

BIOSECURITY ACT 2015

Biosecurity Regulation 2017

Compensation

When is compensation paid?

Compensation may be payable in emergency situations to owners of animals, plants and property when:

- animals, plants and property have been destroyed under an emergency order issued under the *Biosecurity Act 2015* (the Act), or
- animals and plants have died as result of the emergency pest or disease and would have otherwise been destroyed under an emergency order
- animals or plants have died as a result of the emergency pest or disease and the owners have reported the death without unreasonable delay.

Compensation may be refused or reduced in some situations, such as if the owner:

- has committed an offence that has led to the spread of the emergency pest or disease
- has committed an offence that caused the loss for which the compensation is being claimed
- is insured against the loss
- makes a false or misleading claim for compensation, or
- kept the emergency biosecurity matter in contravention of a requirement in the Act.

Compensation may also be payable if an authorised officer damages something while exercising the power to enter premises or to examine or inspect something.

How is the amount of compensation calculated?

Generally the amount of compensation paid will be the market value of the:

- animal, plant or property at the time of its destruction, or
- in the case of the death of an animal or plant, at the time of notification.

The value is set at what the market value would be if the biosecurity emergency had not occurred.

Compensation is not available for consequential losses, such as loss of profit or production.

Is additional compensation payable by the Commonwealth government and/or industry?

NSW is a signatory to the national emergency biosecurity response agreements, which establish cost-sharing arrangements between industries, the Commonwealth, State and Territory governments for biosecurity emergencies.

The Emergency Plant Pest Response Deed, Emergency Animal Disease Response Agreement and National Environmental Biosecurity Response Agreement, provide for compensation following the destruction of property in a biosecurity emergency.

However, before a biosecurity emergency can be declared nationally, all parties to the relevant agreement, including other states and territories and affected industry bodies, must agree that an emergency declaration is warranted.

The Act makes compensation available for all emergencies declared in NSW. If the outbreak of the pest or disease is also recognised nationally as an emergency, compensation may also be payable.

For more information about the Act, visit our website or contact us:

W www.dpi.nsw.gov.au/biosecurityact

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Offences

Anyone who deliberately makes a false or misleading claim for compensation or acts fraudulently in order to be paid compensation is guilty of an offence which carries a significant penalty. If a payment is made but later found to have been made in error, it may be recovered from the claimant.

Examples

Aquatic weed

A farmer notices an unusual plant growing in one of his dams and reports it immediately to an authorised officer. Samples are taken for identification. The plant is identified as a freshwater weed which is listed as prohibited matter in the Act. The most likely method of introduction was through migratory water birds.

An emergency order is issued to eradicate the weed and prevent its spread. The weed does not trigger a national emergency as other jurisdictions do not agree that it constitutes a threat to their state or Territory.

Among other measures, the emergency order requires that the dam is drained and left dry for six months. Any re-emergence is to be treated with herbicide.

As the farmer notified the Department promptly, and was not responsible for the introduction of the weed, he is able to apply for compensation. He is paid for the market value of the water at the current water price in his area, but not for the loss of the crops he would have grown with the water.

Plant disease

NSW DPI is notified of an unusual fungal disease in a chickpea crop. It is identified as a serious exotic disease of legumes and a national emergency is declared under the Emergency Plant Pest Response Deed. Among other measures, the national emergency response plan requires that all legume crops within a certain radius be destroyed, and that the land must lie fallow for a specified number of months.

The compensation payable to affected producers is the market value of the destroyed crops, as provided by the Act. As the Emergency Plant Pest Response Deed also provides compensation for loss of production when an emergency response requires that crops not be grown on affected land, additional compensation is available as calculated under the Deed.

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