

## Biosecurity - Permits

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### Management of the biosecurity risk

The purpose of this procedure is to provide guidance for authorised officers in the granting of permits to provide exceptions to requirements imposed by or under the *Biosecurity Act 2015* (the Act). This includes the identification of the roles and responsibilities of staff who are responsible for enforcing, administering and executing the Act.

### Scope

This procedure applies to the staff of NSW Department of Primary Industries (DPI), an office with in the NSW Department of Industry, Local Land Services (LLS), Local Control Authorities (LCA) and the Australian Plague Locust Commission (APLC) including authorised officers, who and are responsible for administering, enforcing and executing the Act.

This procedure should be read in conjunction with any relevant policy and procedure that is in place for the management of a biosecurity risk.

### Biosecurity legislation summary

Part 21 of the Act provides for permits. There are two types of permits available under the Act, individual permits and group permits. Both types can be granted as a permit, an emergency permit or an prohibited matter permit.

A permit authorises conduct that, but for the permit, would or might contravene a requirement imposed by or under the Act. Permits provide administrative and operational flexibility and can be issued to an individual, or to a class of persons. A permit may be granted to enable market access, business continuity, research on high risk prohibited matter and the keeping of a prohibited non-indigenous animal.

A permit may also be granted to authorise conduct that, but for the permit, would or might contravene a requirement imposed by or under the *Stock Medicines Act, 1989*.

Conditions for the granting of permits are prescribed in Part 11 of the Biosecurity Regulation 2017 (the Regulation).

The collection, use and disclosure of information in accordance with this procedure, including any internal or external discussion or distribution of information, must be in compliance with the *Privacy and Personal Information Protection Act 1998* or be exempted by the operation of section 387 of the Act.

Section 387 (2) of the Act provides authority for the disclosure of information about a person, without the consent of the person: to a public sector agency, or to any other person, but only if the disclosure is reasonably necessary for the purpose of exercising a biosecurity risk function.

Refer to relevant policies and procedures for further guidance in relation to situations when an authorised officer may issue a permit.

## Work Health and Safety

The *Work Health and Safety Act 2011* places an obligation on the agencies to provide a safe and healthy workplace. Safe Work Method Statements that support activities included in this procedure must be used in identifying, assessing and controlling risks.

All relevant agencies must work together to create a safe and supportive work environment when undertaking any activities for the procedure.

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## **Biosecurity - Permit procedure**

### **1. Roles and responsibilities**

Staff of all agencies who are responsible for administering the Act must ensure:

- a permit is only granted by the Secretary, a delegate or an authorised officer consistent with the requirements of Part 21 Permits of the Act and Part 11 Permits of the Regulation
- a permit is only granted by the Secretary or a delegate with the appropriate departmental authorisation
- a group permit can only be granted by an authorised officer with the appropriate departmental approval. The following approval is required:
  - NSW DPI, Director level or higher
  - LLS, General Manager level, and
  - LCA, General Manager level.
- the use of a permit supports the principle that biosecurity is a shared responsibility and where possible, it is outcome focused
- they are trained in the use of their powers (and any limitations included in their 'Instrument of Appointment') in the context of granting a permit
- there is excellent communication within the agency so that all relevant staff are informed of matters that are subject to a permit
- records of permits and all related compliance actions are maintained.

Authorised officers must ensure that:

- permits are given consistent with the officer's authorisation and their current position description except if the officer is directed to do so or if they are required to issue a permit in an emergency situation
- permits are issued consistent with relevant policy and procedure for the management of a biosecurity risk
- emergency and prohibited matter permits are granted consistent with the authorised officer's 'Instrument of Appointment'.
- appropriate approval is obtained before a group permit is granted
- records of all permits are maintained for seven years
- assessment of a permit application that is not the subject of policy and procedure are performed in consultation with relevant technical and compliance staff
- managers and all relevant staff are informed of any permits issued
- they demonstrate they are being fair and reasonable at all times.

## 2. The general biosecurity duty

Part 3 of the Act provides for the general biosecurity duty. The Act prescribes any person who deals with biosecurity matter or a carrier and who knows, or ought reasonably to know, the biosecurity risk posed or likely to be posed by the biosecurity matter, carrier or dealing has a biosecurity duty to ensure that, so far as is reasonably practicable, the biosecurity risk is prevented, eliminated or minimised.

An individual permit can be granted to exempt a person from discharging the general biosecurity duty. This includes not carrying out an action that would otherwise be required in order to discharge the general biosecurity duty. For example, if a person has a general biosecurity duty not to move animals off their property if they are infected with a specified disease, an individual permit could be granted to allow infected animals to move off the property for slaughter or for treatment.

## 3. Permits

Section 333 of the Act provides for the grant of a permit under the Act. A permit authorises for an activity or action that would or might contravene a requirement imposed under the Act.

Section 334 of the Act also provides for the grant of a permit to authorise for an activity or action that would or might contravene a requirement imposed by or under the *Stock Medicines Act 1989* and the regulations under that Act.

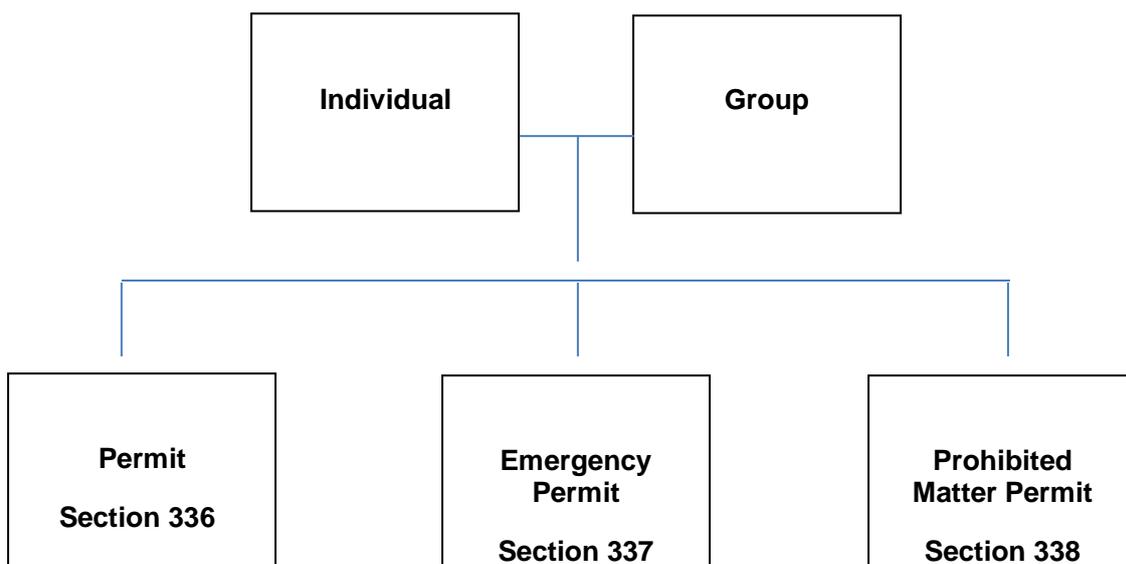
### 3.1 Types of permit

There are two types of permits identified in Part 21, Section 335 (1) of the Act:

- an individual permit which is granted to a specified person
- a group permit which is granted to a specified class of person. A 'permit holder' includes any person who is a member of the class of persons authorised to engage in conduct by a group permit.

Individual and group permits can be granted in three different forms:

- a permit
- an emergency permit
- a prohibited matter permit.



## 3.2 Permit

### 3.2.1 Individual permit

Individual permits may be granted to a person for conduct, an action or inaction that would otherwise be contrary to a requirement of the Act, Regulation, subordinate instruments and any duty imposed by the Act.

*Example: An individual permit may be granted to a person for the movement of grapevine plant material out of a NSW Grapevine Phylloxera Infested Zone.*

Individual permits may be granted by the Secretary, their [delegate](#) or an authorised officer unless it is an emergency or prohibited matter permit and must:

- be the subject of a documented risk assessment process
- not increase any biosecurity risk associated with the biosecurity matter the subject of the permit, and
- be supported by the relevant policy and procedure in place for the management of the biosecurity risk.

### 3.2.2 Group permit

The granting of a group permit can provide an exception to a requirement imposed by or under the Act to a specified class of persons. This can include all persons in NSW, or a part of NSW, or persons who engage in a dealing with specified biosecurity matter. For example:

- a group permit could be granted to provide for the movement of sheep and goats into NSW (contrary to the prohibition as prescribed in the Regulation)
- a group permit may be granted to provide for the movement of all grapes out of NSW Grapevine Phylloxera Infested Zone (contrary to the prohibition as prescribed in the Regulation), for processing.

The granting of a group permit is potentially much more significant than the granting of an individual permit. Therefore, it has been determined that a group permit should only be granted by an authorised officer with the appropriate approval or in the case of emergency and prohibited matter group permits, the appropriate delegation. This includes:

- NSW DPI, Director level or higher
- LLS, General Manager level, and
- LCA, General Manager level.

### 3.2.3 Granting a group permit

The departmental unit responsible for the relevant biosecurity risk is responsible for determining if a group permit is required. If it is determined that a group permit, subject to Section 336 (3) of the Act is required, a request should be made in writing to the relevant approving officer and include the following information:

- the requirement imposed by or under the Act
- the reason for the group permit
- a (supporting) risk assessment
- biosecurity risk management strategy (if required)
- a statement that demonstrates that the permit would be consistent with the relevant policy and procedure in place for the management of the biosecurity risk.

Group permits may also be the subject of a request by an industry association, in which case the granting of the group permit would be the subject of the permit application process.

### 3.3 Emergency permit

An emergency permit is a permit that authorises an action or inaction that would or might contravene an emergency order, issued under Section 44 of the Act, or a biosecurity direction given in the case of an emergency, and that is expressed to apply to the emergency concerned. For example:

- an individual emergency permit is granted to a horse owner to move a horse to a veterinary hospital from a property the subject of an emergency order due to an outbreak of Equine influenza
- a group emergency permit is granted to allow the movement of vaccinated stock out of an emergency zone.

The granting of an emergency permit will be restricted to authorised officers with the appropriate delegation and departmental authorisation.

Sections 337 (1) of the Act, states that only the Secretary can grant an emergency permit. Sections 379 provides power for the Secretary to delegate this function to an officer or employee of a government agency. For advice on who can issue an emergency permit, please refer to the current [Delegations](#) on the government website. An authorised officer's Instrument of Appointment will identify if they are authorised to grant an emergency permit.

### 3.4 Prohibited matter permit

A prohibited matter permit authorises dealing with biosecurity matter that is listed as prohibited matter in the Act.

Schedule 2, Part 1 of the Act identifies prohibited matter throughout the State. Schedule 2, Part 2 identifies prohibited matter in part of the State.

Examples of where a prohibited matter permit may be granted include:

- an individual prohibited matter permit is granted to provide for the keeping of giant African snails for research purposes
- a group prohibited matter permit is granted to provide for the movement of an animal blood sample infected with anthrax, to an approved testing facility.

Section 338(1) of the Act states that only the Secretary can grant a prohibited matter permit. Section 379 provides power for the Secretary to delegate these functions to an officer of employee of a government agency. For advice on who can issue a prohibited matter permit, please refer to the current [Delegations](#) on the government website. An authorised officer's Instrument of Appointment will identify if they are authorised to grant a prohibited matter permit.

## 4. Application for a permit

### 4.1 Application for a permit

Section 341 of the Act provides for a person to apply for a permit under the Act.

It is the responsibility of authorised officers and other relevant officers across agencies to ensure that they only consider an application for a permit if it is consistent with their authorisation, current position description and the policy and procedure for the relevant biosecurity risk. Except if the authorised officer is required to consider a permit application in an emergency response.

Authorised officers should ensure that applicants for a permit are provided with:

- an approved permit application form
- the information or evidence that is required.

The application must identify:

- the requirement imposed by or under the Act
- the conduct, action or inaction that is required
- the reasons for requiring the permit
- the processing officer must ensure a record is maintained of all permit applications.

#### **4.2 Grant or Refusal of a permit**

Section 342 (1) of the Act provides powers to grant or refuse an application for a permit. A decision to refuse an application must be consistent with grounds for refusal identified in section 342 (2) & (3) of the Act and clauses 104 and 105 of the Regulation. The reason for the grant or refusal must be recorded.

The authorised officer must also ensure their decision to grant or refuse a permit is consistent with the objectives of the relevant policy and procedure in place for the biosecurity risk. This should be documented with the application for the permit (Section 4.1 of this procedure).

The relevant decision maker must give the applicant written or oral notice of a decision to grant or refuse a permit. The applicant must be given notice of the decision to grant or refuse a permit or renew a permit within 60 days of receipt of the application before it is taken that the application has been refused.

#### **4.3 Duration of a permit**

The Act provides for a permit to be in force for a period not exceeding five years. The period must be specified in the notice by which the permit is granted.

The duration of a permit should not be more than what would be reasonably required for the person to carry out or take the required action or inaction. Duration of permit will be subject to circumstances of each permit application.

#### **4.4 Variation of a permit**

The Act provides for a variation of a permit by notice in writing to a permit holder. This includes any conditions of a permit. The variation includes the imposition of a new condition, the substitution of a condition, or the omission or amendment of a condition.

The Act provides for fees for the variation of a permit however at this moment, it has been determined that no fee will apply if the variation is initiated by the government. A variation application by the permit holder may be the subject of a fee. Refer to section 7 – Fees.

#### **4.5 Renewal of permit**

When a permit expires, section 345(1) of the Act provides for the permit holder to apply for a renewal of a permit.

When a permit is due to expire, the permit holder can apply for a new permit if necessary. This involves the same process as previously stated for the application for a permit.

### **5. Conditions of a permit**

#### **5.1 Conditions of a permit**

Section 347 of the Act provides for a permit to be the subject of conditions either prescribed by the Regulation or imposed by the relevant decision-maker.

The relevant decision maker should consider the current policy and procedure and/or seek advice from staff who are responsible for the biosecurity risk when considering the imposition of conditions.

If the individual permit holder is to be the subject of a compliance audit, this should be included in the permit conditions. See Section 5.3 of the procedure.

## **5.2 Conditions of insurance cover**

The relevant decision-maker may impose a condition that the permit holder must take out and maintain an insurance policy against any liability that could result from the conduct engaged in under the permit.

This is a relevant consideration for relevant decision makers and should be determined by the units responsible for the management of the biosecurity risk. If required, the relevant decision maker must ensure they obtain evidence of the insurance policy and maintain the record with the permit holder's application.

## **5.3 Conditions of biosecurity audits**

Section 349 provides for the permit holder to co-operate with biosecurity audits. An accreditation audit may be required of a permit application and a compliance audit may be required of an individual permit holder. The requirement for biosecurity audits should be determined by the unit responsible for the management of the biosecurity risk and if required, should be included as a condition of the permit.

## **5.4 Conditions of financial assurances**

The Act section 350 provides for a financial assurance to guarantee funding for what the Act defines in section 350 (2) as a secured event.

Section 350 also specifies the acceptable forms of a financial assurance and provides for the Regulation to prescribe the calculation of a financial assurance, the circumstances the financial assurance may be claimed and the administration of financial assurances. Currently the Regulation does not prescribe any of these requirements.

The requirement for a financial assurance should be determined by the unit responsible for the management of the biosecurity risk and if required, should be included as a condition of the permit.

## **6. Suspension or cancellation of a permit**

Sections 352 and 356 of the Act provide for the suspension or cancellation of a permit and identify the grounds for suspension or cancellation, respectively. The Regulation at Clauses 107 and 108 specifies additional grounds for refusing, suspending or cancelling a permit and additional matters to which the relevant decision-maker may have regards, respectively.

When considering whether to suspend or cancel a permit, the relevant decision maker must ensure the decision to suspend or cancel is supported by the grounds specifies in the Act and/or the Regulation and is documented.

If there are grounds for suspension or cancellation, the relevant decision maker can determine that the permit should be suspended and should inform the permit holder by notice in writing. Except if:

- the permit is a group permit
- the suspension is required urgently, or
- in the case of an emergency.

The Act specifies the information that must be included in the notice of suspension and cancellation.

In the case of an emergency, the notice of suspension may be given orally with written confirmation provided as soon as practicable afterwards.

Sections 355 and 357 of the Act provide for permit holders to be given the opportunity to make submissions about suspension or cancellation, respectively. In both circumstances there is a deadline for submissions of 30 days after the notice was given.

## **7. Fees**

### **7.1 Application fee**

The Act's section 341 (3) provides for the Regulation to prescribe a fee for an application for a permit. Schedule 5 of the Regulation provides an application for permit fee of \$720. Section 341(4) of the Act provides for the relevant decision-maker to determine if a fee is to be paid.

It has been determined that a fee will be required for an application for a permit for dealing with a non-indigenous animal classified as a 'prohibited dealing' under Schedule 3 of the Act.

### **7.2 Accreditation and compliance audit fees**

If appropriate, the applicant for an individual permit should also be informed if their application will be the subject of a biosecurity audit and associated fee. Sections 218 and 230 of the Act provide for auditing of applicants and holders of individual permits. If determined to be appropriate by the relevant policy and procedure, audits may also be the subject of a fee. The Act provides for the charging of a reasonable fee for the carrying out of either an accreditation or a compliance audit.

It has been determined that a fee of \$150/hour may be charged for an accreditation (permit application) or a compliance (individual permit holder) audit.

## **8. Miscellaneous**

### **8.1 Surrender of a permit**

A permit holder may apply to surrender a permit. This must be done using the approved surrender application form at Appendix 1. The application to surrender a permit will include information or evidence required by the authorised officer to make an informed decision.

### **8.2 Appeal to Land and Environment Court**

Section 360 provides for a person to appeal to the Land and Environment Court against a decision to refuse, refuse to renew, cancel or refuse to revoke a suspension of a permit.

Relevant decision makers must keep all the appropriate records of their administration of permits to ensure matters that are appealed can be dealt with appropriately.

## **9. Record keeping**

The responsible authority and the authorised officer must maintain records of all biosecurity permits. Records required are as follows.

Responsible Authority:

- authorised officers training, their roles and responsibilities
- permits granted
- enforcement actions undertaken.

Authorised officers who issue biosecurity certificates should store all certificates in the following locations:

- Biosecurity Plants - Designated RM8 folder, to be determined by the line supervisor
- Biosecurity Animals – LHMS
- Biosecurity Compliance - Designated RM8 folder, to be determined by the line supervisor
- Local Land Services – LHMS (animal) or electronic storage.

At the current stage, electronic permits are under development. This eventual electronic system will create a standardised and consistent method of issuing and storing biosecurity permits.

Authorised officer:

- authorisation, training roles and responsibilities
- copies of all permits issued
- refusal, suspension, cancellation and surrender of permits
- conditions of permits imposed
- financial assurances required.

## 10. Definitions and acronyms

LCA: Local Council Authority

LLS: Local Land Services

NSW DPI: NSW Department of Primary Industries

## 11. Documentation

Permit application

Application to surrender permit – individual or group

Policy - Biosecurity collection, use and disclosure of information

Records Management Policy (IND-I-177)

Information Security Policy (IND-I-197)

Classified Information Policy (IND-I-196)

Government Information (Public Access) Policy (IND-I-178)

Procedure - Biosecurity collection, use and disclosure of information

Procedure – Biosecurity processing permit applications and renewal applications for prohibited dealings

Procedure – Fees and Charges

Guidelines

## 12. Records

Not applicable.

## 13. Revision history

Version	Date issued	Notes	Issued by
1.0	01/07/2017	New procedure developed in response to the <i>Biosecurity Act 2015</i> .	Compliance Systems Coordinator

## 14. Contact

Systems Coordinator

(02)6391 3698