



Primary
Industries

Biosecurity and Food Safety NSW

Biosecurity Compliance and Enforcement Policy



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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (Feb 6, 15, 3:02 PM). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the NSW Department of Trade and Investment, Regional Infrastructure and Services or the user's independent advisor.

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1. Introduction

About Biosecurity NSW

Biosecurity NSW is a business unit within the Biosecurity and Food Safety Division¹ of the Department of Primary Industries (DPI). DPI sits within the Trade and Investment cluster of government. DPI makes an important contribution to the NSW Government's economic goals by using its capabilities for innovation to drive economic growth; mitigating risks that seek to undermine or impede this growth; and by ensuring sustainable access to natural resources.

Biosecurity NSW contributes to government objectives by protecting the economy, environment and community from the harmful effects of pests, diseases and weeds. It does this by:

- safeguarding domestic and export markets for NSW agricultural products;
- minimising biosecurity incursions into NSW and efficiently eradicating or controlling biosecurity threats should they occur;
- promoting the production of safe and wholesome food products that meet consumer expectations;
- regulating and promoting the welfare of production animals and those used in research or for exhibition;
- delivering business licensing for animal research facilities, animal exhibitors, industrial hemp producers and for the keeping of non-indigenous animals; and
- managing systems for emergency preparedness, prevention, response and recovery arising from biosecurity threats and natural disasters.

Biosecurity is a shared responsibility of government, industry and the community. The *NSW Biosecurity Strategy 2013-2021* provides a framework for this cooperation and identifies the key outcomes to be achieved.

Purpose of the Compliance and Enforcement Policy

Biosecurity NSW has prepared this compliance and enforcement policy in keeping with the Quality Regulatory Service (QRS) Initiative guidance material provided by the Department of Premier and Cabinet. This compliance and enforcement policy also reflects the particular compliance demands that flow from the diverse range of regulatory instruments administered by Biosecurity NSW. A key benefit of this compliance and enforcement policy is providing a framework to ensure that regulatory decision making is consistent, fair and credible.

The QRS initiative was endorsed in November 2012 as part of the Government's response to Industry Action Plans which form part of the NSW Economic Development Framework. The objective is to minimise costs for business and individuals while maximising outcomes for the people of NSW.

The QRS initiative requires government regulators to implement a risk-based approach to regulation that is more consistent and transparent in how outcomes are achieved, and to publish this approach within a compliance and enforcement policy. With sustained effort and support

¹ The recently established Biosecurity and Food Safety Division of the Department of Primary Industries is home to both Biosecurity NSW and the NSW Food Authority. For information on the Food Authority Compliance and Enforcement policy, visit http://www.foodauthority.nsw.gov.au/Documents/industry_pdf/compliance_enforcement_policy.pdf

from government, the move towards outcomes and risk-based regulation will enhance the economic and social wellbeing of NSW by:

- reducing unnecessary regulatory burden on regulated entities;
- increasing the productivity of regulators and regulated entities; and
- driving flow-on economic and social benefits.

The regulated environment

Biosecurity NSW administers a range of legislation and is responsible for enforcement of most of this legislation and the associated regulations and instruments. These legislative instruments are regulated within the framework of agency and cluster corporate plans, agency strategic plans, policies, and the priorities of the NSW Government.

This Compliance and Enforcement Policy is relevant to all of the following legislation which is regulated by Biosecurity NSW:

- *Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991,*
- *Apiaries Act 1985,*
- *Deer Act 2006,*
- *Fertilisers Act 1985,*
- *Non-Indigenous Animals Act 1987,*
- *Plant Diseases Act 1924,*
- *Stock (Chemical Residues) Act 1975,*
- *Stock Diseases Act 1923,*
- *Stock Foods Act 1940,*
- *Stock Medicines Act 1989,*
- *Exhibited Animals Protection Act 1986,*
- *Hemp Industry Act 2008,*
- *Animal Research Act 1985, and*
- *Agricultural and Veterinary Chemicals (New South Wales) Act 1994.*

For further information about the legislation listed above please see:

www.dpi.nsw.gov.au/aboutus/about/legislation-acts?mode=results

It is anticipated that the Biosecurity Bill 2015 will be introduced into NSW Parliament in the Autumn session. This Bill and corresponding subordinate regulation will capture the majority of the Acts listed above.

2. Risk-based compliance and enforcement

Biosecurity NSW is committed to promoting compliance with the legislation it regulates in a manner consistent with the policy objectives of the NSW Government. Our approach is guided by the following eight principles² which characterise risk-based compliance programs and ensure that all our activities are:

Targetedat preventing the most serious harm.

Proportionateto the scale of the problem we are trying to address.

Transparentin process and purpose so that the regulated community can have confidence that compliance and enforcement measures are justified.

Consistentand predictable in achieving enforcement outcomes.

Accountablefor the conduct of authorised officers when exercising their enforcement powers and open to public scrutiny in the achievement of outcomes.

Inclusiveof the views of the community and business in the setting of standards and the achievement of objectives.

Authoritativein our interpretation of law and the assessment of compliance risk.

Effectivepreventing harm to the environment, economy and community and in deterring any future non-compliance.

² EPA Victoria 2011

The risk assessment framework

Taking a risk-based approach to regulation allows Biosecurity NSW to meet its objectives by addressing the biggest risks to the environment, community and the economy; and to prioritise attention to businesses and people who are creating the biggest risk. It also allows us to focus on areas where we are able to make a difference.

When assessing risk, Biosecurity NSW will take into account a combination of the likelihood of an event occurring and the consequence of that event should it happen.

When determining the **likelihood** of an event occurring, the risk assessment may take into account individual regulated entities, or industry sectors. This may include an assessment of the capacity of the regulated entities to comply (including whether they have access to appropriate resources); whether they participate in industry based accreditation or certification schemes; the level of awareness which they have about the regulatory requirements; and the history of compliance.

When undertaking analysis of the **consequence** of risks, Biosecurity NSW will consider the severity of the harm to the environment, economy and community should the risk eventuate. This consideration will include whether the effect of the harm is life threatening to humans, plants or animals; and whether the effect of the harm is permanent or long-term. It will also take into account whether the harm is of high frequency; wide-scale; and the level of concern from the community about the risk of non-compliance.

Compliance and enforcement measures

Biosecurity NSW has a range of compliance and enforcement tools available under the various legislative instruments. Biosecurity NSW will use these tools in combination with the assessment of risk to encourage compliance where possible, and to sanction a person or business where this is warranted.

When applying compliance and enforcement tools, Biosecurity NSW will seek to change behaviours; remedy a harm caused; remove any financial gain received from inappropriate or illegal behaviour; and promote behavior that mitigates future risk.

The attitude and capacity of the regulated entities may be taken into account when making decisions about which tools will be applied; for example, history of compliance; capacity to comply; regard for risks; whether non-compliance was deliberate, opportunistic, accidental or irrational; and whether the regulated entities are co-operative, or making an effort to remediate their actions.

In view of these factors, Biosecurity NSW will first attempt to **encourage voluntary compliance** by publishing documents and providing information and advice which will assist the regulated community to understand the requirements. Biosecurity NSW will also recognise or issue voluntary codes of practice; hold discussions, seminars or workshops for regulated entities; and will seek guidance about how it can encourage compliance from industry and community advisory committees.

Where appropriate, Biosecurity NSW will **encourage informal resolution** by discussing the matter with the regulated entity; giving verbal warnings or issuing oral directions to remedy the situation; and in more serious situations, Biosecurity NSW may enter into undertakings with regulated entities.

Administrative (or compliance) actions may also be taken against regulated entities. These actions may include increasing the number of audits and inspections which are undertaken; issue of formal or written cautions to people and businesses; or requiring corrective action to be taken through handing out of notices or written directions. Biosecurity NSW may also choose to suspend, cancel, refuse renewal of, or add conditions to licenses/ permits/ authorities/ accreditations/ certificates which it issues. Biosecurity NSW may also release public warnings about regulated entities; and in more severe cases may issue a penalty infringement notice.

For serious situations, Biosecurity NSW may seek to impose **enforceable undertakings** such as control orders, emergency orders, seizure or destruction orders, prohibition orders, or court orders / injunctions. **Criminal action** will be taken where non-compliance is so significant and severe that it is warranted.

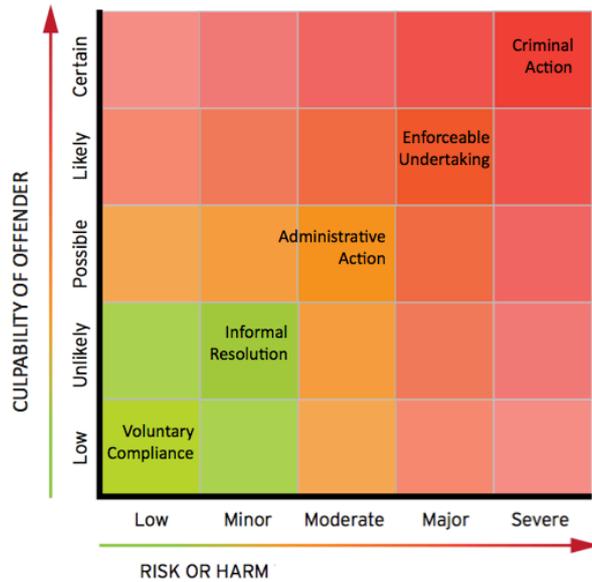


Table 2: Proportionate, risk-based enforcement response

Accountability for enforcement decisions

Prior to commencement of enforceable undertakings and criminal actions, officers of Biosecurity NSW will document and share their decisions with each other (including any assumptions made), including details of where there may be a perception of bias. Decisions to commence proceedings may be reviewed to ensure that they are based on sound decision-making processes.

Key relationships

The Biosecurity NSW compliance team is comprised of over 55 professional regulators based in a range of locations across NSW. This team is responsible for facilitating compliance with the majority of the legislation administered by Biosecurity NSW.

To support the activities of the Biosecurity NSW compliance team and to ensure that legislation is administered effectively, relationships with other agencies and organisations are formed. These relationships may be established to allow for the collection, analysis and sharing of information and data, or to inform policy development. Where allowed under legislation, external agencies assist compliance staff in the exercise of their powers. These type of arrangements currently exist with the

- Local Land Services;
- NSW Food Authority;
- Land and Property Information;
- NSW Police; and
- NSW Health.

In some cases, Biosecurity NSW is not the enforcement agency for the legislation it administers as partnerships arrangements have been established with other bodies. These arrangements currently apply to the following legislation:

- *Prevention of Cruelty to Animals Act 1979* enforced by RSPCA NSW and the Animal Welfare League;
- *Veterinary Practice Act, 2003* enforced by the Veterinary Practitioners Board; and
- *Noxious Weeds Act 1993* enforced by local government.

Biosecurity NSW may also establish advisory committees or informal relationships with industry groups to provide information about the industry, trends for the industry and to develop forecasts about the industry; or so that they can act as an advocate for a regulated entity (to ensure natural justice is served).

Further Information

For further information on the NSW Government's approach to risk-based regulation, please visit:

http://www.dpc.nsw.gov.au/programs_and_services/better_regulation/quality_regulatory_services_initiative

For further information about Biosecurity NSW, and our approach to compliance and enforcement, please email ddg.biosecurityandfoodsafety@dpi.nsw.gov.au