

Biosecurity and Food Safety Enforcement Policy

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VERSION 1

AUTHORISED BY Director, Biosecurity and Food Safety Compliance

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ISSUED BY Biosecurity and Food Safety Compliance

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1. Purpose

The enforcement policy:

- summarises the agency's general approach to compliance and enforcement
- explains how Biosecurity & Food Safety undertakes activities that reduce biosecurity and food safety risks and enhance compliance with established standards
- explains how Biosecurity & Food Safety conduct their activities to protect the economy environment and community from negative impacts associated with animal welfare pests, diseases and weeds
- assists with decision-making to ensure that enforcement actions are consistent, fair, and based on best practice.

The aim of this policy is to:

- promote compliance with New South Wales legislative provisions consistent with the objects of the Act(s)
- promote transparency to stakeholders on how the agency will make decisions on enforcement action
- guide decision making and action by staff in the use of enforcement options
- encourage use of regulatory implements in such a way as to best achieve our organisational objectives
- have a risk-based approach to compliance and enforcement activities through adoption of a graduated and proportionate response to non-compliance
- have a cooperative and collaborative approach with businesses or between jurisdictions to legislative compliance and one that does not place unnecessary impost on businesses in New South Wales
- protect consumers from inappropriate and/or misleading trade practices.

2. Scope

This policy summarises the DPI Biosecurity & Food Safety (the Branch) approach to enforcement and explains how the Branch will conduct its regulatory functions to drive continual improvement. The Branch includes the functions of the Food Authority.

The policy sets out the principles adopted by the Branch to achieve compliance with the law, and outlines the regulator's functions, priorities, strategies and regime.

Enforcement – Making sure a rule, standard, court order or policy is properly followed

DPI Biosecurity & Food Safety is the lead agency for the administration of legislation that protects and manages biosecurity and food safety matters for NSW producers and consumers. DPI Biosecurity & Food Safety has built partnerships with industry and the community to encourage greater understanding of biosecurity and food safety practices and support for innovation.

To build a culture of voluntary compliance and enable community and industry to take responsibility for ensuring their activities do not cause unlawful harm, enforcement action is sometimes necessary.

Enforcement action provides a strong deterrent to non-compliance. The effective protection of biosecurity and food safety, as well as good regulatory practice, requires the Branch to have clear strategies governing the undertaking of enforcement action.

This Enforcement Policy complements the department's *Food Safety Strategy, Annual Compliance Plan*, and the *NSW Biosecurity Strategy 2013 - 2021* and other documents which set out the department's approach to its enforcement activities.

It is the goal of the Branch enforcement activities to:

- achieve outcomes consistent with legislation
- deter non-compliant behaviour
- assertively apply consistent and proportionate enforcement action.

3. Outcomes

This policy sets out the guiding principles DPI Biosecurity & Food Safety will apply when conducting regulatory and enforcement activities and includes an approach that is:

- graduated and proportionate
- authorised by law
- impartial and procedurally fair
- accountable and transparent
- consistent in terms of the enforcement response between regulators
- in the public interest
- allows for application of multiple enforcement tools under appropriate circumstances.

A graduated and proportionate response

DPI Biosecurity & Food Safety will apply a graduated and proportionate approach to the application of enforcement tools upon stakeholders. This involves the application of mild enforcement tools to offenders in the first instance; to be followed by more severe tools should the non-compliant activity continue.

Mild enforcement tools that may be employed include provision of educational information, improvement notices or warning letters.

More severe tools include prohibition orders, penalty notices, licence and registration suspension/cancellation or prosecution. The tool box appended to this policy provides further detail.

The Branch may at times consider mediation and conciliation as preliminary steps in enforcement processes. Mediation and conciliation provides the person or business the opportunity to explain mitigating circumstances of the non-compliance. Following this explanation, the Branch may make a determination on an appropriate course of action.

Proportionate response

DPI Biosecurity & Food Safety will select an enforcement response that is proportionate to the identified non-compliance and capable of providing sufficient incentive to the business or person to amend the non-compliant behaviour.

Should the circumstances surrounding an offence be considered sufficiently serious (e.g. an imminent risk to Australia's biosecurity status or public health and safety), the Branch may elect to employ multiple enforcement tools at the same time.

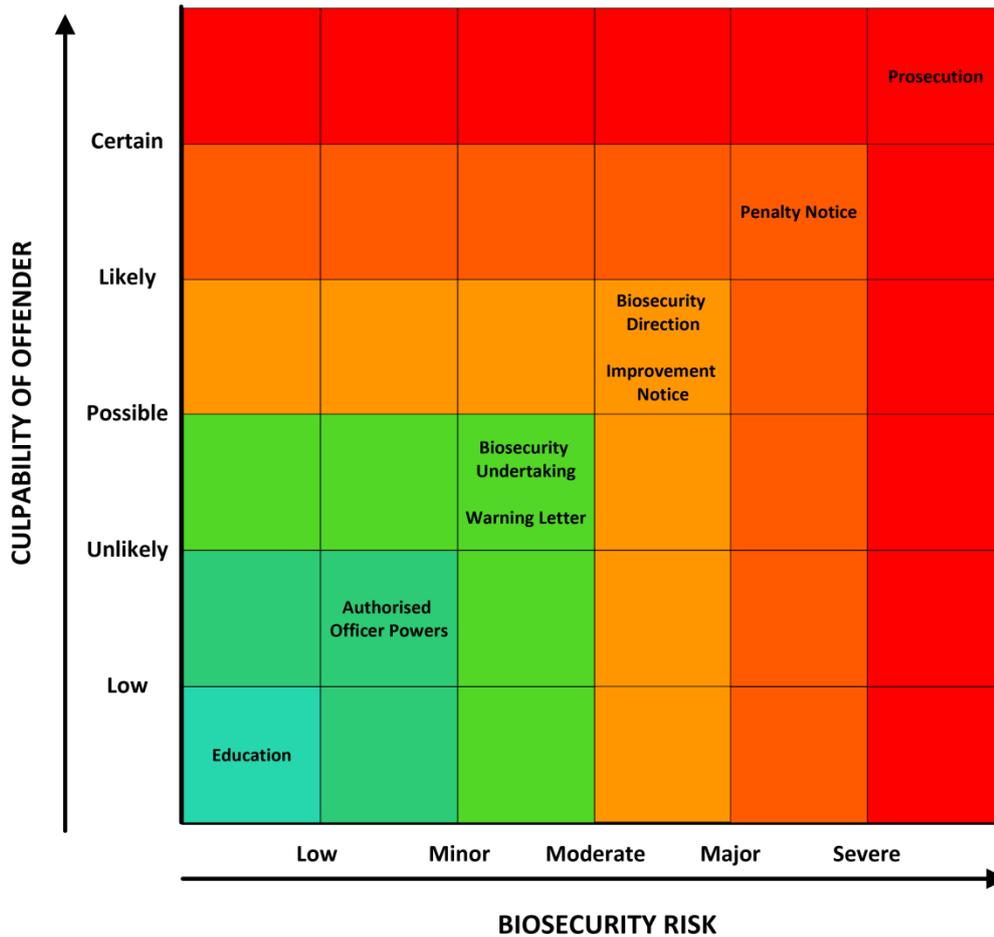
This policy should not be interpreted as a means of preventing DPI Biosecurity & Food Safety exercising any such enforcement powers.

DPI Biosecurity & Food Safety will consider the following factors when making decisions concerning the choice of enforcement tool:

- circumstances of the alleged offence and the individual circumstances of the offender associated with the business
- compliance history of the offender, in general and with respect to the specific incident
- cooperation demonstrated by the alleged offender
- remedial action implemented by the alleged offender to address the non-compliance
- timeframe over which the offence was committed
- the need to provide DPI Biosecurity & Food Safety staff with a safe working environment within the requirements of occupational health and safety laws, particularly in relation to matters involving assaults and intimidation.

The following diagram illustrates the graduated nature of enforcement responses in unity with the seriousness of the non-compliance.

Figure 2. Enforcement response



Authorised by law

Authorised officers are required to act within their legal remit of statutory power when undertaking enforcement activity. People or businesses should not be required, either directly or by inference, to observe requirements that are not authorised by law.

When collecting evidence:

- any evidence obtained by authorised officers relating to actual or alleged offences should be obtained within the requirements of legislation and criminal law
- all decisions should be based on evidence. Enforcement action is to be supported by appropriate evidence. Evidence should be admissible and sufficient to establish that an offence has been committed (this will assist in ensuring that enforcement action is only taken under appropriate circumstances)
- it should be sufficient to support a case against appeal
- it does not need to be assembled into a full prosecution brief for minor enforcement action, however evidence should be sufficient to substantiate the offence.

Impartiality and procedural fairness

DPI Biosecurity & Food Safety will undertake enforcement activity against the businesses or person in a timely manner that is procedurally fair and impartial. This will assist in minimising opportunities for arbitrary or inexplicable differences between the handling of individual cases, or classes of cases, to occur.

Discrimination (e.g. with regard to ethnicity, religion, age or gender) by authorised officers when undertaking enforcement action is unacceptable.

Decision making about applying enforcement provisions should not be influenced by:

- political advantage or disadvantage to a government or any political party or group,
- the consequences of a decision on the personal or professional circumstances of staff, or
- the personal feelings of the decision makers towards the offenders.

Business proprietors and/or persons involved will receive written advice of available statutory rights of appeal when decisions are made by the Branch to apply enforcement provisions.

Reasons for a decision (e.g. to suspend or revoke a licence/registration) will be documented and included in a statement of reasons as part of any administrative review of the decision.

Many juveniles (10 to 18-year-olds) work in (or operate) businesses and may therefore be subject to enforcement action under some circumstances. Under these circumstances, legislation for dealing with children between the ages of 10 and 18 (young offenders' legislation) applies to compliance and enforcement activity.

Accountable and transparent

To ensure the Branch is accountable and transparent in the application of enforcement tools the authorised officers will:

- ensure that legislation, enforcement policies, complaints procedures and relevant information are readily accessible to businesses and the public
- use plain language to communicate with the public and the industry
- ensure that policies and procedures addressing issues associated with enforcement action are readily available
- advise of available complaint or appeal processes associated with enforcement action inclusive of timeframes applicable to these processes
- provide advice on fees and charges that may be applied in discharging enforcement obligations or providing services under the relevant legislation

In relation to issuing penalty notices, Department of Primary Industries has adopted guidance from two documents, which can be found on the NSW Justice website at www.justice.nsw.gov.au:

- [Caution Guidelines](#) and;
- [Internal Review Guidelines](#)

The constraints of any privacy legislation and confidentiality provisions when initiating enforcement action against businesses (unless a statutory requirement exists to disclose the information) will be observed.

Promote consistency of enforcement activity between regulators

DPI Biosecurity & Food Safety will work with other state and territory jurisdictions to promote consistency in the application of enforcement provisions by regulators. This ensures stakeholders in different Australian jurisdictions do not receive differential treatment with respect to measuring compliance with legislative obligations.

The public interest

The overriding consideration in taking enforcement action should always be the protection of the community, plant and animal health and safety.

Application of multiple enforcement tools

A graduated approach to the application of individual enforcement tools does not preclude the simultaneous application of multiple enforcement tools.

There may be circumstances where there are multiple non-compliances detected, each of varying significance. In such circumstances, the use of different enforcement tools may also be warranted.

Conclusion

On a daily basis, DPI Biosecurity & Food Safety investigates compliance issues and applies enforcement tools. This policy provides general guidance on how the Branch will undertake enforcement action. It does not limit the discretion of the Branch to take enforcement action.

Activities

The Branch conducts the following enforcement activities to respond to non-compliance:

1. the use of overt and covert surveillance tools
2. investigation of suspected breaches of the laws
3. identifying measures to compel compliance without resorting to formal court action, such as warning letters, directions (directed works), notices, penalty notices, Ministerial orders and remediation orders, or a combination of these.
4. undertaking works and seeking cost recovery where directed works have not been completed or undertaken subject to a lawful direction
5. prosecution with a view to conviction in a court of competent jurisdiction where court-imposed penalties may include fines, imprisonment, forfeiture of assets and goods, prohibition orders, good behaviour bonds, and community service orders.

4. Related Procedures

N/A

5. Definitions and Acronyms

List definitions and acronyms where appropriate.

DPI: NSW Department of Primary Industries

BFS: Biosecurity and Food Safety

6. Legislation

DPI Biosecurity & Food Safety are responsible for administering and/or enforcing the following Acts and Regulations:

- The *Food Act 2003*
- The Food Standards Code (the Code)
- *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*
- *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*
- *Biosecurity Act 2015*¹

7. Other Related Documents

DPI Biosecurity & Food Safety references the Guidance for regulators to implement outcomes and risk-based regulations (QRSI) to produce material that provides a clear and practical framework for regulators to implement outcomes and risk-based regulation. This approach aids the Branch in achieving improved compliance outcomes and regulated entities to tailor their activities and demonstrate compliance.

8. Revision History

Version	Date issued	Notes	By
1.0	06.04.2017	Formatted for DPI Website Link updates	Biosecurity and Food Safety Compliance

9. Review date

01.06.2017

10. Contact

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¹ The *Biosecurity Act 2015* (the Biosecurity Act), was assented to in September 2015 and is expected to come into effect in 2017 and subsequently repeal any of the list Acts.

* The following Acts will be repealed by the Biosecurity Act 2015.