

Biosecurity and Food Safety Compliance

Compliance and Enforcement Policy

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Introduction

The NSW Department of Primary Industries and Regional Development (DPIRD) Biosecurity and Food Safety Compliance Branch (BFS Compliance) protects our economy, industry, the environment and community from:

- pests, diseases, weeds and contaminants, and
- poor treatment and conditions of exhibited animals and animals used for research.

In conjunction with the NSW Food Authority, BFS Compliance prevents, detects and responds to food safety risks across the entire food industry supply chain in NSW.

We also have a role in responding to natural, biosecurity or food safety related emergencies.

We have responsibility for ensuring compliance¹ with, and responding to breaches, of the:

- *Animal Research Act 1985*
- *Biosecurity Act 2015*
- *Exhibited Animals Protection Act 1986*
- *Food Act 2003*
- *Hemp Industry Act 2008*
- *Poppy Industry Act 2016*
- *Stock Medicines Act 1989.*

This policy sets out the compliance principles we follow and how we approach taking enforcement action. It also supports our risk-based, outcome-focused approach to regulation.

We aim to build a culture of voluntary compliance and empower licensees, stakeholders and other invested parties (including the community) to be responsible for their actions and to reduce, if not remove, any potential for harm. Alongside influencing positive culture, we take offending seriously and will intervene professionally, using a graduated and proportionate response to offending.

This policy does not limit our discretion to take alternative compliance action, or, to apply multiple response options to mitigate risk and deter offending.

Promoting consistency between regulators

Our teams work with partner agencies, like Local Land Services, NSW Police, and other national and state regulators, to provide consistent compliance services. Our goal is for our stakeholders to receive similar, if not the same treatment from regulators involved in measuring compliance across animal welfare, biosecurity or food safety legislation.

In some cases, we have memoranda of understanding with our partner agencies. These memoranda outline practical jurisdictional responsibilities, successfully establish and reinforce positive working relationships and enable a cooperative approach to compliance. We have arrangements, commonly

¹ Compliance includes any activity that delivers knowledge, assistance, education or extension services, audits and inspections and enforcement actions taken to address offending.

referred to as a partnership, with some organisations and local government authorities to deliver consistent compliance services across biosecurity, food safety and animal welfare industries.

Our approach

We focus our compliance efforts on targeted, preventative operations that promote voluntary compliance. We constantly improve our capacity and capability to detect and respond to offending, creating effective deterrence.

We actively seek to resolve risks impacting animal welfare, biosecurity and food safety before they affect our industries, the community, the natural environment or the state's economy. We look to create opportunities to mitigate or eliminate known compliance risks and continuously improve the effectiveness and efficiency of our compliance program. Figure 1 shows the components of our regulatory approach.

There is an inter-related network of tools and options we use to drive voluntary compliance² across biosecurity, food safety and animal welfare industries. We value accountability and transparency, procedural fairness and natural justice and our officers work within their statutory powers. We apply fees and charges to some compliance actions or services we provide (e.g. licence inspections, sampling, audits, directions or orders), and we tell affected licensees or businesses that fees or charges may apply before we begin.



Figure 1: Our regulatory approach

² Driving voluntary compliance includes actions that build continuous improvement in industry performance.

Our enforcement decisions are based on admissible evidence to prove the offence beyond a reasonable doubt. We highlight review processes for enforcement actions, like penalty notices, including timeframes for submission and resolution.

We use plain language to communicate with licensees, stakeholders and the community and publish our policies and procedures and complaint handling guidelines, so they are readily accessible to businesses and the community.

During our compliance activities, we collect, and securely store, information from licensees, businesses, industries and the community. We use this information to assess and inform how we prioritise our resources, now and into the future. We protect the information we collect and only use it, including when and how we can disclose information³, following the principles of the *Privacy and Personal Information Protection Act 1998*. Figure 2 shows the components of promoting voluntary compliance.

Compliance monitoring

We use a risk-based approach for our compliance programs; some originate from national and interstate agreements on biosecurity and food safety. Our programs focus on achieving the best outcome and minimising the regulatory burden on compliant businesses, sectors and industries and the community.

Our officers undertake audits and inspections that are targeted at high-risk operations, based on the compliance history and attitude to compliance of a particular business or operator. We use targeted operational campaigns focused on a specific industry, sector or business to prevent pest and disease, food safety or to maintain market access. To support ongoing voluntary compliance, we also conduct routine checks of lower risk activities or operations.

Audits and inspections determine if the business is meeting its regulatory requirements and are generally unannounced. Audits involve a complete review of the business, including the physical condition of the building and equipment, licensing, operational processes, sampling programs and records, while inspections may be targeted at assessing low risk activities, or a particular concern.

We respond to complaints and requests, incidents or intelligence that we gather on specific risks, businesses or industries. Complaints are managed through a complaint handling policy that provides for triaging based on the risks associated with the alleged activity, available resources and our priorities at any time. Each complaint is prioritised (low, medium, high or urgent) to aid in applying the most appropriate response.

When conducting audits and inspections, responding to complaints or conducting investigations, officers can enter business premises, require the production of, and view, business records, collect samples and take photographs - actions that are supported by statutory powers.

Underpinning our compliance monitoring, is our commitment to the analysis and use of intelligence, gathered from our compliance activities, investigations, stakeholder engagement, surveys, complaints and other government or industry information.

³ Section 387 of the *Biosecurity Act 2015* has specific provisions relating to the collection, use and disclosure of information.

We develop this intelligence to highlight trends, identify emerging risks and potential responses to avoid or mitigate harm and direct the need for education and extension services.

We strive regularly to review our compliance programs, assessing our effectiveness, driving improvements in program delivery and enabling us to refocus our efforts to address emerging risks.

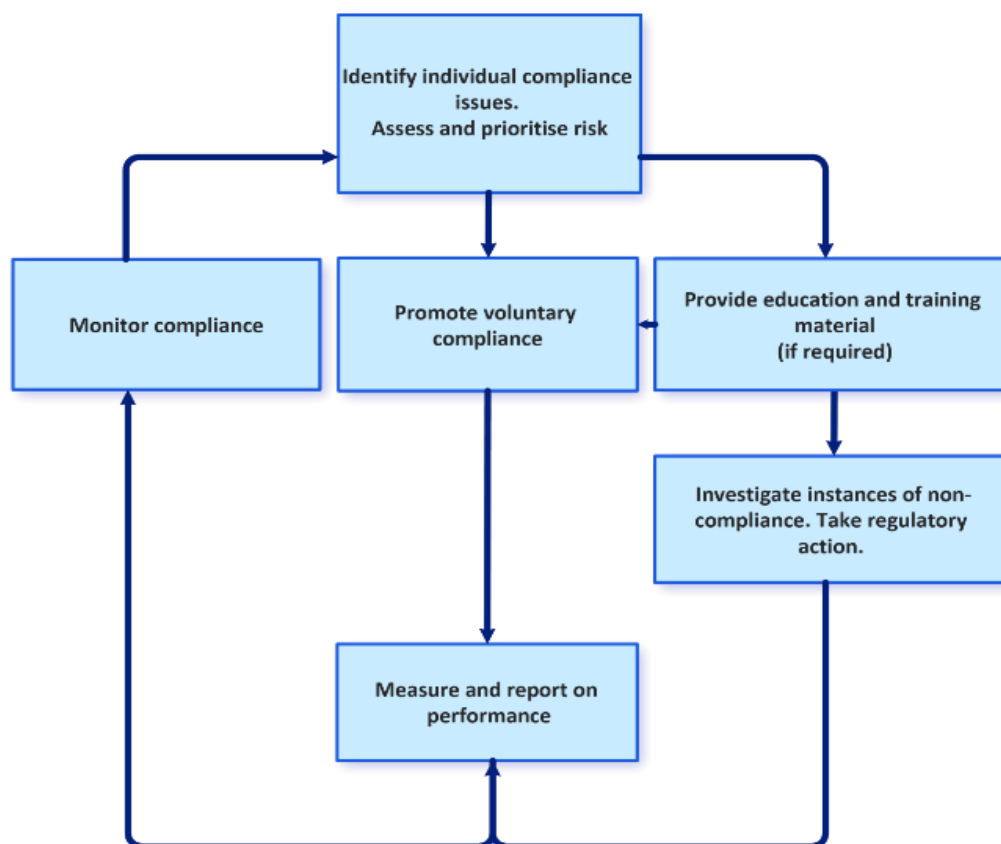


Figure 2: Promoting voluntary compliance

Education, extension and advisory services

We recognise that education, extension and advisory services help our licensees, business owners and other invested parties meet their obligations and promote voluntary compliance.

Our officers play an important role in informing and educating businesses as well as preventing serious offending.

We engage with business owners, their staff and the community, providing opportunities to raise their concerns. Information gathered through stakeholder engagement informs monitoring activities, targeted projects and training solutions. These projects and solutions are used to educate and to improve business systems and knowledge across industry and the community.

We deliver training packages for food safety auditors, plant health certifiers and partner agencies to help them understand their obligations under the legislation. We provide resources and information to licensees, businesses and stakeholders to build their understanding and knowledge and to promote voluntary compliance.

We actively engage with peak industry bodies and stakeholder groups when developing policies and share information about our compliance activities to support and drive shared responsibility and improved compliance.

Developing a graduated & proportionate enforcement response

Protecting NSW's animal welfare, biosecurity and food safety industries requires good governance oversight, especially when taking enforcement action.

To manage the risks across the industries we regulate, we focus on the activities that present the highest risk or impact to compliance. Enforcement aims to prevent impacts on a business or industry and the potential for, or actual harm caused to the community, the environment or the economy. The purpose of an enforcement response is to prevent further offending and to encourage future voluntary compliance.

Enforcement action often results in a financial penalty, for example, a monetary fine or the additional costs imposed by a statutory direction or order (e.g. an improvement notice or individual biosecurity direction). An enforcement response aims to correct a lack of knowledge, poor or inadequate business practices, illegal operations and can reduce the belief that it costs less to break the rules than it does to do the right thing.

We employ a graduated and proportionate approach to enforcement, based on the environmental, economic or social harm caused (or could be caused) and other factors (shown in Figure 3) as a result of the offending.

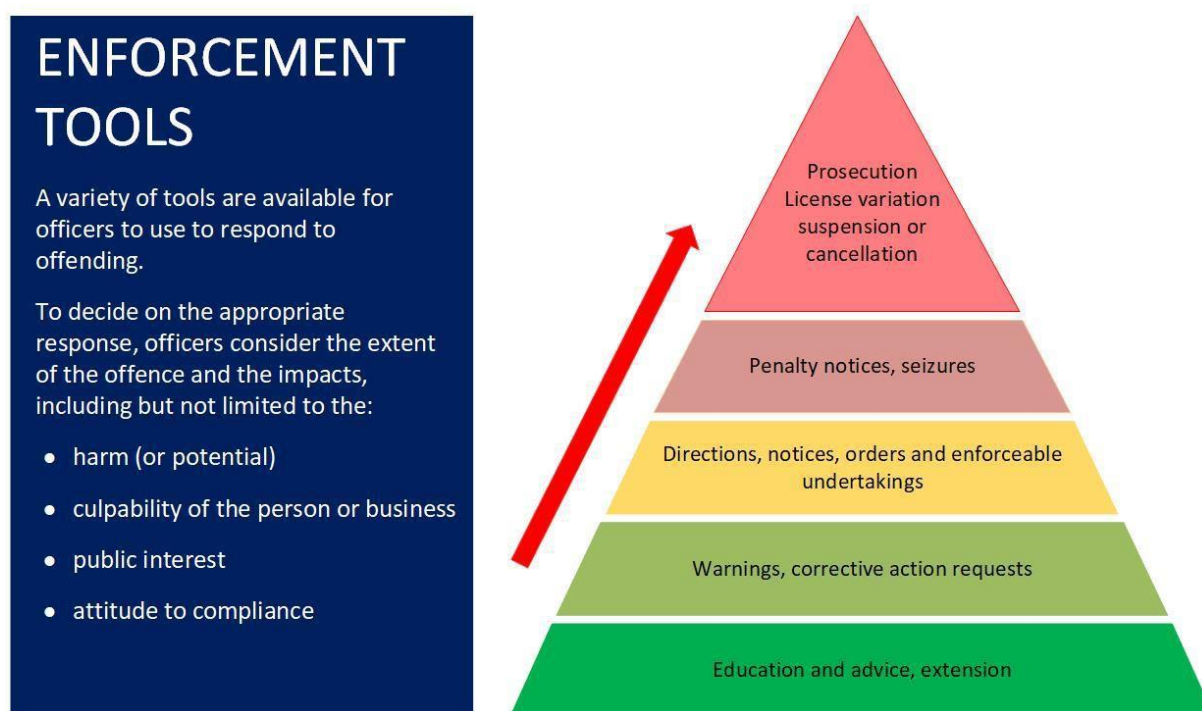


Figure 3: Factors driving a response to offending

Where the evidence shows that the impacts are low, we apply a corresponding enforcement response, including investigative effort. Where the evidence shows the impacts are serious or

urgent, a higher enforcement response will be applied. This may result in more intensive investigations and significantly higher penalties.

As part of determining an appropriate enforcement response, we consider the full extent of the offending and the resulting impacts, including discretionary factors⁴ such as, but not limited to the:

- the seriousness of the offence.
- any mitigating or aggravating circumstances.
- the need for strong deterrence.
- whether the matter is obsolete or obscure
- the length of time that has passed since the offence was committed.
- the culpability, criminal history and background of the offender.
 - their age, physical health, mental health or cognitive impairment, and
 - their willingness to assist, including in the prosecution of a co-offender.
 - the likely outcome, given the options available to us.

We may at times adopt mediation and conciliation as a preliminary step in the compliance process. We are open to providing the person or business an opportunity to explain any mitigating circumstances of the offending. We will then consider the impacts of that mitigation on any resulting action.

Enforcement options

We can select from an array of enforcement tools; however, our response will be proportionate to the alleged offending and, be capable of providing enough incentive for an individual or business to change their behaviour and, or, improve their practices. Responses move on a sliding scale similar to the seriousness of the offending. This means the more serious the offending, the more punitive the response.

Where we determine the offending to be at the low end of the response spectrum, the options available to us include:

1. Taking no further action.
2. Advisory, education and extension⁵ activities.
3. Advisory letters outlining the offender's legal obligations.
4. Corrective Action Request/s.
5. Letter of warning or a formal caution.

A biosecurity undertaking is an agreement between the offender and an officer (on behalf of BFS Compliance). It is made by the offender to voluntarily rectify any harms caused as a result of an offence against the *Biosecurity Act 2015*. Undertakings are legally enforceable and failure to complete the undertaking could result in more punitive action.

⁴ Chapter 1.4, [Prosecution Guidelines](#) of the NSW Director of Public Prosecutions, March 2021

⁵ Extension may relate to improving a specific person, business or corporation's conduct.

Should we decide that the offending is at the moderate to high end of the response spectrum, the options available to us include:

6. Biosecurity Undertakings.
7. Seizure.⁶
8. Improvement notice/s for food related offences.
9. Request to show cause why a punitive action should not be taken.
10. Individual directions (impacting individuals and/or a single business for offences against biosecurity or animal welfare legislation).
11. General Biosecurity Directions (impacting a multitude of people, businesses, sectors or an entire industry).
12. Prohibition orders for the most serious of food related offences.
13. Penalty Notices.
14. Administration sanctions, such as licence suspension, cancellation or variation.
15. Criminal prosecution.

These responses allow a balanced approach to offending that stops improper conduct and promotes changes in attitudes and behaviours, rather than simply applying a punishment. Across the response spectrum, enforcement responses aim to deter the person or entity involved from reoffending and to encourage voluntary compliance with other industry participants.

Compliance decisions must be based on admissible evidence and enough to establish that an offence has been committed beyond a reasonable doubt. Where a business owner or a specific person does not respond to an initial enforcement response, we may escalate the seriousness of our response and use a stronger option.

We apply the principles for issuing cautions and conducting internal reviews as released from time to time by the NSW Department of Justice and the NSW Attorney General.

Use of multiple compliance measures

In certain circumstances, we may choose to use multiple enforcement responses, especially where the harm from one offence is more significant than others, e.g. an imminent risk to Australia's biosecurity status or public health and safety. Issuing multiple enforcement responses enables offenders to be dealt with fairly and ensures future voluntary compliance, in addition to creating both personal and general deterrence.

Examples might include:

- a direction or order and a penalty notice for a serious animal welfare, biosecurity or food safety offence.

⁶ Seizure is a tool that can be used for analytical sampling. Generally, seizures of goods, assets or records is considered a punitive action and may occur at along any stage of the response spectrum.

- combining a letter of warning with a corrective action request for minor matters, especially where the business owner (or their manager) has been subject to similar action in the past.

Some situations may require that interim enforcement responses are implemented swiftly to stop significant environmental, economic or social harm from occurring. In these cases, the use of control orders, biosecurity directions or prohibition orders may be required until a full investigation can be completed.

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