

AUSTRALIA AND NEW ZEALAND BIOSOLIDS LEGAL REGISTER

WESTERN AUSTRALIA

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

Western Australia

- Western Australia legislation establishes various obligations that a producer, supplier or user of biosolids must consider when dealing with biosolids products.
- Biosolids producers, suppliers and end-users should consult the Western Australian Guidelines for Direct Land Application of Biosolids and Biosolids Products (2002) (**Western Australian Guidelines**). The Western Australian Guidelines grade biosolids by two parameters. The contaminant grading classifies biosolids into C1, C2 and C3, based on the concentration of chemical contaminants. The pathogen grading classifies biosolids into P1, P2, P3 and P4, depending on microbiological criteria. The contaminant and pathogen grades restrict the possible end-uses of biosolids.
- A producer or end-user of biosolids must be careful not to cause environmental harm or otherwise breach the *Environmental Protection Act 1986* (WA). Heavy penalties can apply under this Act.
- 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 the *Trade Practices Act 1974* (Cth), the *Fair Trading Act 1987* (WA) and the *Sale of Goods Act 1895* (WA).
- 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 Safety and Health Act 1984* (WA).

Key Regulatory Instruments

In Western Australia the key regulatory instruments for biosolids are:

- Western Australian Guidelines for Direct Land Application of Biosolids and Biosolids Products (2002)
- *Environmental Protection Act 1986* (WA)
- *Environmental Protection (Unauthorised Discharges) Regulations 2004* (WA)
- *Health Act 1911* (WA)
- *Waterways Conservation Act 1976* (WA)
- *Metropolitan Water Supply, Sewerage and Drainage Act 1909* (WA)
- *Country Areas Water Supply Act 1947* (WA)
- *Fly Eradication Regulations 1961* (WA)

Environment Protection Act 1986 (WA)

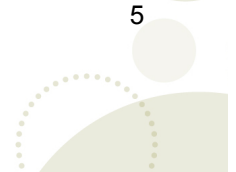
In Western Australia, the *Environment Protection Act 1986* (**EP Act**) enables the Environment Protection Authority (**EPA**) to provide for the prevention, control and abatement of pollution and environmental harm, for the conservation, preservation, protection, and management of the environment. In relation to biosolids, the Act provides for the issuing of works approvals, licenses, permits and associated notices in relation to corporations which are likely to undertake activities which are potentially harmful to the environment; the regulation of discharge of waste onto land and into air and water; the promotion of efficient use of resources; and the implementation of various State policy documents.

Significant fines of up to \$1 million or imprisonment of up to 5 years may be imposed under the EP Act for causing environmental harm.

Legislative Provision	Obligation	Suggested Action
s 49 Causing pollution and unreasonable	(1) In this section <i>unreasonable emission</i> means an emission or transmission of noise, odour or electromagnetic radiation which unreasonably interferes with the	A person who intentionally or negligently causes pollution or allows pollution is guilty of an offence.

Legislative Provision	Obligation	Suggested Action
emissions	<p>health, welfare, convenience, comfort or amenity of any person.</p> <p>(2) A person who intentionally or with criminal negligence:</p> <p>(a) causes pollution; or</p> <p>(b) allows pollution to be caused, commits an offence.</p> <p>(3) A person who causes pollution or allows pollution to be caused commits an offence.</p> <p>(4) A person who intentionally or with criminal negligence:</p> <p>(a) emits an unreasonable emission from any premises; or</p> <p>(b) causes an unreasonable emission to be emitted from any premises, commits an offence.</p>	A person who emits an unreasonable emission, which is defined as the transmission of noise or odour that interferes with health, welfare, convenience, comfort or amenity of any person, is guilty of an offence.
s 50 Discharge of waste in circumstances in which it is likely to cause pollution	<p>(1) A person who intentionally or with criminal negligence:</p> <p>(a) causes waste to be placed; or</p> <p>(b) allows waste to be placed,</p> <p>(c) in any position from which the waste;</p> <p>(d) could reasonably be expected to gain access to any portion of the environment; and</p> <p>(e) Would in so gaining access be likely to result in pollution, commits an offence.</p> <p>(2) A person who causes or allows waste to be placed in any position from which the waste:</p> <p>(a) could reasonably be expected to gain access to any portion of the environment; and</p>	Producers or users of biosolids who either negligently or intentionally, cause or allow waste to be placed in a position where it could gain access to the environment which is likely to cause pollution to the environment are guilty of an offence.

Legislative Provision	Obligation	Suggested Action
	<p>(b) would in so gaining access be likely to result in pollution, commits an offence.</p> <p>(3) A person charged with committing an offence against subsection (1) may be convicted of an offence against subsection (2) which is established by the evidence.</p>	
s 50A Causing serious environmental harm	<p>(1) A person who, intentionally or with criminal negligence:</p> <p>(a) causes serious environmental harm; or</p> <p>(b) allows serious environmental harm to be caused, commits an offence.</p> <p>(2) A person who:</p> <p>(a) causes serious environmental harm; or</p> <p>(b) allows serious environmental harm to be caused, commits an offence.</p> <p>(3) A person charged with committing an offence against subsection (1) may be convicted of an offence against subsection (2) which is established by the evidence.</p>	<p>Producers and users of biosolids must not, intentionally or with criminal negligence, cause serious environmental harm.</p> <p>Serious environmental harm is defined as harm that:</p> <ul style="list-style-type: none"> - is irreversible, of a high impact or on a wide scale; - is significant or in an area of high conservation value or special significance; or - results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding 5 times the threshold amount.
s 50B Causing material	<p>(1) A person who intentionally or with criminal negligence:</p> <p>(a) Causes material environmental harm; or</p>	<p>Producers and users of biosolids must not cause material environmental harm, either intentionally or with</p>



Legislative Provision	Obligation	Suggested Action
environmental harm	<p>(b) Allows material environmental harm to be caused, commits an offence.</p> <p>(2) A person who:</p> <p>(a) Causes material environmental harm; or</p> <p>(b) Allows material environmental harm to be caused, commits an offence.</p> <p>(3) A person charged with committing an offence against subsection (1) may be convicted of an offence against subsection (2) which is established by the evidence.</p>	<p>criminal negligence.</p> <p>Material environmental harm is defined as harm that:</p> <ul style="list-style-type: none"> - is neither trivial nor negligible in nature; or - results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding the threshold amount.
s 50C Court may find accused guilty of alternative offences if charged with causing serious environmental harm	A person charged with committing an offence against section 50A may be convicted of an offence against section 50B (1) or (2) or 51C which is established by the evidence.	If producers and users of biosolids cause or allow a serious environmental harm then they are liable to be further persecuted for committing material environmental harm.
s 54 Applications for	<p>(1) An application for a works approval shall be –</p> <p>(a) made in the form and in the manner approved by the CEO;</p>	Producers and users of biosolids may be required to apply for a licence or

Legislative Provision	Obligation	Suggested Action
works approvals	<p>(b) accompanied by such fee as is prescribed by or determined under the regulations; and</p> <p>(c) supported by such plans, specifications and other documents and information, including a summary thereof, as the CEO requires.</p> <p>(2) On receiving an application made under subsection (1), the CEO shall:</p> <p>(a) if that application does not comply with that subsection, decline to deal with that application and advise the applicant accordingly; or</p> <p>(b) if that application complies with that subsection, advise the applicant that his application has been received and seek comments thereon from any public authority or person which or who has, in the opinion of the CEO, a direct interest in the subject matter of that application.</p>	<p>works approval to:</p> <ul style="list-style-type: none"> - discharge or deposit any waste onto any land or into any water; or - use premises to reprocess, treat, store or dispose of prescribed industrial waste. <p>Producers or users of biosolids are required to apply for a works approval in proper manner and form, in addition to a fee and accompanied by any prescribed information required for the processing of their application.</p>
s 55 Contravention of conditions of works approvals	<p>(1) The occupier of any premises to which a works approval relates (in this section called <i>the relevant premises</i>) who contravenes any condition to which the works approval, or a suspension of the works approval, is subject commits an offence.</p> <p>(2) If:</p> <p>(a) the relevant premises are shared by a corporation and a subsidiary or subsidiaries of the corporation;</p> <p>(b) the corporation or a subsidiary referred to in paragraph (a) is an occupier of the relevant premises; and</p> <p>(c) a condition to which the works approval relating to the relevant premises is for the time being subject is contravened on the relevant premises,</p> <p>the occupier referred to in paragraph (b) is deemed to have caused the</p>	<p>The occupier of any premise that has a works approval who contravenes conditions of the works approval commits an offence.</p>

Legislative Provision	Obligation	Suggested Action
	contravention referred to in paragraph (c) unless the contrary is proved.	
s 56 Occupiers of prescribed premises to be licensed in respect of discharges of waste or emissions of noise, odour or electromagnetic radiation	(1) Subject to this Act, the occupier of any prescribed premises who: (a) causes or increases, or permits to be caused or increased, an emission; or (b) alters or permits to be altered the nature of the waste, noise, odour or electromagnetic radiation emitted, from the prescribed premises commits an offence unless he is the holder of a licence issued in respect of the prescribed premises and so causes, increases, permits or alters in accordance with any conditions to which that licence is subject.	Occupiers of prescribed premises must ensure that they do not permit or cause an emission or alter the nature of a waste, noise or odour unless they are the holder of a licence which permits the activity.
s 57 Applications for licences	(1) An application for a licence shall be: (a) made in the form and in the manner approved by the CEO; (b) accompanied by such fee as is prescribed by or determined under the regulations; and (c) supported by such plans, specifications and other documents and information, including a summary thereof, as the CEO requires.	Application for licenses are generally to be accompanied with the following information as per the Western Australian Guidelines : <ul style="list-style-type: none"> The site owner's name and contact details;

Legislative Provision	Obligation	Suggested Action
	<p>(2) On receiving an application made under subsection (1), the CEO shall:</p> <p>(a) if that application:</p> <p>(i) does not comply with that subsection; or</p> <p>(ii) relates to a matter in respect of which a works approval –</p> <p>(A) has been granted and, in the opinion of the CEO, the works concerned have not been completed satisfactorily in accordance with the conditions to which the works approval is subject (to the extent to which that completion and those conditions are relevant to that application); or</p> <p>(B) is required to be, and has not been, granted and the works concerned have not been completed, decline to deal with that application and advise the applicant accordingly; or</p> <p>(b) if that application complies with that subsection and does not relate to a matter referred to in paragraph (a)(ii), advise the applicant that that application has been received and seek comments thereon from:</p> <p>(i) any public authority or person which or who in the opinion of the CEO has a direct interest in the subject matter of that application; and</p> <p>(ii) in the case of an application for a licence for the discharge of waste into a designated area, a person nominated by the Minister (Water Resources).</p> <p>(2a) As well as seeking comments under subsection (2)(b) the CEO is to advertise the application in the prescribed manner, inviting any person who wishes to comment on it to do so within such period as is specified in the advertisement.</p>	<ul style="list-style-type: none"> • The site address; • The proposed use of biosolids • The source and classification of biosolids, and the basis for that classification (eg: provision of batch sample results and details of treatment process); • A plan of application areas (the plan should show locations of any watercourses and biosolids stockpile sites); • The total area to be treated; • A description of the site, identifying any restrictions as per section 8; • Provision of actual distances between the application site and houses and bores; • The proposed dates of delivery of biosolids to the property, application of biosolids, and the method of application; • The proposed application rate, and the calculations used to

Legislative Provision	Obligation	Suggested Action
		<p>derive it;</p> <ul style="list-style-type: none"> • A contingency plan in case the removal or reassignment of biosolids is required; • Confirmation that the land owner has been advised of the health and safety issues associated with the use of biosolids and is aware of the application restrictions, buffer zones and holding periods to be observed; • Confirmation that the application will be performed in accordance with the requirements of this guideline.
<p>s 58 Contravention of licence conditions</p>	<p>(1) A holder of a licence who contravenes a condition to which the licence is subject commits an offence.</p> <p>(2) If a person contravenes on premises in respect of which a licence is in force a condition to which the licence is subject, the occupier of those premises is himself deemed to have contravened that condition whether or not the person acted contrary to the instructions of that occupier in contravening that condition.</p> <p>(3) If:</p> <p>(a) premises are shared by a corporation and a subsidiary or subsidiaries of the corporation;</p> <p>(b) the corporation or a subsidiary referred to in paragraph (a) is a licensee in</p>	<p>Producers and users of biosolids who contravene a condition within a license they hold commit an offence.</p> <p>License holders should be aware of all conditions fixed to their license to prevent contravention.</p>

Legislative Provision	Obligation	Suggested Action
	<p>respect of the premises referred to in that paragraph; and</p> <p>(c) a condition to which the licence of the licensee referred to in paragraph (b) is subject is contravened on the premises referred to in paragraph (a), the licensee referred to in paragraph (b) is deemed to have caused the contravention referred to in paragraph (c) unless the contrary is proved.</p>	
<p>s 59A Revocation or suspension of works approval or licence</p>	<p>(1) The CEO may revoke or suspend a works approval or licence.</p> <p>(2) The grounds for revocation or suspension of a works approval or licence are that:</p> <p>(a) the CEO is satisfied that there has been a breach of any of the conditions:</p> <p>(i) to which the works approval or licence is subject; or</p> <p>(ii) to which a works approval granted to the licensee was at the time of that breach subject;</p> <p>(b) the premises to which the licence relates are exempted by the regulations from requiring a licence;</p> <p>(c) information contained in or supporting the application was false or misleading in a material respect;</p> <p>(d) the current business address of the holder of the works approval or licence is unknown; or</p> <p>(e) the holder of the works approval or licence has applied to the CEO to surrender the works approval or licence.</p>	<p>CEOs may revoke or suspend a works approval or licence on the grounds that:</p> <ul style="list-style-type: none"> - the CEO is satisfied that there has been a breach of any conditions to which the approval relates; - the premises are exempt; - information contained in the application was false or misleading; - The current address of the holder is unknown; or - the holder has applied to surrender the approval or licence

Environmental Protection (Unauthorised Discharges) Regulations 2004 (WA)

These Regulations, made under the *Environment Protection Act 1986 (WA)*, list materials that must not be discharged into the environment, including sewage. The penalty for an unauthorised discharge is \$5000. Sewage is defined in a related Regulation, the *Environmental Protection (Controlled Waste) Regulations 2004 (WA)* as 'waste containing faecal matter or urine'.

Health Act 1911

The objectives of the *Health Act 1911 (HA)* provides for the prevention and abatement of conditions and activities which are or may be offensive or dangerous to public health. The aim of the HA is to protect health and includes provisions relating to odour, insects, food quality and other matters. The Act applies to any nuisances which are liable to be dangerous or offensive to public health. The Act allows for a local council to serve a notice following investigation of a nuisance complaint.

An organisation dealing with biosolids needs to ensure that its premises do not produce any nuisance that may be offensive or dangerous to public health.

Legislative Provision	Obligation	Suggested Action
s 129 Pollution of water supply	Any person who: (a) defiles or pollutes any water supply, or the catchment area thereof; or (b) permits or suffers any water supply or the catchment area thereof to become defiled or polluted, commits an offence.	Any persons who pollutes or defiles or permit or suffer any water or catchment area to be defiled or polluted commits an offence.
s 181 Removal of offensive matter	In any case where it appears to an environmental health officer or other officer that on any premises within any district there exists any such accumulation of manure, dung, filth, or other offensive matter as to be a nuisance or injurious or dangerous to health, the following provisions shall apply: (1) He may, by requisition to the occupier, or if there is no occupier, to the owner of the premises, require him within a specified time to remove such matter, and destroy the same, or otherwise dispose of it so that it shall cease to be offensive. (2) If default is made in duly complying with the requisition within the time specified in that behalf, then the owner or occupier, as the case may be, commits an offence.	Where there is a accumulation of offensive matter that is a nuisance or injurious to health, then health officers may order the matter to be destroyed

Legislative Provision	Obligation	Suggested Action
	<p>(3) If such default occurs, the officer by whom the requisition was issued shall cause the offensive matter to be removed at the expense of the local government.</p> <p>(4) The offensive matter so removed shall be destroyed, sold, or otherwise disposed of by or on behalf of the local government.</p> <p>(5) The surplus money (if any) remaining from such disposal after defraying the expenses of the removal and disposal shall be paid into the municipal fund, and the deficiency (if any) shall be recoverable by the local government in a summary way from the occupier or owner, as the case may be, of the premises, who shall be jointly and severally liable therefore.</p>	
s 183 Immediate action in respect of nuisances	If an environmental health officer or other officer is satisfied that the nuisance exists, and that immediate action for its abatement is necessary in order to check or prevent the spread of infectious disease, he may act under section 260, and in such case the provisions of that section shall, <i>mutatis mutandis</i> , apply, and the provisions of the next following section shall not apply.	If a nuisance exists then an environmental health officer has the authority to order an abatement of the nuisance to prevent the spread of infectious disease. 'Mutatis mutandis' means 'with necessary changes'.

Waterways Conservation Act 1976 (WA)

It is an offence to discharge pollutants into designated waterways under the *Waterways Conservation Act 1976 (WA)*. Pollutants include sewage, which in turn includes 'any and all waste substance ... which contains or may be contaminated with contain human excrement'. A licence is required to discharge pollutants into designated waterways, which may be granted if the sewage is treated to an approved standard.

Metropolitan Water Supply, Sewerage and Drainage Act 1909 (WA)

The Western Australian Guidelines prohibit the application of biosolids within water supply catchment areas designated as such under the *Metropolitan Water Supply, Sewerage and Drainage Act 1909 (WA)*.

Country Areas Water Supply Act 1947 (WA)

The Western Australian Guidelines prohibit the application of biosolids within water supply catchment areas designated as such under the *Country Areas Water Supply Act 1947 (WA)*.

Fly Eradication Regulations 1961 (WA)

The *Fly Eradication Regulations 1961 (WA)* (made under the *Health Act 1911 (WA)*) make it an offence to lay any matter on land which is likely to attract or be a breeding ground for flies. The local authority may enter the premises to conduct an inspection when it appears that flies are prevalent or breeding on any land or premises. The local authority may also take measures to control the prevalence of flies, affect their eradication and prevent the breeding of flies if the owner or occupier fails to do so. The maximum fine for an offence is \$1000, but if the offence is a continuing one, a daily penalty of between \$50 and \$100 can be applied.

Sale of Goods Act 1895 (WA)

The *Sale of Goods Act 1895 (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 (WA)*.

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 any description, all goods should be reasonably fit for their purpose and all goods should be of merchantable quality.

Legislative Provision	Obligation	Suggested Action
s 12 Implied undertakings 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">(i) 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 the time when the property is to pass;(ii) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;(iii) an implied warranty that the goods shall be free from any charged 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.	<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>

Legislative Provision	Obligation	Suggested Action
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> <p>(i) Where the buyer, expressly or by implication, makes known to the seller 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>(ii) 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>(iii) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;</p> <p>(iv) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.</p>	<p>Where the buyer of biosolids makes known the particular purpose for which the biosolids have been acquired and relies on the skill and judgment of the seller, then there is an implied condition 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 they were acquired and are fit for purposes for which it is reasonable to expect them to be</p>

Legislative Provision	Obligation	Suggested Action
		suitable having regard to any price descriptions and relevant circumstances. 'Merchantable' broadly means 'saleable'.
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> <ul style="list-style-type: none"> (a) there is an implied condition that the bulk shall correspond with the sample in quality; (b) there is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample; (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. 	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 in a proper and sound quality to be sold.

Legislative Provision	Obligation	Suggested Action
s 17 Property passes when intended to pass	<p>(1) Where there is a contract for the sale of specified 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>	<p>Property in ascertained goods is to be transferred when the contracting parties intended them to be pass, with intention to be ascertained with regards to terms of the contract, conduct of the parties and the circumstances of the case.</p> <p>This is important to determine the point at which liability for biosolids will pass</p>
s 20 Risk, prima facie, passes with property	<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: 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 liability of either seller or buyer as a bailee or custodian 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 responsible for the delay will bear liability.</p>

Fair Trading Act 1987 (WA)

The *Fair Trading Act 1987 (WA)* is used for consumer protection in Western Australia. Many of the provisions in the Act mirror the provisions of the *Trade Practices Act 1974 (Cth)*. 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.

Under the *Fair Trading Act 1987 (WA)*, 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.

Legislative Provision	Obligation	Suggested Action
s 10 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 11 Unconscionable conduct	See section 51AB of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this Register.	See the action policy for section 51AB of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this Register.
s 11A Unconscionable conduct in business transactions	See section 51AC of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this Register.	See the action policy for section 51AC of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this Register.
s 12 False representations and other misleading or offensive conduct	See section 53 of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this Register.	See the action policy for section 53 of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this Register.

Legislative Provision	Obligation	Suggested Action
s 17 Certain misleading conduct in relation to goods	See section 55 of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this Register.	See the action policy for section 55 of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this register.
s 51 Prohibition on supply of goods not complying with safety standards	See section 65C of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this Register.	See the action policy for section 65C of the <i>Trade Practices Act 1974</i> (Cth) in the Commonwealth section of this register.

Occupational Safety and Health Act 1987 (WA)

The *Occupational Safety and Health Act 1987* (WA) 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 \$2,000.00 to \$100,000.00.

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.

Legislative Provision	Obligation	Suggested Action
s 19 Duties of employers	<p>(1) An employer shall, so far as is practicable, provide and maintain a working environment in which the employees of the employer (the <i>employees</i>) are not exposed to hazards and in particular, but without limiting the generality of the foregoing, an employer shall:</p> <p>(a) provide and maintain workplaces, plant, and systems of work such that, so far as is practicable, the employees are not exposed to hazards;</p> <p>(b) provide such information, instruction, and training to, and supervision of, the employees as is necessary to enable them to perform their work in such a manner that they are not exposed to hazards;</p> <p>(c) consult and cooperate with safety and health representatives, if any, and other employees at the workplace, regarding occupational safety and health at the workplace;</p> <p>(d) where it is not practicable to avoid the presence of hazards at the workplace, provide the employees with, or otherwise provide for the employees to have, such adequate personal protective clothing and equipment as is practicable to protect them against those hazards, without any cost to the employees; and</p> <p>(e) make arrangements for ensuring, so far as is practicable, that:</p> <p>(i) use, cleaning, maintenance, transportation and disposal of plant; and</p> <p>(ii) the use, handling, processing, storage, transportation and disposal of substances,</p> <p>at the workplace is carried out in a manner such that the employees are not exposed to hazards.</p>	<p>Employers are to ensure that employees are safe from injury and risks to health, and in particular, employers must provide and maintain:</p> <ul style="list-style-type: none"> - a safe working environment; and - safe systems of work. <p>Employers are to provide adequate facilities and provide instruction and training in the production and handling of biosolids to ensure employees are safe from injury and risks to health.</p>
s 19A	(1) If an employer contravenes section 19(1) in circumstances of gross negligence, the	If an employer breached their duty that they owe to employees due to

Legislative Provision	Obligation	Suggested Action
Breaches of section 19(1)	<p>employer commits an offence and is liable to a level 4 penalty.</p> <p>(2) If:</p> <p>(a) an employer:</p> <p>(i) contravenes section 19(1); and</p> <p>(ii) by the contravention causes the death of, or serious harm to, an employee;</p> <p>and</p> <p>(b) subsection (1) does not apply;</p> <p>the employer commits an offence and is liable to a level 3 penalty.</p> <p>(3) If:</p> <p>(a) an employer contravenes section 19(1); and</p> <p>(b) neither subsection (1) nor subsection (2) applies;</p> <p>the employer commits an offence and is liable to a level 2 penalty.</p> <p>(4) An employer charged with an offence under:</p> <p>(a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or</p> <p>(b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).</p>	<p>gross negligence they are guilty of an offence.</p> <p>If an employer by contravention causes the death or serious harm to an employee then they are liable to a level 3 penalty.</p>