

Biosecurity and Food Safety Compliance Policy

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VERSION 1

AUTHORISED BY Director, Biosecurity and Food Safety Compliance

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Introduction

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

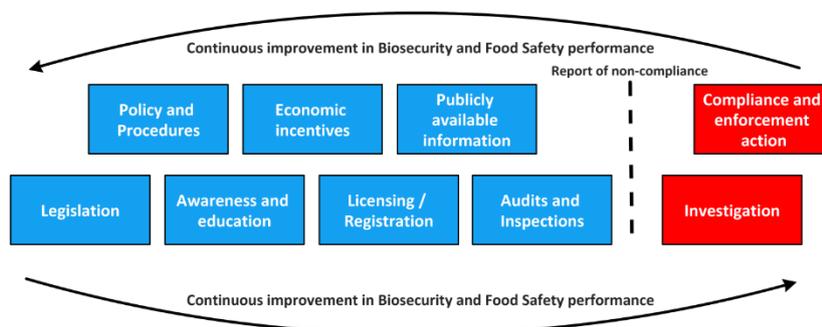
This policy sets out the principles adopted by DPI Biosecurity & Food Safety to achieve compliance with the law, and outlines the Branch's functions, priorities, strategies and regime.

Compliance – Adhering to the requirements of laws, industry and organisational standards and codes, principles of good governance and accepted community and ethical standards

The Branch operates within a complex and ever-changing legislative and policy environment involving federal and state governments.

The policy guides the most efficient and effective use of the Branch's resources to achieve the best outcomes for stakeholders¹.

Figure 1. Components of DPI Biosecurity & Food Safety regulatory framework



¹ Stakeholders include other government agencies, industry and community.

1. Purpose

This policy sets out DPI Biosecurity & Food Safety's approach to compliance to support the achievement of outcomes. It does this by:

- clearly defining regulatory outcomes
- identifying and assessing risks that affect regulatory outcomes
- remaining accountable and transparent
- providing information to improve compliance within a regulated community
- communicating with regulated parties.

2. Scope

It is the responsibility of the regulated parties, industry and community to comply with all relevant Acts and Regulations. The Branch takes a risk-based approach to compliance management. Where compliance with the legislation administered and enforced by the Branch is not achieved, there is a range of tools that regulators use to respond. While regulated parties are expected to comply with legislative requirements, if non-compliance is identified the likely consequence for the regulated parties are clearly identified, predictable and consistently applied. Regulated parties can expect that any non-compliance will be treated seriously by the Branch and will be dealt with in a professional manner.

This compliance policy is intended to describe DPI Biosecurity & Food Safety's overall approach to assessing and monitoring compliance and responding to instances of non-compliance.

This compliance policy aligns with NSW State priorities, NSW Department of Industry, Skills and Regional Development *Corporate Plan*, the NSW Department of Primary Industries' *Corporate Plan*, NSW Food Authority's *Strategic Plan* and *NSW Biosecurity Strategy 2013-2021*.

The objective of the policy is to promote:

- compliance with the objective legislative provisions of the Act
- the use of regulatory tools in such a way as to best achieve our organisational objectives
- a risk-based approach to compliance through adoption of a graduated and proportionate response to non-compliance.

The policy promotes a cooperative and collaborative approach with businesses and the public or between jurisdictions to education and compliance, and one that does not place unnecessary impost on industry in New South Wales.

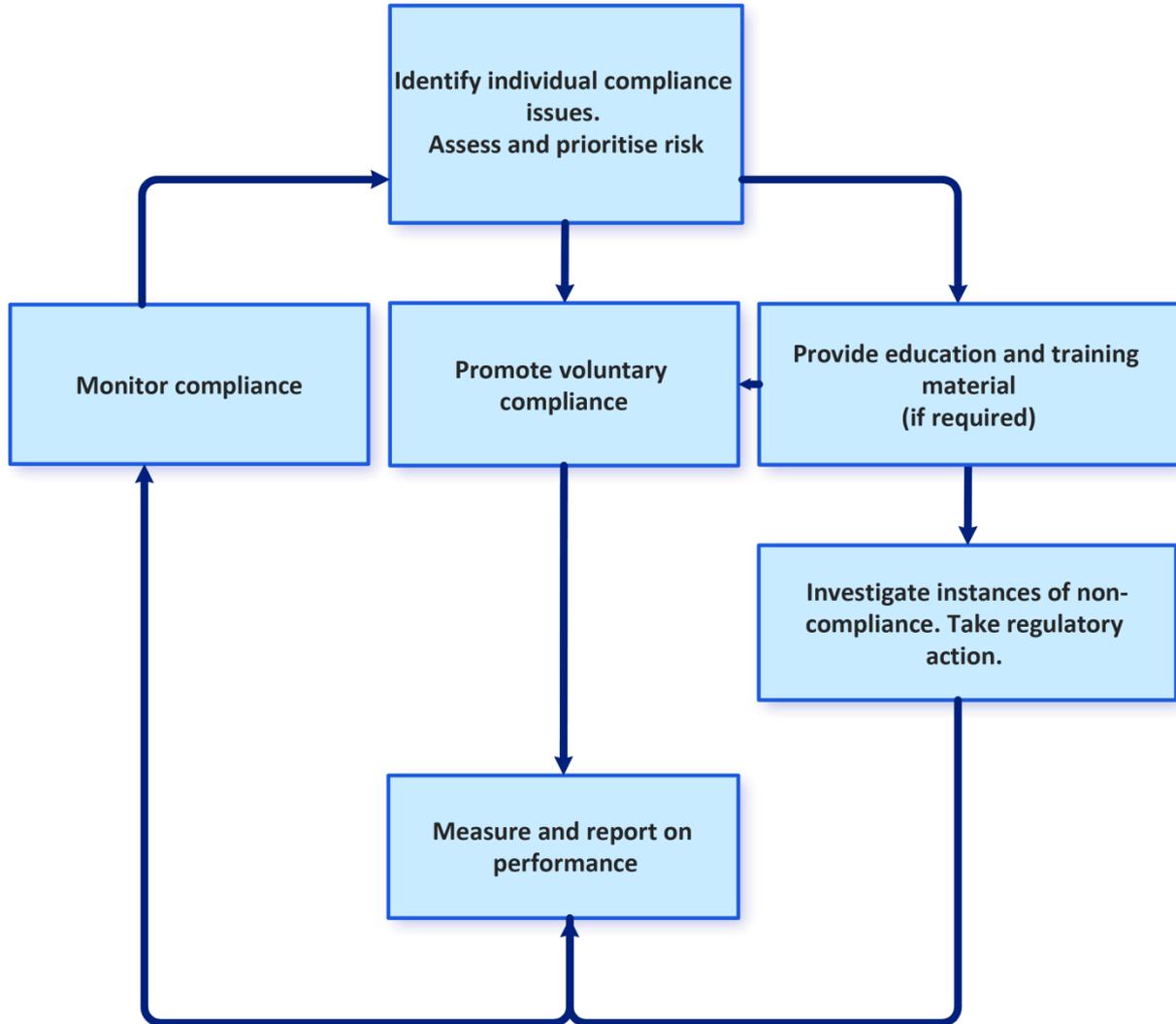
3. Outcomes

DPI Biosecurity & Food Safety collects data from its interactions with regulated and non-regulated entities and uses this data to inform decision making, as well as the allocation and prioritisation of resources to achieve strategic outcomes.

The Branch's primary focus is targeted preventative operations. The Branch constantly improves its capacity to detect and respond to non-compliance. When a problem or a risk is identified, the Branch seeks to resolve it before it impacts the community and industry. Monitoring compliance and investigating non-compliance is therefore a key role for DPI Biosecurity & Food Safety.

Figure 2 shows the components of DPI Biosecurity & Food Safety’s compliance approach. This enables the Branch to focus on identified areas of highest risk and learn and adapt to continuously improve the appropriateness, efficiency and effectiveness of its compliance program.

Figure 2. Biosecurity & Food Safety approach to compliance



It has been identified that the most effective way to gain and maintain voluntary compliance is by building a relationship of trust between DPI Biosecurity & Food Safety, the community and industry. This relies on the premise that if regulated businesses are treated as trustworthy, they will repay this by:

- voluntarily complying with their obligations
- being truthful and cooperative in their dealings and
- meeting their requirements as and when they fall due.

The Branch applies its resources to optimise voluntary compliance and ensure understanding and a fair system for all.

DPI Biosecurity & Food Safety encourages voluntary compliance through a range of educational activities which aims to build a capacity within industry to play an informed and active role in complying with food safety and biosecurity matters.

4. Activities

Education

The Branch recognises that communication, education and support help stakeholders to meet obligations and avoid inadvertent non-compliance. DPI Biosecurity & Food Safety provides information in a variety of formats on their websites and social media.

Compliance Officers play an important role in informing and educating business of their requirements, as well as the consequences of non-compliance.

In addition, the Branch ensures that participants have the opportunity to raise issues of concern and participate in workshops and discussion forums.

Where possible, the Branch will seek opportunities to engage with industry and the general community during the development of its systems through user-centred design processes.

DPI Biosecurity & Food Safety support and encourage voluntary compliance through a range of educational activities which aim to build the capacity of the community and industry to play an active role in complying with regulations.

Education activities may include:

- providing information and tools to assist stakeholders to be aware of their rights and the law, and to help provide certainty in planning for the future
- engaging with stakeholders to build capacity, such as through workshops
- promoting and reinforcing good regulatory practices
- promoting the benefits of complying with legislation
- highlighting the potential consequences of not complying with legislation.

Wherever possible, DPI Biosecurity & Food Safety work in partnership with industry peak bodies, and stakeholder groups to gain support for and achieve compliance.

Compliance data

DPI Biosecurity & Food Safety is committed to the collection, analysis and use of appropriate data and intelligence to inform strategic decision making and allocation of resources to compliance activities.

Information is gathered and analysed from sources such as:

- compliance audits/inspections – planned monitoring, surveillance and compliance programs
- science and technical surveys
- community requests or complaint data
- other government or industry compliance data.

Information gathered through industry stakeholder engagement and internal surveys is used to inform monitoring activities, targeted projects and training solutions to provide education and resources to improve systems and/or knowledge of the industry.

Monitoring compliance

Monitoring compliance with legislation is an essential component of the DPI Biosecurity & Food Safety regulatory role.

Information gained during monitoring assists to:

- determine the level of and trends in compliance
- identify when and what type of education responses or enforcement action may be required
- identify where action may be required to avoid or mitigate public harm
- detect instances of non-compliance in a timely manner
- assessing and prioritising risk and optimising an appropriate response
- identify opportunities for improvement
- develop compliance programs focused on the greatest risk to regulatory outcomes
- assess and review the effectiveness of its operations, education and programs.

The Branch compliance monitoring program includes the use of targeted surveys, projects and reviews of licences/approvals. The Branch analyses this information, as well as information from other sources and data from research, to identify emerging issues, define any associated problems, and develop and implement effective, well-targeted compliance responses.

Education

DPI Biosecurity & Food Safety acknowledges the need for comprehensive education, advisory and extension initiatives as integral components of successful compliance strategies. A key area of education for the Branch is the engagement with stakeholders to ensure understanding of educational materials to targeted areas of non-compliance.

Inspections and audits

DPI Biosecurity & Food Safety uses routine inspections and audits as a method of collecting information and monitoring compliance. During these visits, authorised officers may collect samples, view records and take photographs. In line with their legislative powers, authorised officers are able to enter premises unannounced.

The Branch also uses various external resources to assess compliance and performance. These include:

- accredited third party auditors and biosecurity certifiers.

Compliance audits are used to assist in determining whether regulatory requirements are being met and are generally conducted on an unannounced basis. As part of the audit process, the Branch also reviews its oversight of individual premises and industry sectors to identify areas where improvements could help achieve the desired strategies for the Department of Industry and NSW.

Investigations

Investigations by the Branch are a key means of assessing incidents or significant breaches of legislation to determine the priority for further compliance action. During an investigation, authorised officers gather evidence in order to establish:

- whether an offence has occurred,
- the severity of the offence, and
- the identity of those who may be responsible.

This evidence may take the form of videos, photographs, samples and physical evidence, witness statements and records of interview, consistent with legislative powers.

Risk-based analysis

Risk-based compliance is about prioritising efforts to assist in identifying and enforcing compliance. The Branch has adopted a risk-based strategic approach to the application of enforcement and implemented a compliance strategy that:

- identifies sectors with a history of adopting non-compliant practices
- identifies inappropriate or misleading trade practices with the potential to intentionally mislead consumers
- develops compliance level indicators for businesses
- identifies behavioural issues and use of compliance data to evaluate/review the compliance strategy
- allocates resources according to risk
- clearly defines regulatory outcomes
- identifies and assesses risks to achieving regulatory outcomes
- tailors its use of enforcement and other regulatory tools based on the severity and behavioural drivers of non-compliance.

Generating compliance

The Branch strives for a coordinated, transparent and accountable compliance system and recognises that the most effective way to achieve compliance is to involve regulated parties during the regulatory and policy development stage.

Extending beyond regulatory and legislative development when the Branch is creating program-specific policies, consultations with stakeholders are undertaken to ensure transparency, openness and visible accountability.

Compliance incentives

Compliance incentives can be an effective tool to encourage voluntary compliance, self-assessment and self-reporting. DPI Biosecurity & Food Safety is committed to the use of appropriate incentives to encourage voluntary compliance within regulated communities.

Example: Frequency of audits (Food Authority Only)

The Food Authority conducts regular auditing of licensed food businesses with food safety programs. Businesses are categorised as either 'Priority 1' or 'Priority 2' depending on the risks associated with that type of business. Audit frequency is based on the entity's rating.

Table 1: Rating a business

Facility Rating (based on audit score)	Audit Frequency	
	Priority 1	Priority 2
A	12 months	24 months
B	6 months	12 months
C	3 months	6 months
D or E	Unacceptable follow up audit: 1 month audit frequency Acceptable follow up audit: Return to original audit frequency	

Pro-active monitoring

The Branch undertakes a range of pro-active, planned monitoring and inspection programs to determine the level of compliance within a regulated community.

Pro-active inspection programs can include:

- inspections/audits carried out at regular intervals, determined on the basis of the risk rating
- follow up audits or more frequent auditing of identified poor performer or high risk activities or businesses
- campaigns targeting a particular regulated community.

Reactive monitoring

Reactive monitoring and inspections are undertaken in response to customer requests, complaints, incidents or other intelligence gathered.

The Branch applies a risk-based approach to reactive monitoring. This allows the Branch to achieve the best outcomes and minimise the burden on regulated entities that are found to be complying or have only minor or technical non-compliance issues. The Branch triages complaints at the point of receipt based on information obtained from the complainant, with:

- low priority complaints being noted but not actioned unless further complaints are received
- mid priority complaints being followed up with an inspection or audit, and
- high priority complaints being followed up with an inspection or audit, an enforcement response (if necessary), and follow up interactions over time to achieve better compliance.

Choosing the appropriate compliance action

The following issues will be considered and balanced in making a decision as to the type of regulated activities, if any, that applies:

- the seriousness of the incident, based on its actual or potential impacts on the business or industry
- the potential or actual risk of public health, animal health and plant health caused by the incident
- voluntary action by the offender to mitigate any harm to the public from the incident and any mechanisms put in place to prevent a recurrence
- failure by the offender to notify or delay notification of the incident as required
- failure by the offender to comply with Branch requests, lawful directions or statutory notices
- cooperation with DPI Biosecurity & Food Safety through willingness to commit to appropriate remedial actions

- whether effective implementation of measures or procedures to address impacts are already in place
- the offender's history of compliance with the Branch legislation and the frequency of offences committed by them
- whether the offender has made false or misleading statements about the incident
- the culpability of the offender, including any mitigating or aggravating circumstances
- public interest and community expectation about the action taken to provide specific or general deterrence
- any precedent which may be set by not taking action
- statutory time limits for taking action
- the legislative procedures and policy requirements, including potential rights of appeal.

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*²

² 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.

7. Other Related Documents

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 NSW DPI Website Links updated	Biosecurity and Food Safety Compliance

9. Review date

01.06.2017

10. Contact

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