



New South Wales

Agriculture Commissioner Act 2024 No 77

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New South Wales

Agriculture Commissioner Act 2024 No 77

Act No 77, 2024

An Act to establish the office of the Agriculture Commissioner and to provide for the functions of the office; and for other purposes. [Assented to 31 October 2024]

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Agriculture Commissioner Act 2024*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Definitions

In this Act—

agricultural matters means matters relating to agriculture, agricultural productivity, land use conflicts, food security and agroecology.

Agriculture Commissioner or ***Commissioner*** means the person appointed as the Agriculture Commissioner by the Governor under section 4(2).

Note— The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

Part 2 Agriculture Commissioner

4 Establishment of Agriculture Commissioner

- (1) There must be an Agriculture Commissioner.
- (2) The Commissioner is appointed by the Governor on the recommendation of the Minister.
- (3) The Commissioner is an officer of the Crown.
- (4) Schedule 1 contains provisions relating to the Commissioner.

5 Functions of Agriculture Commissioner

- (1) The Commissioner has the following functions—
 - (a) to give advice about, and undertake reviews of, agricultural matters,
 - (b) to make recommendations about agricultural matters to the Minister and other relevant Ministers,
 - (c) to monitor developments relating to agricultural matters,
 - (d) to identify opportunities to improve agricultural matters,
 - (e) to promote a coordinated and collaborative approach across the Commonwealth Government, the NSW Government and local government in relation to agricultural matters,
 - (f) other functions conferred on the Commissioner by or under this Act or another Act.
- (2) The Commissioner must, from time to time, in consultation with relevant NSW Government agencies, prepare and publish maps of New South Wales in relation to agricultural matters to assist in the exercise of the Commissioner's functions.
- (3) To assist in the exercise of the Commissioner's functions, the Commissioner may—
 - (a) engage experts and stakeholders, and
 - (b) enter into contracts or other arrangements.
- (4) The Commissioner is subject to the control and direction of the Minister in the exercise of the Commissioner's functions, other than in relation to the content of the Commissioner's advice, reviews, reports or recommendations.
- (5) The Commissioner must act in an independent and impartial way in relation to the content of the Commissioner's advice, reviews, reports or recommendations.

6 Reports about reviews undertaken by Agriculture Commissioner

- (1) As soon as practicable after undertaking a review, as referred to in section 5(1)(a), the Commissioner must prepare a report about the review.
- (2) The report must be published on the Commissioner's website.
- (3) Before publishing a report under subsection (2), the Commissioner must—
 - (a) give a copy of the report to—
 - (i) the Minister, and
 - (ii) other relevant Ministers, and
 - (b) allow the Minister, and other Ministers to whom the report is given, reasonable time to consider the report.
- (4) In this section—

Commissioner's website means a NSW Government website used by the Commissioner to provide public access to matters relating to the Commissioner's functions.

7 Ministers must respond to Agriculture Commissioner's recommendations

- (1) This section applies if the Commissioner makes a recommendation to the Minister or another Minister under section 5(1)(b).
- (2) The Minister to whom the recommendation is made must—
 - (a) respond to the recommendation within 6 months after the recommendation is made, and
 - (b) make the response publicly available.

8 Agriculture Commissioner's power to require information

- (1) The Commissioner may, by notice given to a relevant executive, require the relevant executive to give specified information to the Commissioner.
- (2) A notice may only require information to be given to the Commissioner if the information is reasonably required for the exercise of the Commissioner's functions.
- (3) A notice must specify—
 - (a) the way in which the information must be given, and
 - (b) a reasonable time within which the information must be given.
- (4) A notice may require information to be given to the Commissioner that includes personal information, within the meaning of the *Privacy and Personal Information Protection Act 1998*.

Note— Under the *Privacy and Personal Information Protection Act 1998*, section 25, a public sector agency is not required to comply with particular provisions of that Act if non-compliance is otherwise permitted, or is necessarily implied or reasonably contemplated, under another Act.

- (5) A notice may only require a relevant executive to give existing information that is—
 - (a) in the possession of the relevant Public Service agency or relevant State owned corporation, or
 - (b) within the power of the relevant Public Service agency or relevant State owned corporation to obtain lawfully.
- (6) The Commissioner may take copies of information given to the Commissioner under this section.
- (7) A relevant executive given a notice under this section must comply with the notice unless the relevant executive has a reasonable excuse.
- (8) In this section—

information includes a document.

relevant executive means—
 - (a) for a relevant Public Service agency—the head of the agency, or
 - (b) for a relevant State owned corporation—the chief executive officer or a director of the State owned corporation.

relevant Public Service agency means a Public Service agency, within the meaning of the *Government Sector Employment Act 2013*, that has functions relating to, or is otherwise involved in, agricultural matters.

relevant State owned corporation means a State owned corporation that has functions relating to, or is otherwise involved in, agricultural matters.

9 Staff

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Commissioner to exercise the Commissioner's functions.

Note— The *Government Sector Employment Act 2013*, section 59 provides that persons employed in the Public Service to enable the Commissioner to exercise the Commissioner's functions, or whose services the Commissioner makes use of, may be referred to as officers or employees, or members of staff, of the Commissioner. The *Constitution Act 1902*, section 47A precludes the Commissioner from employing staff.

Part 3 Miscellaneous

10 Application of Privacy and Personal Information Protection Act 1998

The office of the Commissioner is a public sector agency for the purposes of the *Privacy and Personal Information Protection Act 1998*.

11 Personal liability

- (1) A protected person is not personally subject to civil liability for anything done or omitted to be done—
 - (a) in good faith, and
 - (b) for the purposes of exercising functions under this Act.
- (2) The liability attaches instead to the Crown.
- (3) In this section—

civil liability includes an action, claim or demand.

protected person means the following—

 - (a) the Commissioner,
 - (b) a member of the staff of the Commissioner,
 - (c) a person acting under the direction of the Commissioner.

12 Review of Act

- (1) The Minister must review the operation of this Act to determine whether—
 - (a) the policy objectives of the Act remain valid, and
 - (b) the terms of the Act remain appropriate for securing the policy objectives.
- (2) A review must be undertaken—
 - (a) as soon as practicable after the period of 5 years from the commencement of this Act, and
 - (b) every 5 years after the first review.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period to which the review relates.

13 Regulations

The Governor may make regulations about a matter that is—

- (a) required or permitted by this Act to be prescribed, or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1 Provisions relating to Agriculture Commissioner

section 4(4)

1 Term of office

- (1) The Commissioner holds office for the term, not more than 5 years, specified in the Commissioner's instrument of appointment.
- (2) The Commissioner is eligible for reappointment.

2 Employment conditions and remuneration

- (1) The employment of the Commissioner must, subject to this Act, be governed by a contract of employment between the Commissioner and the Minister.
- (2) The Commissioner is not a Public Service employee under the *Government Sector Employment Act 2013* and the provisions of that Act relating to the employment of Public Service employees do not apply to the Commissioner, except as provided by this section.
- (3) The following provisions of or made under the *Government Sector Employment Act 2013* relating to the employment of Public Service senior executives apply to the Commissioner—
 - (a) provisions relating to the band in which an executive must be employed,
 - (b) provisions relating to the contract of employment of an executive,
 - (c) provisions relating to the remuneration, employment benefits and allowances of an executive.
- (4) For subsection (3), a reference in the provisions to the employer of a Public Service senior executive is taken to be a reference to the Minister.
- (5) Without limiting subsection (3)(b), the provisions of or made under the *Government Sector Employment Act 2013* that prescribe a model contract of employment for statutory officers, including provisions that specify mandatory model provisions, apply to the Commissioner's contract of employment.

3 Removal from office

- (1) The Minister may remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.
- (2) To avoid doubt, the *Government Sector Employment Act 2013*, Part 6 applies in relation to the Commissioner.

Note— Under the *Government Sector Employment Act 2013*, Part 6, the Governor may remove the Commissioner from office at any time for any or no stated reason and without notice.

4 Vacancy in office

- (1) The office of Commissioner becomes vacant if the Commissioner—
 - (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns from office by notice to the Minister, or
 - (d) is removed from office by—
 - (i) the Governor under the *Government Sector Employment Act 2013*, Part 6, or
 - (ii) the Minister under this schedule, section 3(1), or

- (e) becomes personally insolvent, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted—
 - (i) in New South Wales of an offence punishable by imprisonment for 12 months or more, or
 - (ii) elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence punishable by imprisonment for 12 months or more, or
 - (h) is imprisoned—
 - (i) in New South Wales in relation to a conviction for an offence, or
 - (ii) elsewhere than in New South Wales in relation to a conviction for an offence that, if committed in New South Wales, would be an offence punishable by imprisonment.
- (2) If the office of Commissioner becomes vacant, a person must, subject to this Act, be appointed to fill the vacancy.

5 Acting Commissioner

- (1) The Minister may appoint a person to act as Commissioner during—
 - (a) the illness or absence of the Commissioner, or
 - (b) a vacancy in the office of Commissioner.
- (2) A person acting as Commissioner—
 - (a) has and may exercise the Commissioner’s functions, and
 - (b) is taken to be the Commissioner.
- (3) The Minister may, at any time, remove a person from office as acting Commissioner.
- (4) An acting Commissioner is entitled to be paid the same remuneration and allowances as the Commissioner.

Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
 - (a) a provision of this Act, or
 - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
 - (a) for a provision of this Act—the date of assent to this Act, or
 - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
 - (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this section —
person does not include the State or an authority of the State.

Schedule 3 Consequential amendments

3.1 Climate Change (Net Zero Future) Act 2023 No 48

Section 21 Annual reports

Omit “person employed in the Public Service as the Agriculture Commissioner” from section 21(3).

Insert instead “Agriculture Commissioner appointed under the *Agriculture Commissioner Act 2024*”.

3.2 Government Information (Public Access) Regulation 2018

Schedule 3 Agencies declared to be part of other agencies

Insert in alphabetical order—

Agriculture Commissioner

Department of Primary Industries and
Regional Development

3.3 Government Sector Finance Regulation 2024

Schedule 2 Prescribed government officers

Omit item 5 from the table. Insert instead—

5	Department of Primary Industries and Regional Development	Each of the following is prescribed for the Department— (a) the Independent Biosecurity Commissioner appointed under the <i>Biosecurity Act 2015</i> , (b) the Agriculture Commissioner appointed under the <i>Agriculture Commissioner Act 2024</i> .
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[Second reading speech made in—

Legislative Council on 17 September 2024

Legislative Assembly on 18 October 2024]