16 Soil improving agents to be sold in marked parcels</b>	<p>(1) The Minister may, by order published in the Gazette, declare that particulars specified in the order must be marked on a parcel that contains a soil improving agent or a soil improving agent of a specified class.</p> <p>(2) Without limiting the generality of subsection (1), those particulars may comprise any or all of the following:</p> <ul style="list-style-type: none"> <li>(a) details of the quantity of soil improving agent contained in the parcel,</li> <li>(b) in the case of a soil improving agent that is a fertiliser, the respective proportion in which nitrogen, phosphorus or potassium or any other element (or any form of nitrogen, phosphorus or potassium or any other element) occurs in the fertiliser,</li> <li>(c) in the case of a soil improving agent that is a liming material, the respective proportion in which calcium, magnesium or sulphur or any other element (or any form of calcium, magnesium or sulphur or any other element) occurs in the liming material,</li> <li>(d) warning labels.</li> </ul> <p>(3) A dealer must not sell a soil improving agent unless the soil improving agent is contained in a parcel that is marked with the particulars (if</p>	<p>If instructed by the Minister producers and suppliers of biosolids must state the particulars specified in the order.</p>

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	any) required by an order made under this section that is in force.	
<b>17 Soil improving agents to conform to marked particulars</b>	<p>(1) This section applies to any soil improving agent in relation to which an order is in force under section 16 (declaring that particulars specified in the order must be marked on a parcel that contains the soil improving agent or a soil improving agent of its class).</p> <p>(2) A dealer must not sell a soil improving agent to which this section applies unless the soil improving agent conforms to the particulars required to be marked on the parcel (or permitted to be marked on an invoice or other document) that are in fact so marked.</p>	Soil improving agents must conform to the particulars required to be marked on the parcel.
<b>18 Soil improving agents to comply with composition standards</b>	<p>(1) The Minister may, by order published in the Gazette, declare that a soil improving agent, or a soil improving agent of a class specified in the order, must not contain more than a specified maximum concentration or proportion of any specified component (a "composition standard").</p> <p>(2) A dealer must not sell a soil improving agent unless the soil improving agent complies with the composition standards (if any) that apply to it as a result of an order made under this section that is in force.</p> <p>(3) Maximum penalty: 50 penalty units.</p> <p>(4) However, it is not an offence to sell a soil improving agent that does not comply with the composition standards applying to it if the soil improving agent is sold to a dealer.</p>	<p>The Minister may publish orders that declare biosolids fertiliser products must not contain more than a specified maximum concentration or proportion of any specified component.</p> <p>Further, sellers of biosolids must ensure that their product complies with composition standards.</p>

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>19 Substances not to be falsely represented as soil improving agents</b>	A dealer shall not falsely represent a substance to be a soil improving agent.	Producers or sellers of biosolids should be certain that the product they are supplying is a soil improvement agent.
<b>33 False or misleading information</b>	A person shall not, in or in relation to any application under this Act or in purported compliance with any requirement under this Act, make any statement or furnish any information which is false or misleading in a material particular.	Persons shall not furnish any information which is false or misleading.

#### **Occupational Health and Safety Act 2000 NSW**

The *Occupational Health and Safety Act 2000 NSW (OHSA)* imposes a duty on employers to protect people at their place of work against risks to health or safety. A duty is imposed on employers to consult their employees on occupational health and safety matters. The Act imposes penalties for contravening the provisions by imposing penalties ranging from 7,500 to 500 penalty units.

Where employees deal with biosolids and any associated products, the employer must ensure their health, safety and welfare at all times. This is to be achieved by reducing risks to employees health, ensuring safe working environments and systems of work and consulting with employees.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>8 Duties of employers</b>	<p>(1) <b>Employees</b> An employer must ensure the health, safety and welfare at work of all the employees of the employer.</p> <p>That duty extends (without limitation) to the following:</p>	Employers whose employees deal with biosolids must ensure their health, safety and welfare at all times.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	<ul style="list-style-type: none"> <li>(a) ensuring that any premises controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risks to health,</li> <li>(b) ensuring that any plant or substance provided for use by the employees at work is safe and without risks to health when properly used,</li> <li>(c) ensuring that systems of work and the working environment of the employees are safe and without risks to health,</li> <li>(d) providing such information, instruction, training and supervision as may be necessary to ensure the employees' health and safety at work,</li> <li>(e) providing adequate facilities for the welfare of the employees at work.</li> </ul> <p>(2) <b>Others at workplace</b> An employer must ensure that people (other than the employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work.</p>	
<b>10 Duties of controllers of work premises, plant or substances</b>	<ul style="list-style-type: none"> <li>(1) A person who has control of premises used by people as a place of work must ensure that the premises are safe and without risks to health.</li> <li>(2) A person who has control of any plant or substance used by people at work must ensure that the plant or substance is safe and without risks to health when properly used.</li> <li>(3) The duties of a person under this section: <ul style="list-style-type: none"> <li>(a) do not apply to premises, plant or substances used only by</li> </ul> </li> </ul>	Companies whose employees handle and use biosolids must provide and maintain a working environment that is safe and without risks to its employees health.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	<p>employees of the person; and</p> <p>(b) do not apply to premises occupied only as a private dwelling or to plant or substances used in any such premises and</p> <p>(c) extend to the means of access to or exit from a place of work; and</p> <p>(d) apply only if the premises, plant or substances are controlled in the course of a trade, business or other undertaking (whether for profit or not) of the person.</p> <p>(4) In this section, a person who has control of premises, plant or substances includes:</p> <p>(a) a person who has only limited control of the premises, plant or substances (in which case any duty under this section applies only to the matters over which the person has control); and</p> <p>(b) a person who has, under any contract or lease, an obligation to maintain or repair the premises, plant or substances (in which case any duty under this section applies only to the matters covered by the contract or lease).</p>	
<b>12 Penalty for offence against this Division</b>	<p>A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision and is liable to the following maximum penalty:</p> <p>(a) in the case of a corporation (being a previous offender)—7,500 penalty units; or</p> <p>(b) in the case of a corporation (not being a previous offender)—5,000 penalty units; or</p> <p>(c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both; or</p> <p>(d) in the case of an individual (not being a previous offender)—500</p>	<p>A person or corporation who fails to provide and maintain a safe working environment without risks to health is guilty of an offence.</p>



<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
	penalty units.	
<b>13 Duty of employer to consult</b>	An employer must consult, in accordance with this Division, with the employees of the employer to enable the employees to contribute to the making of decisions affecting their health, safety and welfare at work.	Employers must consult with their employees to enable them to contribute to the making of decisions affecting their health, safety and welfare at work.  This can arise in the form of meetings or interviews with staff and listening to their advice and recommendations.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>17 Establishment of OHS committees, election of OHS representatives and other agreed arrangements</b>	<p>(1) <b>OHS committees</b> An OHS committee is to be established for the purposes of consultation under this Division if the employer employs 20 or more persons in the employer's undertaking and a majority of those employees request the establishment of the committee or if WorkCover so directs. More than one committee is to be established if a majority of those employees request their establishment and the employer agrees or if WorkCover so directs.</p> <p>(2) <b>OHS representatives</b> An OHS representative is to be elected for the purposes of consultation under this Division if at least one of the persons employed by the employer requests the election of the representative or if WorkCover so directs. The employees may elect more than one OHS representative if the employer agrees or if WorkCover so directs.</p> <p>(3) <b>Other agreed arrangements</b> Other agreed arrangements for consultation with employees are to be made in accordance with any requirements of the regulations. A Federal or State industrial organisation of employees may represent, for the purposes of consultation under the agreed arrangements, any of those employees who request the organisation to represent them.</p> <p>(4) <b>General</b> The employer may make arrangements for the establishment of an OHS committee or the election of an OHS representative whether or not it has been requested by any of the employees of the employer.</p> <p>(5) An OHS representative may also be appointed to an OHS committee.</p>	Where the employer employs 20 or more persons an Occupational Health and Safety committee is to be established. OHS representatives are to be elected for the purpose of consultation.

### **Food Act 2003 NSW**

The objectives of the *Food Act 2003 NSW (FA)* ensure that food for sale is both safe and suitable for human consumption.

It is an offence under the Act to sell any product which has potentially been contaminated by biosolids.

<b>Legislative Provision</b>	<b>Obligation</b>	<b>Suggested Action</b>
<b>14 Sale of unsafe food</b>	<p>(1) A person must not sell food that the person knows is unsafe.</p> <p>Maximum penalty: 1,000 penalty units or imprisonment for 2 years, or both, in the case of an individual and 5,000 penalty units in the case of a corporation.</p> <p>(2) A person must not sell food that the person ought reasonably to know is unsafe.</p> <p>Maximum penalty: 750 penalty units in the case of an individual and 3,750 penalty units in the case of a corporation.</p>	<p>If a seller of food knows that their product has been contaminated by biosolids rendering them unsafe then it is an offence to sell the product.</p>

#### **Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act)**

The EP&A Act regulates most development in the state. The development of any biosolids related facility, or works to an existing facility, is likely to constitute development for the purposes of the EP&A Act. Proposed development must be assessed in accordance with the relevant planning controls. There are state, regional and local plans and policies that determine the necessary level of assessment and who is responsible for the assessment. Generally, local government is responsible for determining development applications; however sometimes it is the Minister for Planning (the Department assess proposals for the Minister).

In general, the application of biosolids to agricultural land is considered to be ancillary to normal agricultural use. It therefore does not generally require any additional permits.

