

AUSTRALIA AND NEW ZEALAND BIOSOLIDS LEGAL REGISTER

SOUTH AUSTRALIA

This chapter of the *Legal Register* deals with legislation in South Australia. 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.

South Australia

South Australian legislation establishes various obligations that a producer, supplier or user of biosolids must consider when dealing with biosolids products.

- Biosolids suppliers and end-users should consult the South Australian Biosolids Guidelines for the safe handling and reuse of biosolids (1997) (**South Australian Guidelines**), which provide information regarding the use and application of biosolids in South Australia. A new draft version of the South Australian Guidelines was released in May 2009.
- A producer or end-user of biosolids must be careful not to pollute the environment, or to cause environmental harm. If this occurs, the *Environment Protection Act 1993* (SA) may be breached, and penalties may be payable. An Environmental Protection Policy (**EPP**) clarifies the application of the *Environment Protection Act 1993* (SA) in relation to particular aspects of the environment, such as water quality for example.
- A biosolids product must correspond to any description or sample of it, must be fit for the purpose for which it was sold and must be of merchantable quality. See the *Trade Practices Act 1974* (Cth), the *Fair Trading Act 1987* (SA) and the *Sale of Goods Act 1895* (SA).
- 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 production, storage, transport and use of biosolids. See the *Occupational Health, Safety and Welfare Act 1986* (SA).

Key Regulatory Instruments

The main regulatory instruments for biosolids in South Australia are:

- South Australian Biosolids Guidelines for the safe handling, reuse or disposal of biosolids (1997)
- *Environment Protection Act 1993 (SA)*
- Environment Protection (Water Quality) Policy 2003
- Environment Protection (Waste to Resources) Policy 2010
- *Land and Business (Sale and Conveyancing) Act 1994 (SA)*
- *Livestock Act 1997 (SA)*
- *Public and Environmental Health Act 1987 (SA)*
- *Development Act 1993 (SA)*
- *River Murray Act 1993 (SA)*
- *Agricultural and Veterinary (Control of Use) Products Act 2002 (SA)*
- *Natural Resources Management Act 2004 (SA)*

South Australian Biosolids Guidelines for the safe handling, reuse or disposal of biosolids (South Australian Guidelines)

The objectives of the South Australian Guidelines are to provide a framework for the safe handling and use of biosolids by operators of wastewater treatment plants, reprocessors and end users. The guidelines provide classification of biosolids, stabilisation grading of biosolids, contaminant grading of biosolids, approved uses of biosolids and biosolids health and safety precautions.

Prior to using and handling of biosolids users should consult these guidelines. It would be prudent to consult both the current South Australian Guidelines and the new draft version of the guidelines released in 2009.

Environment Protection Act 1993 (SA)

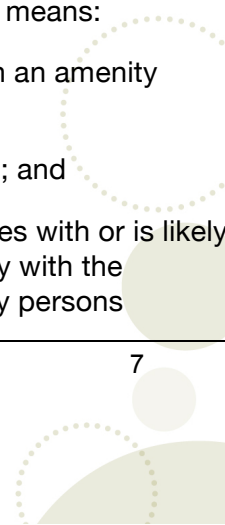
This Act is the main instrument for protection of the environment in South Australia. Under the Act, discharges to the environment must not cause detriment to the environment. The Act includes a General Environmental Duty (section 25). The Act also provides for the development of Environment Protection Policies (**EPPs**) which set out detailed requirements for protecting particular aspects of the environment, or protecting the environment from particular activities. The EPPs contain penalties for the breach of mandatory provisions, relating to required behaviours or causing certain types of environmental harm.

Legislative Provision	Obligation	Suggested Action
s 25 General environmental duty	<p>1 A person must not undertake an activity that pollutes, or might pollute, the environment unless the person takes all reasonable and practicable measures to prevent or minimise any resulting environmental harm.</p> <p>2 In determining what measures are required to be taken under subsection 1, regard is to be had, amongst other things, to:</p> <p>(a) the nature of the pollution or potential pollution and the sensitivity of the receiving environment; and</p> <p>(b) the financial implications of the various measures that might be taken as those implications relate to the class of persons undertaking activities of the same or a similar kind; and</p> <p>(c) the current state of technical knowledge and likelihood of successful application of the various measures that might be taken.</p> <p>3 In any proceedings (civil or criminal), where it is alleged that a person failed to comply with the duty under this section by polluting the environment, it will be a defence:</p> <p>(a) If:</p> <p>(i) maximum pollution levels were fixed for the particular pollutant and form of pollution concerned by mandatory provisions of an environment protection policy or conditions of an environmental authorisation held by the person, or both;</p>	Producers and users of biosolids must not undertake activities that might pollute or do pollute the environment unless they take all reasonable and practicable measures to prevent or minimise any resulting environmental harm.

Legislative Provision	Obligation	Suggested Action
	<p style="text-align: center;">and</p> <p style="text-align: center;">(ii) it is proved that the person did not by so polluting the environment contravene the mandatory provisions or conditions; or</p> <p style="text-align: center;">(b) If:</p> <p style="text-align: center;">(i) an environment protection policy or conditions of an environmental authorisation provided that compliance with specified provisions of the policy or with specified conditions of the authorisation would satisfy the duty under this section in relation to the form of pollution concerned; and</p> <p style="text-align: center;">(ii) it is proved that the person complied with the provisions or with such conditions of an environmental authorisation held by the person.</p> <p>4 Failure to comply with the duty under this section does not of itself constitute an offence, but:</p> <p>(a) compliance with the duty may be enforced by the issuing of an environment protection order; and</p> <p>(b) a clean-up order or clean-up authorisation may be issued, or an order may be made by the Environment, Resources and Development Court under Part 11, in respect of non-compliance with the duty; and</p> <p>(c) failure to comply with the duty will be taken to be a contravention of this Act for the purposes of section 135.</p>	
s 79 Causing serious environmental	<p>1 A person who causes serious environmental harm by polluting the environment intentionally or recklessly and with the knowledge that environmental harm will or might result is guilty of an offence.</p>	<p>Producers or users of biosolids must not cause serious environmental harm by polluting the environment, either intentionally or recklessly.</p>

Legislative Provision	Obligation	Suggested Action
harm	<p>Penalty:</p> <p>If the offender is a body corporate—\$2,000,000.</p> <p>If the offender is a natural person—\$500,000 or Division 4 imprisonment or both.</p> <p>2 A person who by polluting the environment causes serious environmental harm is guilty of an offence.</p> <p>Penalty:</p> <p>If the offender is a body corporate—\$500,000.</p> <p>If the offender is a natural person—\$250,000.</p>	<p>Environmental harm is to be treated as serious environmental harm if:</p> <p>(i) it involves actual or potential harm to the health or safety of human beings that is of a high impact or on a wide scale, or other actual or potential environmental harm (not being merely an environmental nuisance) that is of a high impact or on a wide scale; or</p> <p>(ii) it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$50,000.</p> <p>Careful procedures and measures should be taken to ensure that environmental harm is not caused. These should be reviewed and tested constantly to ensure their effectiveness.</p>
s 80 Causing material environmental harm	<p>1 A person who causes material environmental harm by polluting the environment intentionally or recklessly and with the knowledge that environmental harm will or might result is guilty of an offence.</p> <p>Penalty:</p> <p>If the offender is a body corporate—\$500,000.</p> <p>If the offender is a natural person—\$250,000 or Division 5 imprisonment or both.</p>	<p>Producers or users of biosolids must not cause material environmental harm by polluting the environment either intentionally or recklessly.</p> <p>Environmental harm is to be treated as material environmental harm if:</p> <p>(i) it consists of an environmental</p>

Legislative Provision	Obligation	Suggested Action
	<p>2 A person who by polluting the environment causes material environmental harm is guilty of an offence.</p> <p>Penalty:</p> <p>If the offender is a body corporate—\$250,000.</p> <p>If the offender is a natural person—\$150,000.</p>	<p>nuisance of a high impact or on a wide scale; or</p> <p>(ii) it involves actual or potential harm to the health or safety of human beings that is not trivial, or other actual or potential environmental harm (not being merely an environmental nuisance) that is not trivial; or</p> <p>(iii) it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$5000.</p>
s 82 Causing environmental nuisance	<p>1 A person who causes an environmental nuisance by polluting the environment intentionally or recklessly and with the knowledge that an environmental nuisance will or might result is guilty of an offence.</p> <p>Penalty:</p> <p>If the offender is a body corporate—Division 1 fine.</p> <p>If the offender is a natural person—Division 3 fine.</p> <p>2 A person who by polluting the environment causes an environmental nuisance is guilty of an offence.</p> <p>Penalty:</p> <p>If the offender is a body corporate—Division 4 fine.</p> <p>If the offender is a natural person—Division 6 fine.</p>	<p>Producers and users of biosolids must ensure that they do not create an environmental nuisance by polluting the environment in an intentional or reckless way with the knowledge that they will or may cause an environmental nuisance.</p> <p>Environmental nuisance means:</p> <p>(a) any adverse effect on an amenity value of an area that:</p> <p>(i) is caused by pollution; and</p> <p>(ii) unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons</p>



Legislative Provision	Obligation	Suggested Action
		<p>occupying a place within, or lawfully resorting to, the area; or</p> <p>(b) any unsightly or offensive condition caused by pollution;</p> <p>The most common nuisance in the production and use of biosolids is odour. Producers and users of biosolids should ensure that they have in place adequate precautions that will prevent or minimise the impact of this nuisance from occurring.</p>
s 83 Notification where serious or material environmental harm caused or threatened	<p>1 If serious or material environmental harm from pollution is caused or threatened in the course of an activity undertaken by a person, the person must, as soon as reasonably practicable after becoming aware of the harm or threatened harm, notify the Authority [the Environment Protection Authority South Australia (EPA SA)] of the harm or threatened harm, its nature, the circumstances in which it occurred and the action taken to deal with it.</p> <p>Penalty:</p> <p>If the offender is a body corporate—\$250,000.</p> <p>If the offender is a natural person—\$150,000.</p>	<p>If serious environmental harm is threatened or occurs then notification must be given as soon as reasonably practicable to EPA SA of the nature, circumstances and the action taken to deal with the harm.</p> <p>Established procedures and protocols should be in place to ensure that if environmental harm occurs or is threatened then persons know and understand what to do immediately.</p>
s 119 False or misleading information	A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act.	False or misleading information in relation to a particular material should never be provided to EPA SA or kept in records.

Legislative Provision	Obligation	Suggested Action
	Penalty: (a) If the offender is a body corporate—Division 1 fine; (b) If the offender is a natural person—Division 3 fine.	
s 123 Continuing offences	1 Where an offence against a provision of this Act is committed by a person by reason of a continuing act or omission: (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence; and (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence. 2 For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.	Where offences against this act (causing environmental harm or nuisances) are committed by reason of a continuing act or omission, then persons will be liable to additional penalties for each day the act or omission continues.

Environment Protection (Water Quality) Policy 2003

Published by EPA SA, this EPP sets out a consistent State-wide policy on water quality. It clarifies the general duty under section 25 of the *Environmental Protection Act 1993* (SA) not to undertake an activity that pollutes or might pollute the environment regarding the impacts on water quality. This EPP also sets out mechanisms for exemptions from parts of the EPP.

This EPP clarifies that in relation to septic systems:

- South Australian Biosolids Guidelines for the safe handling, reuse or disposal of biosolids (1997)
- *Environment Protection Act 1993* (SA)

Legislative Provision	Obligation	Suggested Action
Clause 11 General obligation to avoid discharge etc into waters	<p>1 A person who is undertaking an activity, or is an occupier of land, must take all reasonable and practicable measures (not being measures that themselves cause environmental harm) to avoid the discharge or deposit of waste from that activity or land:</p> <p>(a) into any waters; or</p> <p>(b) onto land in a place from which it is reasonably likely to enter any waters (including by processes such as seepage or infiltration or carriage by wind, rain, sea spray, or stormwater or by the rising of the water table),</p> <p>and, in taking those measures, must apply the waste management hierarchy.</p> <p>2 If, after having complied with subclause (1), some waste is to be discharged or deposited, and may lawfully be discharged or deposited, by a person into waters or onto land referred to in subclause (1)(b), the person must take all reasonable and practicable measures to prevent or minimise any resulting environmental harm to waters.</p> <p>3 Subclause (2) does not derogate from any other provision of this policy.</p>	Producers and users of biosolids must not undertake activities that might discharge waste into any waters, or onto land from where it might enter waters. If some waste is lawfully discharged into waters or the waste might enter waters, all reasonable and practical measures must be taken to prevent or minimise environmental harm to waters.
Clause 32(4) Septic systems	If a person uses sludge collected from a septic system, the <i>South Australian Biosolids Guidelines for the Safe Handling, Reuse or Disposal of Biosolids</i> prepared by the Authority apply.	For the purposes of this EPP, sludge includes biosolids.
Clause 34(5) Sewerage systems and sewage	If a person reuses, or supplies for reuse, sludge collected: <p>(a) by a community wastewater management system; or</p> <p>(b) from a sewage treatment system,</p> the <i>South Australian Biosolids Guidelines for the Safe Handling, Reuse or Disposal of</i>	For the purposes of this EPP, sludge includes biosolids.

Legislative Provision	Obligation	Suggested Action
treatment plants	<i>Biosolids prepared by the Authority apply.</i>	

Environment Protection (Waste to Resources) Policy 2010 (EPP)

This policy has not yet (as of March 2010) formally commenced. The objective of this EPP is to achieve sustainable waste management by applying a waste management hierarchy in line with the principles of ecological sustainability set out in section 10 of the *Environment Protection Act 1993* (SA). The waste management hierarchy is set out in section 3(2) of the *Zero Waste SA Act 2004* (SA). The order of priority is as follows:

- (a) avoidance of the production of waste; and
- (b) minimisation of the production of waste; and
- (c) reuse of waste; and
- (d) recycling of waste; and
- (e) recovery of energy and other resources from waste; and
- (f) treatment of waste to reduce potentially degrading impacts; and
- (g) disposal of waste in an environmentally sound manner.

This EPP also sets out penalties for the unlawful disposal of waste.

Land and Business (Sale and Conveyancing) Act 1994 (SA)

This Act and its regulations (the *Land and Business (Sale and Conveyancing) Regulations 1995* (SA) (**LBSC Regulations**)) establish protection for consumers buying land and businesses in South Australia. When land or a business is sold the vendor is required to complete a series of questions, in either a Form 1 or Form 2 Statement. This includes questions on specific environmental matters. The vendor is required to specify the existence of an environmental assessment of the land or part of the land, including any site testing done relating to the use of biosolids.

Livestock Act 1997 (SA)

This Act specifies the requirements for livestock grazing in order to protect stock health and the health of humans who consume stock produce. These have been taken into considerations in the preparation of the South Australian Guidelines, discussed above.

Legislative Provision	Obligation	Suggested Action
s 28 Acts causing or likely to cause livestock to become affected with notifiable condition	A person who does an act intending that, or being recklessly indifferent as to whether, livestock become affected or further affected with a notifiable condition is guilty of an offence. Maximum penalty: In the case of an exotic disease—\$50,000 or imprisonment for 2 years; In any other case—\$20,000 or imprisonment for 1 year.	Prior to applying biosolids to land, users should ensure that the biosolids have been sufficiently tested and examined so that they meet established guidelines and levels. Where biosolids are proven to be safe to apply to land then this will provide a defence that the users did not intend or were not recklessly indifferent to the fact that livestock became affected with a notifiable condition. To determine whether biosolids are safe to apply to land the South Australian Guidelines should be consulted.
s 75 False or misleading information	A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act. Maximum penalty: If the person made the statement knowing that it was false or misleading—\$10,000; In any other case—\$5000.	Persons must not make statements or representations that are false or misleading in relation to biosolids or to any other relevant matter.

Public and Environmental Health Act 1987 (SA)

This Act is largely focused on matters such as infectious diseases and epidemics but also has provisions on preventing insanitary conditions on premises and on the control of activities which either give rise to public health risks or emit offensive materials or odours. Discharging waste in a public space and polluting water supplies are prohibited by the Act. Under the Act local council officers can, in circumstances

which the officer reasonably believes require immediate action, enter a premises or property to carry out an inspection without a warrant from a magistrate.

Development Act 1993 (SA)

The *Development Act 1993 (SA)* sets out the planning and development framework in South Australia. Among other matters it outlines the powers and duties of the EPA in relation to planning and development issues and the role of Environmental Impact Statements and Public Environment Reports in this field.

River Murray Act 1993 (SA)

This Act applies to the River Murray and designated River Murray Protection Areas. The aims of the Act includes water quality objectives, such as improving water quality, minimising the impact of potential pollutants and managing nutrient levels to reduce the occurrence of algal blooms and other harmful effects on the ecology of the river. The Act applies a general duty of care on all persons to take all reasonable measures to prevent or minimise harm to the River Murray through their activities. In addition to other relevant Acts, Regulations, Policies and Guidelines, the *River Murray Act 1993 (SA)* also applies to producers and users of biosolids within a River Murray Protection Area.

Agricultural and Veterinary (Control of Use) Products Act 2002 (SA)

This Act and its subordinate regulations (the *Agricultural and Veterinary Products (Control of Use) Regulations 2004 (SA)*) govern the use of chemicals, including fertilisers, for agricultural purposes. They administer standards for unacceptable impurities

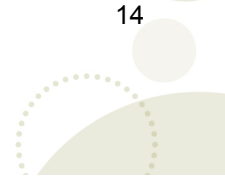
Natural Resources Management Act 2004 (SA)

The purpose of this Act is to assist in achieving ecologically sustainable development by establishing an integrated scheme promoting the sustainable use and management of natural resources. The Act has a particular focus on water resources. The Act imposes a general duty to act reasonably in relation to managing natural resources, and forbids activities which may result in the degradation of land ('degradation' is given the meaning of any change that has an adverse effect on water, native vegetation or other natural resources).

Sale of Goods Act 1895 (SA)

This Act is South Australia's key law for regulating contracts of sale. The Act sets out the basic elements for formation of a contract of sale, the effect of such a contract, and the consequences of a breach of such a contract. Organisations dealing with biosolids should ensure that any contracts of sale between it and a biosolids customer meet the provisions set out in the Act. For provisions relating to the protection of consumers, reference should be made to the *Fair Trading Act 1987 (SA)*, below.

Legislative Provision	Obligation	Suggested Action
s 12 Implied undertaking as to title etc	<p>In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is:</p> <ul style="list-style-type: none"> (a) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at a time when the property is to pass; (b) An implied warranty that the buyer shall have and enjoy quiet possession of the goods; (c) 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. 	Sellers of biosolids must ensure that they have the right to sell biosolids and that the goods are free from any charge or encumbrance in favour of any third party.
s 13 Sale by description	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.	Where sellers of biosolids provide a description to buyers they must ensure that the description is accurate and truthful and corresponds to the biosolids supplied.
s 14 Implied conditions as to quality or fitness	<p>Subject to the provisions of this Act, and of any Statute in that behalf, 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> <ul style="list-style-type: none"> (a) where the buyer, expressly or by implication, makes known to the seller 	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



Legislative Provision	Obligation	Suggested Action
	<p>the particular purpose for which the goods are required, so as to 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 he 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>(b) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer 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>(c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;</p> <p>(d) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.</p>	<p>that the goods are fit for such purpose. To ensure this implied 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 for which it is they were acquired and are fit for purposes reasonable to expect them to be suitable having regard to any price, descriptions and relevant circumstances.</p>
s 15 Sale by sample	<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,</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>

Legislative Provision	Obligation	Suggested Action
	rendering them unmerchantable, which would not be apparent on reasonable examination of the sample	
s 20 Risk prima facie passes with property	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: 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: Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party.	Unless the parties have otherwise agreed, the goods remain at the risk of the seller until the property is transferred to the buyer. If delivery has been delayed through either the fault of the buyer or seller, then the party responsible for the delay will bear liability.

Fair Trading Act 1987 (SA)

This Act is the key instrument for consumers in South Australia. The Act replicates sections of the *Trade Practices Act 1974* (Cth). Reference should also be made to this Commonwealth Act.

Most importantly for those dealing with biosolids, the Act prohibits misleading, unconscionable conduct and false representations regarding goods and services. The Act allows for damages and other remedies where such conduct occurs.

Legislative Provision	Obligation	Suggested Action
s 56 Misleading or deceptive conduct	See section 52 of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this Register.	See the action policy for section 52 of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this Register.
s 57 Unconscionable conduct	<p>1 A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services to another person, engage in conduct that is, in all the circumstances, unconscionable.</p> <p>2 Without in any way limiting the matters to which a court may have regard for the purposes of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of goods or services to another person (in this subsection referred to as the "consumer"), a court may have regard to:</p> <ul style="list-style-type: none"> (a) the relative strengths of the bargaining positions of the person and the consumer; and (b) whether, as a result of the conduct engaged in by the person, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the person; and (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services; and (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the person or a person acting on behalf of the person in relation to the supply or possible supply of the goods and services; and 	See the action policy for section 51AB of the <i>Trade Practices Act 1974</i> (Cth) in Commonwealth section of this Register.

Legislative Provision	Obligation	Suggested Action
	<p>(e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the person.</p> <p>3 A person will not be taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to another person by reason only that the person:</p> <p>(a) institutes legal proceedings in relation to that supply or possible supply; or</p> <p>(b) refers a dispute or claim in relation to that supply or possible supply to arbitration.</p> <p>4 For the purposes of determining whether a person has contravened subsection 1 in connection with the supply or possible supply of goods or services to another person:</p> <p>(a) a court is not to have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and</p> <p>(b) a court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.</p> <p>5 A reference in this section to goods or services is a reference to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.</p> <p>6 A reference in this section to the supply or possible supply of goods does not include a reference to the supply or possible supply of goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.</p>	
s 58 False or misleading	See section 53 of the Trade Practices Act above,	See the action policy for section 53 of the <i>Trade Practices Act 1974</i> (Cth) in the

Legislative Provision	Obligation	Suggested Action
representations		Commonwealth section of this Register.
s 63 Misleading conduct in relation to goods	A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.	Producers and users of biosolids must not mislead the public in relation to the nature, manufacturing process, characteristics or suitability for purpose in relation to biosolids.

Occupational Health, Safety and Welfare Act 1986 (SA)

Employees in workplaces in South Australia handling biosolids are protected by this Act, which is monitored by SafeWork SA. This Act sets out the laws regarding health and safety in South Australian workplaces, imposes obligations on people who may affect the health and safety of others and sets out procedures for setting up workplace health and safety committees and representatives within workplaces.

An employer dealing with biosolids must ensure that it provides a safe workplace for its employees. The key obligation is provided in section 19.

Further health and safety precautions are set out in the South Australian Guidelines, discussed above. They specify that as biosolids may contain microorganisms that could be harmful to people who come into contact with the material, sensible care should be exercised when handling biosolids products. A number of practices are suggested.

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s 19 Duties of employers	<p>1 An employer must, in respect of each employee employed or engaged by the employer, ensure so far as is reasonably practicable that the employee is, while at work, safe from injury and risks to health and, in particular:</p> <p>(a) must provide and maintain so far as is reasonably practicable—</p> <p>(i) a safe working environment;</p>	<p>Employers are to ensure that employees are safe from injury and risks to health, and in particular, the employers must provide and maintain:</p> <ul style="list-style-type: none"> - Safe working environment; - Safe systems of work;

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	<ul style="list-style-type: none"> (ii) safe systems of work; (iii) plant and substances in a safe condition; and (b) must provide adequate facilities of a prescribed kind for the welfare of employees at any workplace that is under the control and management of the employer; and (c) must provide such information, instruction, training and supervision as are reasonably necessary to ensure that each employee is safe from injury and risks to health. 	<ul style="list-style-type: none"> - Facilities to ensure the welfare of employees. <p>Employers must provide adequate facilities and provide instruction and training in the manufacturing and handling of biosolids to ensure employees are safe from injury and risks to health.</p>
<p>s 20 Employers' statements for health and safety at work</p>	<p>1 Every employer must:</p> <ul style="list-style-type: none"> (a) prepare and maintain, in consultation with: <ul style="list-style-type: none"> (i) health and safety committees; and (ii) the employer's employees; and (iii) any health and safety representative who represents those employees; and (iv) on the application of an employee—a registered association of which that employee is a member; and (v) if the employer so decides—any other registered association nominated by the employer of which the employer is a member, <p>Policies relating to occupational health, safety and welfare at the workplace; and</p> <ul style="list-style-type: none"> (b) — <ul style="list-style-type: none"> (i) prepare and keep up to date a written statement setting out with reasonable particularity the arrangements, practices and procedures at the workplace protecting the health and 	<p>Employers must prepare policies relating to health, safety and welfare in consultation with health safety committees and with health and safety representatives from any registered association of which employees are members.</p>

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	<p>safety of the employer's employees at the workplace; and</p> <p>(ii) take reasonable steps to bring the contents of that statement to the notice of those employees.</p>	
s 21 Duties of workers	<p>1 An employee must take reasonable care to protect the employee's own health and safety at work. Maximum penalty: Division 7 fine.</p> <p>(a) An employee must take reasonable care to avoid adversely affecting the health or safety of any other person through an act or omission at work. Maximum penalty: Division 6 fine.</p>	A duty is imposed upon employees to ensure they protect their own health and safety while at work and to avoid affecting the health of any other persons.
s 24 Duties of manufacturers etc	<p>A person who designs, manufactures, imports or supplies any plant to which this subsection applies must:</p> <p>(a) ensure so far as is reasonably practicable that the plant is designed and constructed so as to be safe:</p> <p>(i) when properly used and maintained; and</p> <p>(ii) when subjected to reasonably foreseeable forms of misuse; and</p> <p>(b) ensure so far as is reasonably practicable that the plant is designed and constructed so that people who might use, clean or maintain the plant are, in doing so, safe from injury and risks to health; and</p> <p>(c) take such steps to test or examine, or arrange for the testing or examination of, the plant as are reasonably necessary to ensure compliance with paragraphs (a) and (b); and</p> <p>(d) ensure that the plant complies in all respects with prescribed requirements (if any) applicable to it; and</p>	Persons who produce or supply biosolids must ensure that their plant is designed and constructed so that it is safe when properly used, cleaned or maintained. Appropriate testing and examination are required to ensure compliance. Any prescribed requirements in addition adequate information regarding conditions of use and maintenance are to be furnished to employees or other persons.

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	(e) ensure so far as is reasonably practicable that adequate information about any conditions necessary to ensure the safe installation, use and maintenance of the plant is supplied with the plant.	