



Department of  
Primary Industries

Biosecurity and Food Safety Compliance

## Prosecution Guidelines

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Biosecurity and Food Safety Prosecution Guidelines

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## Introduction

The NSW Department of Primary Industries (DPI) Biosecurity and Food Safety Compliance Branch (BFS Compliance), including the NSW Food Authority, protects our economy, industry, environment and community from:

- pests, diseases, weeds and contaminants.
- food safety risks across the entire food industry supply chain in NSW
- poor treatment and poor conditions of exhibited animals and animals used for research, and
- Emergency responses (such as natural disasters, pests or disease).

Prosecuting an offender for a biosecurity, food safety or animal welfare offence, is a serious decision, with potential operational, financial and reputational impacts for us and the affected person or business.

The goal of any prosecution is to prevent future offending by deterring individuals and others from engaging in the same or similar illegal activities.

This Guideline outlines our approach to prosecution as an enforcement tool, the decision-making process and provides the community, business owners and other stakeholders with knowledge of our prosecution process.

## Principles for prosecution

Prosecution is an element of our regulatory strategy and is generally an effective alternative where voluntary compliance fails to occur, but we will not prosecute every offence we detect. Offences that impose serious impacts on the community, economy or the environment, or, where the offender has decided to not comply (and previous actions has not created behaviour change), may result in prosecution.

Our actions must be proportionate, fair and impartial, based on the circumstances and the evidence, including anything that supports a defence that may be raised by the defendant. We apply the principals outlined in the NSW Director of Public Prosecutions (DPP) [Prosecution Guidelines](#), in particular, that the prosecution is *in the public interest*, and, it has a reasonable chance of resulting in a conviction<sup>1</sup>.

Public interest depends on the individual circumstances of the case<sup>2</sup>, including:

- the seriousness of the offence.
- any mitigating or aggravating circumstances.
- the need for strong deterrence.
- whether the matter is obsolete, obscure or stale (the length of time since the offence was committed).
- the culpability, criminal history and background of the offender.

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<sup>1</sup> Chapter 1.2 [Prosecution Guidelines](#) of the NSW Director of Public Prosecutions, March 2021

<sup>2</sup> Chapter 1.4, [Prosecution Guidelines](#) of the NSW Director of Public Prosecutions, March 2021

- their age, physical health, mental health or cognitive impairment, and
- their willingness to assist, including in the prosecution of a co-offender.
- the likely outcome, given the options available to the court.

We will not prosecute based on the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person. Decisions are not made based on our perception of or any personal or professional impacts on the alleged offender, or, as a result of political pressure or consequence<sup>3</sup>.

Sometimes, administrative sanctions (e.g. licence suspension or cancellation) achieve greater and more immediate benefits than could be gained through prosecution. If the use of an administrative sanction presents a better option and that option is legally available, we will consider them as an alternative to prosecution. In some serious situations, we may choose to prosecute and apply an administrative sanction in concert.

## Who may be prosecuted?

We may not prosecute every person responsible for an offence. Liability can be wide ranging, however, when assessing who to prosecute we will consider who has primary responsibility for the offending.

An employee of a company may commit an offence as part of their employment or they may commit an offence as an individual. Our decision to prosecute an employee will be based on the circumstances of the matter and the offences alleged to have been committed.

Executive liability, that is, that managers and directors are held responsible for their actions or inactions, is provided for in the legislation we enforce. We will consider whether it is appropriate, or necessary, to prosecute both the corporation and its directors or managers, considering any relevant discretionary factors and the public interest.

## The prosecution process

We have established an objective and independent prosecution review process, including a panel of senior BFS staff to oversee prosecutions. All panel decisions are recorded, however those decisions, including a decision not to prosecute, will not be publicly released where that decision attracts legal professional privilege or where releasing the information would result in a breach of privacy or personal information.

We seek input from qualified legal advisors, from the Department of Regional NSW (DRNSW), the NSW Crown Solicitors Office or an experienced legal practitioner, so the panel is fully informed on the evidence and procedural matters applicable to each case before making its decision.

Proceedings will normally be initiated in the NSW Local Court, however, where the jurisdictional limit does not reflect the severity of the offence, we will consider commencing matters in the

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<sup>3</sup> Chapter 1.5, [Prosecution Guidelines](#), NSW Director of Public Prosecutions (DPP) March 2021

NSW Supreme Court. Charges will reflect the serious nature and extent of the alleged offending to enable the court to impose an appropriate penalty. We will avoid laying duplicate or multiple charges for the same alleged offence. We will seek to recoup any professional, investigative, sampling or other legal costs incurred as part of any successful prosecution.

We will only consider appealing a court ruling where we are confident there was a material error of fact or law, or, when the sentence does not reflect the seriousness of the offending. The panel will review each matter on a case by case basis, weighing up the chances of an appeal succeeding in the same way as the initial decision to prosecute.

We will strive to communicate successful prosecutions with industry and the community through traditional and social media channels. For prosecutions under the *Food Act 2003*, the NSW Food Authority may publish the details of any successful prosecutions through the [Name and Shame](#) register. More information can be found on the [NSW Food Authority](#) website.

Our approach to prosecution identified in these guidelines does not limit our discretion in applying a different enforcement response in any matter, including, but not limited to, any response identified in our Compliance and Enforcement policy.