

## **Destruction, Sale or Disposal of things under the *Biosecurity Act 2015***

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### **Purpose**

The purpose of this procedure is to provide guidance to staff, including authorised officers who have delegated functions to destroy, sell or dispose things under the *Biosecurity Act 2015* (**the Act**).

### **Scope**

This procedure applies to NSW Department of Primary Industries (**NSW DPI**) within Regional NSW, Local Land Services (**LLS**) and other authorised persons responsible for destroying, selling or disposing of forfeited things under the Act.

This procedure reflects different destruction powers available under the Act, including destruction under Part 8 of the Act, destruction of property that has been forfeited to the Secretary, and destruction requirements under the Control Order or Emergency Order. Staff members using the procedure should refer to the relevant sections of this procedure for the requirements of destruction.

### **Interaction with other Acts**

#### **Collection, use and disclosure of information**

The collection, use and disclosure of information in accordance with this procedure, including any internal and external discussion of information, must comply 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.

The NSW DPI policy and procedure on Collection, Use and Disclosure of Information should be consulted for further information.

#### **Safety Requirements**

The *Work Health and Safety Act 2011* places an obligation on the agencies (e.g. NSW DPI, Local Land Services, Local Control Authorities) as a person conducting a business or undertaking and workers to provide a safe and healthy workplace. Safe work method statements that support activities included in this policy must be used in identifying, assessing and controlling risks.

The agencies will work to create a safe and supportive work environment when undertaking any activities in this procedure.

### **Delegations**

Consult with the most recent instrument of delegation when undertaking functions under the Act to confirm that you have the necessary powers. Refer to the [Delegations page on the Intranet](#).

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# Procedure – Destruction, Disposal or Sale of things under the

## 1. Roles and Responsibilities

When exercising a function under the Act, staff are to ensure that:

- they have the delegated power to act,
- their action is in accordance with the Act, and
- they maintain all relevant documentation to ensure compliance.

Authorised officers who destroy or dispose of a thing under Part 8 of the Act are to ensure:

- full compliance with all relevant provisions under the Act,
- all necessary evidence is collected,
- verification of the correct entity is undertaken,
- appropriate management approvals have been undertaken before exercising power to destroy
- demonstration they are being fair and reasonable at all times,
- maintenance of appropriate records.

Line managers, senior officers and team leaders are to ensure that they:

- demonstrate procedural fairness and reasonableness at all times, and
- interpret the information provided by authorised officers and make administrative decisions.

The Secretary (or delegate):

- may charge a recoverable fee to the liable person in relation to any costs and expenses incurred in connection destruction.
- if an emergency order is required, ensure that the emergency order is made by the Secretary (or delegate) in accordance with section 44(2) of the Act.

The Minister (or person authorised by the Minister):

- if destruction or disposal is required by a control order (section 69(1), section 73), ensure that the control order is made by the Minister (or the person authorised by the Minister) in accordance with sections 62(2) and 78 of the Act

## 2. Definitions

### 2.1 'Reasonable suspicion'

"Reasonable suspicion" is used often in legislation. It requires enough facts and that a reasonable person is inclined to accept the subject matter of the belief. The Act provides guidance on how an authorised officer may form an opinion and reasonable suspicion that:

- an animal, plant, place or thing may reasonably be suspected of being a carrier of biosecurity matter (see section 399)
- an animal, plant, place or thing may reasonably be suspected of being infested with a disease (see section 400)
- an animal, plant, place or thing may reasonably be suspected of being infested with a pest (see section 401).

Case law has also identified that three things that must be present, which a Court will take into account in a prosecution:

- (1) the authorised officer must have an actual subjective belief. Belief is more than "suspicion", "apprehension" or "fear"; it is an actual "inclination of the mind",
- (2) the subjective belief of the authorised officer must be a belief that is formed by the authorised officer by reference to objective circumstances known to and taken into

account by the authorised officer – including information provided to the authorised officer by someone else – and can include an element of surmise or conjecture on the part of the authorised officer, and

- (3) the court must be able to determine that a reasonable person would form the same belief based on the objective circumstances (*Prior v Mole* [2017] HCA 10).

## 2.2 'Reasonably practicable'

With respect to destruction powers, “reasonably practicable” means reasonably practicable in the opinion of the authorised officer, Secretary or Minister.

Section 16 of the Act defines reasonably practicable, in relation to the prevention, elimination or minimisation of a biosecurity risk, to that which is, or was at a particular time, reasonably able to be done, taking into account and weighing up all relevant matters including—

- a) the biosecurity risk concerned, and
- b) the degree of biosecurity impact that arises, or might arise, from the biosecurity risk, and
- c) what the person concerned knows, or ought reasonably to know, about the biosecurity risk and the ways of preventing, eliminating or minimising the risk, and
- d) the availability and suitability of ways to prevent, eliminate or minimise the biosecurity risk, and
- e) the cost associated with available ways of preventing, eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Notably, there are three general propositions on the meaning of “reasonably practicable” that may also be considered:

- the phrase “reasonably practicable” means something narrower than “physically possible” or “feasible”;
- what is “reasonably practicable” is to be judged on the basis of what was known at the relevant time;
- to determine what is “reasonably practicable” it is necessary to **balance the likelihood of risk occurring against the cost, time and trouble necessary to avert that risk.** (*Slivak v Lurgi (Australia) Pty Ltd* [2001] HCA 6 205 CLR 304; 75 ALJR 481 para [53]).

## 3. Destruction of a thing under Part 8 of the Act

The authorised officer must undertake the following in relation to the destruction of a thing, including:

- identifying an authorised purpose (s89)
- comply with the limitations on destruction (s113 and s115)
- forming an opinion that it is necessary (s102(1))
- notifying the intention to destroy (s114)

Before destroying a thing, the authorised officer should seek guidance and approval from a team leader, senior officer of their line manager.

These tasks are described below.

### 3.1 Identify the authorised purpose

An authorised officer may exercise their functions under Part 8 of the Act, including the powers to destroy, dispose of or eradicate any thing, if before acting, they identify an authorised purpose for their action. An authorised purpose is:

- investigating, monitoring and enforcing compliance with the requirements imposed by or under the Act (s89)(1)(a)),
- obtaining information or records for purposes connected with the administration of the Act (s89)(1)(b)),
- preventing, eliminating, minimising or managing biosecurity risks or suspected biosecurity risks (s89)(1)(e)), or
- preventing, managing or controlling a biosecurity impact (s89)(1)(f),

- enforcing, administering or executing the Act (including any instrument made under the Act)(89)(1)(g)).

After an authorised officer has identified an authorised purpose, the authorised officer may, at any premise lawfully entered, do anything in the opinion of the authorised officer that is necessary to be done for an authorised purpose (section 102).

### 3.2 Limitations on destruction

Under section 113, an authorised officer has the power to destroy something only if:

- the thing is, or is reasonably suspected of being, prohibited matter, or
- the thing is a pest, or
- the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, biosecurity matter that poses a biosecurity risk and there are no other reasonably practicable treatment measures that could eliminate or minimise the biosecurity risk posed by the biosecurity matter, or
- the destruction is expressly authorised or required by an emergency order, control order or biosecurity zone regulation, or
- the thing has been forfeited to the Secretary.

Refer to section 2.1 of this procedure for further clarification on forming a '*reasonable suspicion*'.

Importantly, section 115(1) of the Act provides that authorised officers must not:

- destroy any living thing that is a protected animal or protected plant within the meaning of the [Biodiversity Conservation Act 2016](#), or
- destroy any living thing that is a threatened species within the meaning of the [Biodiversity Conservation Act 2016](#), or
- clear any native vegetation within the meaning of Part 5A of the [Local Land Services Act 2013](#), or
- harm (within the meaning of the [Heritage Act 1977](#)) any building, work, relic, moveable object or place the subject of an interim heritage order or listing on the State Heritage Register under that Act.

However, s115(2) does not limit the power of an authorised officer to do a thing where that action is expressly authorised or required by an emergency order, a control order or a biosecurity zone regulation.

### 3.3 Approval and guidance for destruction

The authorised officer should, prior to destroying and/or disposing of a thing, discuss with their team leader, senior officer or their line manager the objective circumstances of the biosecurity matter, carrier or thing and the risk or potential biosecurity risk it poses.

Matters that may be relevant to discuss include:

- the basis for the decision,
- available evidence and assessment (i.e. whether the authorised officer has gathered/considered all relevant evidence available, considered any evidence that is irrelevant to the decision to destroy, the level of inquiries made, key findings of the risk assessment, whether the authorised officer has s recorded their observations etc),
- compliance with the destruction requirements in Part 8 of the Act,
- notification requirements (see 3.4 below),
- arrangements for destruction and disposal.

A team leader, senior officer or line manager will analyse the evidence and circumstances provided by the authorised officer and provide direction to the authorised officer.

### 3.4 Notification of proposed destruction

An authorised officer must not destroy any thing under Part 8 of the Act unless:

- before taking that action, the authorised officer gives notice in writing of the proposed destruction to the owner or person in charge of the thing, or
- the authorised officer is satisfied that the owner or person in charge has already been given notice in writing of the proposed destruction (s114(1)).

Notice must be given at least one day before the function is exercised (s114(2)). “At least one day” means there must be a clear day between when the notice is served and the function is exercised. For example, if a notice is served at 9.00am on Monday, the clear day is Tuesday, and the thing may be destroyed at any time after 12.01am on Wednesday.

Notice is not required when:

- there appears to be no one immediately in control of the thing and the owner or person in charge cannot, after reasonable search and inquiry, be located, and
- the authorised officer considers that, in the circumstances, the function must be exercised without prior notice to the owner or person in charge (s114(3)).

If a thing has been forfeited to the Secretary, notice is not required.

The **Notice of Proposed Destruction** (PUB17/376) template must be completed by the authorised officer.

### 3.5 Destruction and disposal considerations

Destruction and disposal of any thing, should be in accordance with any policy of procedure for that biosecurity risk. These documents are available on the NSW DPI website or Intranet.

Other key considerations include:

- preventing or eliminating any biosecurity risk
- the availability of options for disposal
- risks posed to human health
- cost of available options, and
- a request made by the owner of the thing

Destruction and disposal should be in accordance with any Australian Pesticides and Veterinary Medicine Authority registration or permit requirements.

Where destruction relates to a living animal, to comply with animal welfare requirements under the [Prevention of Cruelty to Animals Act 1979](#), destruction should be performed:

- by a method which is lawful and humane, and
- by a registered veterinary practitioner.

If appropriate, destruction of any thing should be witnessed and certified by a third party.

Disposal should be consistent with:

- the relevant procedure in place for to prevent, eliminate or manage the biosecurity risk, and
- in consultation with the relevant technical specialist, and the authorised officer’s line manager.

## 4. Destruction under a biosecurity direction

Part 9 of the Act provides for an authorised officer to give a biosecurity direction that will remedy or prevent a contravention, suspected contravention, or likely contravention of a requirement imposed by or under the Act. Further details can be found in the [Biosecurity Direction Procedure](#)

### 4.1 Limitations on destruction

Under sections 123 and 136, an authorised officer may give a biosecurity direction requiring the destruction of a thing only if:

1. the thing is or is reasonably suspected of being prohibited matter (s136(1)(a)); or



2. the thing is a pest (s136(1)(b)). A pest is defined in section 15 of the Act. This definition includes non-indigenous animals listed in Division 1 of Part 2 of Schedule 3 to the Act and Part 3 of Schedule 3 to the Act; or
3. the thing is, or is reasonably suspected of being, infested or infected with, or of harbouring, biosecurity matter that poses a biosecurity risk and there are no reasonably practicable treatment measures that could eliminate or minimise the biosecurity risk posed by the biosecurity matter (s136(1)(c)); or
4. the destruction is expressly authorised or is required by an emergency order, control order or biosecurity zone regulation (s136(1)(c)).

Refer to [section 2.1](#) of this procedure for further clarification on forming a '*reasonable suspicion*'.

Importantly, section 137(1) provides that an authorised officer must not:

- destroy or require the destruction of any living thing that is a protected animal or protected plant within the meaning of [Biodiversity Conservation Act 2016](#), or
- destroy or require the destruction of any living thing that is a threatened species within the meaning of the [Biodiversity Conservation Act 2016](#), or
- clear or require the clearing of native vegetation within the meaning of Part 5A of the [Local Land Services Act 2013](#), or
- harm (within the meaning of the [Heritage Act 1977](#)) or require the harming of any building, work, relic, moveable object or place the subject of an interim heritage order or listing on the State Heritage Register under that Act.

Note: Section 137 does not limit the power of an authorised officer to do or require a thing to be done where that action is expressly authorised or required by an emergency order, a control order or a biosecurity zone regulation.

#### **4.2 Approval and guidance for destruction**

An authorised officer should seek approval and guidance for destruction, as described in section 3.3.

#### **4.3 Destruction and disposal considerations**

When determining how to destroy and/or dispose of a thing, an authorised officer should consider matters identified in section 3.4.

### **5. Destruction of property that has been forfeited to the Secretary**

The Secretary (or delegate) may direct an authorised officer to destroy a thing that has been forfeited to the Secretary, if the Secretary (or delegate) considers it appropriate that the thing is destroyed.

#### **5.1 Seized thing forfeited to the Secretary**

Under section 111(1), when an order is made by the Secretary declaring a seized thing to be forfeited to the Secretary, the seized thing becomes the property of the Secretary. Refer to the '[Seizure of things under the Biosecurity Act 2015 Procedure](#)' to determine the steps required by an authorised officer for a seized thing to be forfeited to the Secretary.

The Secretary may deal with the thing in any way the Secretary considers appropriate (s111(2)). Without limiting s111(2), the Secretary may destroy, sell or dispose of the thing or authorise its destruction, sale or disposal (s111(3)). If the Secretary has determined that the forfeited thing should be destroyed, the authorised officer can implement that decision (s113(2)).

#### **5.2 Court Order – Forfeiture to the Secretary (where the Court finds an offence against this Act or the regulations proved)**

If a Court finds an offence against the Act or the regulations proved, section 299 of the Act provides that:

- the court may order forfeiture to the Secretary of any biosecurity matter or other things to which the offence relates (s299(1)).
- in any such case, the forfeiture may extend to the whole of the biosecurity matter or other thing or to any similar things belonging to the offender or in the offender's possession at the time of committing the offence (s299(2)).
- when an order is made by the court declaring any biosecurity matter or other thing to be forfeited to the Secretary, the biosecurity matter or other thing is forfeited to the Secretary and becomes the property of the Secretary. (s299(3)).
- the Secretary may deal with the biosecurity matter or other thing in any way the Secretary considers appropriate: s299(4)
- without limiting s299(4), the Secretary may destroy, sell or dispose of the biosecurity matter, or other thing, or authorise its destruction, sale or disposal (s299(5)).

To avoid doubt, a forfeiture order is not a monetary penalty for the purposes of any provision of the Act that provides for the maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence under the Act or the regulations (s299(6)).

### **5.3 Forfeiture of boats and motor vehicles (where the Court finds an offence against this Act or the regulations proved)**

If the Court finds an offence against the Act or the regulations proved, section 300 of the Act provides that:

- the court may order forfeiture to the Secretary of a boat or motor vehicle that has been seized under this Act in connection with the offence (s300(1)).
- when an order is made by the court declaring any boat or motor vehicle to be forfeited to the Secretary, the boat or motor vehicle is forfeited to the Secretary and becomes the property of the Secretary (s300(3)).
- the Secretary may deal with the boat or motor vehicle in any way the Secretary considers appropriate (s300(4)).
- without limiting s300(4), the Secretary may destroy, sell or dispose of the boat or motor vehicle, or authorise its destruction, sale or disposal (s300(5)).

To avoid doubt, a forfeiture order is not a monetary penalty for the purposes of any provision of the Act that provides for the maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence under the Act or the regulations (s300(6)).

### **5.4 Destruction and disposal of forfeited things**

Sections 111(2), 299(4) and 300(4) provide that the Secretary may deal with a thing forfeited to the Secretary in any way the Secretary considers appropriate.

The notice requirement (s114(2)) does not apply to the destruction of a thing that has been forfeited to the Secretary.

Where explicit instructions for the destruction and disposal of things is not provided by the Secretary, an authorised officer should consider matters identified in section 3.4.

### **5.5 Approval and guidance for destruction and disposal**

The authorised officer should, prior to destroying, disposing and/or selling a thing, discuss with their team leader, senior officer or their line manager the objective circumstances.

Matters that may be relevant to discuss include:

- instructions of the Secretary
- compliance with the requirements in the Act
- other relevant matters discussed in section 3.3.

A team leader, senior officer or line manager will analyse the evidence and circumstances provided by the authorised officer and provide direction to the authorised officer.

## 5.6 Sale of forfeited things

Following the forfeiture of a things to the Secretary, the Secretary (or delegate) can authorise for the sale of the forfeited thing. The sale should be consistent with:

- the relevant departmental procedures, and
- in consultation with the relevant technical specialist.

## 6. Destruction requirements under an Emergency Order

The purpose of an emergency order made under s44(2) is to isolate, prevent the spread of, and eradicate (if practicable) the biosecurity matter by establishing measures to deal with the emergency. An emergency order also prescribes the appropriate application of special powers available during an emergency. Refer to '[Biosecurity Emergency Powers Procedure](#)' for further information on emergency powers and emergency orders.

All emergency orders are published on the [NSW DPI website](#).

### 6.1 Limitations on destruction

Under section 55 of the Act, an emergency order cannot require or authorise the destruction of biosecurity matter or any other thing unless:

- the Secretary (or delegate) is of the opinion that the destruction is reasonably necessary to prevent, eliminate or minimise a significant biosecurity impact, or
- the biosecurity matter to be destroyed is an animal and the Secretary (or delegate) is of the opinion that the destruction is necessary to ensure that the emergency measures provided for by the emergency order do not have or continue to have an "adverse effect on animal welfare".

In relation to "adverse effect on animal welfare," section 55(2) states that "to avoid doubt, distress or likely distress to an animal is an adverse effect on animal welfare."

Part 2B of the [Prevention of Cruelty to Animals Act 1979](#) (Power of the Secretary to authorise seizure and disposal of stock animals) does not apply to the destruction of an animal as required or authorised by an emergency order: s55(3).

If an emergency order required or authorised the destruction of any biosecurity matter or other thing, the Secretary (or delegate), under section 56, must ensure that a copy of the order is given to the owner or person in charge of the biosecurity matter or thing, unless—

- there appears to be no one immediately in control of it, and the owner or person in charge cannot, after such search and inquiry as is reasonable in the circumstances be located, and
- the Secretary considers that, in the circumstances, the order must be carried out without prior notice to the owner or person in charge.

### 6.2 Authorised officer destruction powers under an emergency order

Section 113(1)(d) provides that an authorised officer may destroy a thing under Part 8 if the destruction is expressly authorised or required by an emergency order. Refer to section 3 of this procedure for authorised officer's destruction requirements under Part 8 of the Act.

The relationship between Part 5 (Emergency Order) and Part 8 (Powers of authorised officers) is described below:

Part 5 (Emergency orders)	Part 8 (Powers of authorised officers)
<p>Section 55 contains specific destruction requirements for an emergency order, see section 6.1 of this procedure.</p>	<p>Section 113(1)(d) provides that an authorised officer may destroy a thing under Part 8 only if the destruction is <b>expressly authorised or required by an emergency order</b>.</p> <p>Section 114(2) provides that notice must be given at least one day before the function is exercised unless s114(3) applies. Refer to section 3.4 of this procedure. This is consistent with section 56 which requires that a copy of the emergency order is given to the owner or person in charge of the biosecurity matter or thing, unless section 56(a) and (b) apply.</p> <p>Section 115(2) provides that section 115 does not limit the power of an authorised officer to do a thing where that action is <b>expressly authorised or required by an emergency order</b>, a control order or a biosecurity zone regulation.</p>

### 6.3 Compensation

Part 19 of the Act provides for the payment of compensation under the Act. Section 309 of the Act provides for the payment of compensation to the owner of any animal, plant or property which has been:

- destroyed in accordance with an emergency order for the purpose of minimising, eradicating or preventing the spread of emergency biosecurity matter, or
- the owner reported to the Secretary (or a delegate) or an authorised officer as being affected by, or as having died of, emergency biosecurity matter, and is certified by the Chief Veterinary Officer (in the case of an animal) or the Chief Plant Protection Officer (in the case of a plant) as having died of emergency biosecurity matter.

Refer to the '[Biosecurity Compensation Procedure](#)' on further details if compensation is required for the destruction of a thing under an emergency order.

## 7. Destruction requirements under a Control Order

Part 6 of the Act allows the Minister to establish a control order to prohibit, regulate or control the doing of anything, subject to certain limitations, to prevent the introduction of or eradicate biosecurity matter that poses or is likely to pose a biosecurity risk.

A control order can provide an immediate response to a biosecurity risk while longer term management arrangements are being developed pending further risk pathway tracing and epidemiology of likely pests and diseases.

Control orders can be located on the [NSW DPI website](#).

### 7.1 Limitations on destruction

Section 73 states that a control order cannot require or authorise the destruction of a thing unless:

- the thing is, or is reasonably suspected of being, prohibited matter, or
- the thing is a carrier of, or is reasonably suspected of being a carrier of, prohibited matter, or

- the thing is a pest to which the control order relates, or
- the thing is, or is reasonably suspected of being, infected or infected with, or harbouring, the biosecurity matter to which the control order relates and there are no other reasonably practicable treatment measures that could eliminate or minimise the biosecurity risk posed by the biosecurity matter, or
- the thing is or is reasonably suspected of being abandoned and is biosecurity matter to which the control order relates or a carrier of biosecurity matter to which the control order relates.

Refer to [section 2](#) of this procedure for further clarification on the meaning of ‘*reasonably practicable*’ and ‘*reasonable suspicion*’.

Importantly, section 74 provides that the Minister must not, in a control order, unless the Minister has consulted with the head of the government agency responsible for the administration of that Act, require:

- destruction of any living thing that is a protected animal or protected plant within the meaning of the [Biodiversity Conservation Act 2016](#)
- destruction of any living thing that is a threatened species within the meaning of the [Biodiversity Conservation Act 2016](#),
- clearing of native vegetation within the meaning of Part 5A of the [Local Land Services Act 2013](#), or
- harm (within the meaning of the [Heritage Act 1977](#)) to any building, work, relic, moveable object or place the subject of an interim heritage order or listing on the State Heritage Register under that Act.

Note: A failure to comply with section 74 of the Act does not affect the validity of a control order.

### 7.2 Authorised officer destruction powers under a control order

Section 113(1)(d) provides that an authorised officer may destroy a thing under Part 8 if the destruction is expressly authorised or required by a control order. Refer to **section 3** of this procedure for authorised officer’s destruction requirements under Part 8 of the Act.

The relationship between Part 6 (Control Order) and Part 8 (Powers of authorised officers) is described below:

Part 6 (Control orders)	Part 8 (Powers of authorised officers)
<p>Section 73 contains specific destruction requirements for a control order, see section 7.1 of this procedure.</p>	<p>Section 113(1)(d) provides that an authorised officer may destroy a thing under Part 8 only if the destruction is <b>expressly authorised or required by a control order</b>.</p> <p>Section 114(2) provides that notice must be given at least one day before the function is exercised unless s114(3) applies. Refer to section 3.4 of this procedure.</p> <p>Section 115(2) provides that section 115 does not limit the power of an authorised officer to do a thing where that action is <b>expressly authorised or required by a control order</b>.</p>

## 8. Destruction requirements under a Biosecurity Zone

Biosecurity zones are established by regulation and are used for long term management of an ongoing key biosecurity risk or impact. They are used when complete eradication of biosecurity

matter is not feasible by the risk is still high so regulatory actions for ongoing prevention, elimination and minimisation of impacts are necessary.

### 8.1 Limitations on destruction

Under section 85 of the Act, a biosecurity zone regulation cannot require or authorise the destruction of a thing unless:

- the thing is, or is reasonably suspected of being, prohibited matter, or
- the thing is a carrier of, or reasonably suspected of being a carrier of, prohibited matter, or
- the thing is a pest to which the biosecurity zone relates, or
- the thing is, or is reasonably suspected of being, infected or infested with, or of harbouring, the biosecurity matter to which the regulations relate and there are no other reasonably practicable treatment measures that could eliminate or minimise the biosecurity risk posed by the biosecurity matter, or
- the thing is, or is reasonably suspected of being abandoned, and is biosecurity matter to which the regulations relate or a carrier of biosecurity matter to which the regulations relate.

Refer to [section 2](#) of this procedure for further clarification on the meaning of ‘*reasonably practicable*’ and ‘*reasonable suspicion*’.

Importantly, under section 86 the Minister must not recommend to the Governor, unless the Minister has certified that he or she consulted with the Minister administering that Act before recommending the making of the regulation, the making of a biosecurity zone regulation that would authorise or require:

- destruction of any living thing that is a protected animal or protected plant within the meaning of the [Biodiversity Conservation Act 2016](#)
- destruction of any living thing that is a threatened species within the meaning of the [Biodiversity Conservation Act 2016](#),
- clearing of native vegetation within the meaning of Part 5A of the [Local Land Services Act 2013](#), or
- harm (within the meaning of the [Heritage Act 1977](#)) to any building, work, relic, moveable object or place subject of an interim heritage order or listing on the State Heritage Register under that Act.

Note: A failure to comply with section 86 of the Act does not affect the validity of any regulation.

### 8.2 Authorised officer destruction powers under a biosecurity zone regulation

Section 113(1)(d) provides that an authorised officer may destroy a thing under Part 8 if the destruction is expressly authorised or required by the biosecurity zone regulation. Refer to [section 3](#) of this procedure for authorised officer’s destruction requirements under Part 8 of the Act.

The relationship between Part 7 (Biosecurity Zone) and Part 8 (Power of authorised officers) is described below:

Part 7 (Biosecurity zone)	Part 8 (Powers of authorised officers)
Section 85 contains specific destruction requirements for a biosecurity zone, see 8.1 of this procedure.	Section 113(1)(d) provides that an authorised officer may destroy a thing under Part 8 only if the destruction is <b>expressly authorised or required by biosecurity zone regulation</b> .  Section 114(2) provides that notice must be given at least one day before the function is

	<p>exercised unless s114(3) applies. Refer to section 3.4 of this procedure.</p> <p>Section 115(2) provides that section 115 does not limit the power of an authorised officer to do a thing where that action is <b>expressly authorised or required by a biosecurity zone regulation</b>.</p>
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## 9. Record keeping and Fees

All information and records of disposal and any receipts or invoices for costs incurred for the enforcement action are to be retained by the Authorised Officer. For NSW DPI authorised officers these documents should be electronically attached to the relevant BYTE record.

## 10. Recovery of fee: Division 4, Part 8 of the Act and action taken under sections 59, 74 and 88 of the Act

Secretary (or delegate) may authorise any person to enter premises and take any action in relation to those premises, or any thing on those premises, that the liable person is required to take by the order or a biosecurity zone regulation, or that tare otherwise necessary to remedy that failure. The Secretary may charge the liable person a fee for action taken under:

- section 59 (regarding an emergency order).
- section 74 (regarding a control order).
- section 88 (regarding a biosecurity zone regulation).

Authorised officers should consult with their team leader, senior officer or line manager and refer to the '[Recoverable Costs Under the Biosecurity Act 2015 Guidelines](#)' and the '[Biosecurity Recoverable Costs, Fees and Charges Procedure](#)' which can be found on the Intranet.

## 11. Definitions and acronyms

**Authorised Officer:** means a person who is appointed as an authorised officer under the Act authorised by that appointment to exercise the function in relation to which the expression is used.

**Department:** means Regional NSW

**LLS:** Local Land Services

**Pest:** Section 15(1) of the Act defines 'pests' as "a plant or animal (other than a human) that has an adverse effect on, or is suspected of having an adverse effect on, the environment, the economy or the community...". Clause 4A of the Regulation declares certain things to be pests.

## 12. Legislation

- *Biosecurity Act 2015*
- Biosecurity Regulation 2017
- Biosecurity (National Livestock Identification System) Regulation 2017

## 13. Related policies

- Policy: BFS Compliance Policy
- Policy: BFS Enforcement Policy
- Policy: BFS Seizure Policy



- Policy: Record Management
- Policy: Information Security
- Policy: Code of Ethics and Conduct
- Policy: Biosecurity collection, use and disclosure of information

#### 14. Other related documents

- Individual Biosecurity Direction Template
- Form - Notice of the proposed destruction of a thing template
- Procedure: Biosecurity Direction
- Procedure: Biosecurity collection, use and disclosure of information
- Procedure: Compensation
- Procedure: Biosecurity recoverable costs, fees and charges
- Procedure: Emergency Powers
- Procedure: Seizure of Seized things under the *Biosecurity Act 2015*
- Procedure: Cost Recovery
- [Biosecurity Act 2015 - Instrument of Delegation \(Secretary\)](#)
- Recoverable Costs Under the Biosecurity Act 2015 Guidelines
- Specific biosecurity and risk management policies (ie Anthrax Management Procedure) which are published on the [NSW DPI website](#).
- [Biosecurity Instrument of Delegation \(Secretary\)](#)
- [Biosecurity Instrument of Authorisation \(Minister\)](#)

#### 15. Revision history

Version	Date issued	Notes	By
1	9/9/2020	N/A	A/Director Compliance and Integrity Systems

#### 16. Review date

The procedure is to be reviewed within 3 years of its implementation, or sooner if needed.

#### 17. Contact

A/Manager, Operational Policy and Legislation  
 Compliance & Integrity Systems  
 NSW DPI Biosecurity and Food Safety