

## Biosecurity - Biosecurity Directions

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### Management of the Biosecurity Risk

The purpose of this procedure is to provide guidance for authorised officers in the use of the biosecurity direction tool to ensure compliance with the requirements of the *Biosecurity Act 2015* (the Act). This includes identifying the roles and responsibilities of staff responsible for enforcing, administering and executing the Act and to ensure that biosecurity directions are given appropriately in response to a biosecurity risk, a biosecurity impact or to enforce compliance with the Act.

### Scope

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

Note: Fees and charges associated with biosecurity directions are covered under the NSW DPI Fees & Charges Procedure.

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 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.

In accordance with Part 9, section 124 (2) an authorised officer may give a general biosecurity direction to the public or to a specified class of persons. Subject to section 124 (3) an authorised officer may give an individual biosecurity direction to a particular person.

Under section 138 it is a category 2 offence not comply with a biosecurity direction.

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 specific policies and procedures for further guidance in relation to when an authorised officer may give a biosecurity direction.

## Work Health and Safety

The *Work Health and Safety Act 2011* places an obligation on the agency 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.

NSW DPI and LLS work together to create a safe and supportive work environment when undertaking any activities for this procedure.

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# Biosecurity directions procedure

## 1. Roles and responsibilities

Staff of the NSW DPI, LLS, LCAs and the APLC who are responsible for enforcing, administering or executing the Act must ensure that:

- a general biosecurity direction is only given by an authorised officer for a purpose identified in section 126 (1) & (2) of the Act
- a general biosecurity direction is only given 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.
- an individual biosecurity direction can be given by an authorised officer in accordance with a purpose identified in section 128 (1) & (2) of the Act
- the use of a biosecurity direction supports the principle that biosecurity is a shared responsibility and where possible, is outcome focused
- authorised officers are trained in the use of their powers in the context of giving a biosecurity direction including the power to enter premise, the conduct of investigations, the use of document templates and all relevant policies and procedures
- there is communication between agencies and within the agency so that all relevant staff are informed of matters the subject of a biosecurity direction
- records of biosecurity directions and all related enforcement actions are maintained.

Authorised officers must ensure that:

- individual biosecurity directions are given consistent with the authorised officer's authorisation and their current position description except if the officer is directed to do so or if they are required to give a direction in an emergency situation (refer to 5 below, special emergency powers)
- biosecurity directions are given consistent with any relevant policy and procedure for the management of a biosecurity risk. In the absence of a policy or procedure, officers should consult with relevant technical and compliance staff
- the time in which a person is given to comply with a biosecurity direction should be proportionate to the risk presented and action required to address that risk
- records of all biosecurity directions given are maintained for a minimum of 7 years
- their managers are informed of any biosecurity directions issued
- they demonstrate they are being fair and reasonable at all times.

## 2. The general biosecurity duty

An authorised officer may issue an individual biosecurity direction to ensure a person discharges their general biosecurity duty. This includes when a person has failed to discharge, or the authorised officer reasonably believes the person has failed to discharge or is likely to fail to discharge their general biosecurity duty.

An authorised officer must refer to the policy and procedure for the relevant biosecurity risk before issuing an individual biosecurity direction. If policy and procedure are not in place for the biosecurity risk the authorised officer must consult with their Manager and technical experts from the NSW DPI biosecurity unit responsible, to determine the significance of the biosecurity impact which has, is or is likely to occur, before giving a biosecurity direction.

Generally individual biosecurity directions should be given after the person has been informed of their general biosecurity duty and they have been given the opportunity to provide a biosecurity undertaking to address the risk if the biosecurity impact that is occurring or is likely to occur can be managed appropriately. If the impact of the biosecurity risk on the economy, environment or community is significant enough to require government intervention an authorised officer can issue a biosecurity direction immediately. The significance thresholds for the management of the biosecurity risks have been determined in relevant policies and procedures.

### **3. Evaluation of risk**

The authorised officer needs to identify the risk and evaluate the seriousness and likelihood that a biosecurity risk is likely to occur, is occurring or has occurred. The authorised officer should refer to the relevant policy and procedure in place for the biosecurity risk for guidance when evaluating a risk and for the identification of any significance thresholds.

If the authorised officer reasonably believes that the biosecurity risk is significant, or is likely to increase, the authorised officer has the power to issue a biosecurity direction.

Prior to issuing a biosecurity direction, officers are encouraged to work with the person or persons to resolve the matter through the compliance escalation procedure, outlined in the applicable Compliance Policy and Enforcement Policy.

### **4. Types of Biosecurity Directions**

There are two types of biosecurity direction identified in section 124 of the Act, a general biosecurity direction and an individual biosecurity direction.

#### **4.1 General Biosecurity Direction**

A general biosecurity direction is a direction that applies to the public generally or to a specified class of persons.

*Example: Used grain harvesting equipment and transport vehicles must be free of soil and plant material when leaving the local government area (LGA) of Cabonne.*

##### **4.1.1 When can the direction be given**

In the first instance, an authorised officer must establish a basis for issuing a general biosecurity direction. This requires the authorised officer to form a reasonable belief that giving the general biosecurity direction is necessary for any purpose set out under Section 126 of the Act, namely

*Section 126(1)*

- (a) to prevent, eliminate or minimise a biosecurity risk,*
- (b) to prevent, manage or control a biosecurity impact that has occurred, is occurring or is likely to occur,*
- (c) to enforce, administer or execute this Act (including any instrument made under this Act).*

When considering whether it is necessary to give a general biosecurity direction to address a biosecurity risk or impact, the authorised officer should refer to the relevant policy or procedure in place for the management of the biosecurity risk and the definitions set out in the Act for 'biosecurity impact' and 'biosecurity risk' where applicable (see definition section). If the authorised officer forms a reasonable belief that a general biosecurity direction is necessary to enforce, administer or execute the Act (including any instrument made under the Act) then the officer should record the relevant part of the Act upon which they rely to support their decision to give a biosecurity direction.

An authorised officer must document, record and keep evidence that form the basis of the officer's reasonable belief. This can include observations, records of conversations, photographs and reports of analysis.

### 4.1.2 Giving a general biosecurity direction

NSW DPI has arrangements in place to ensure general biosecurity directions are given appropriately when addressing a biosecurity risk or impact. These arrangements include oversight by senior management responsible for approval and before publication of a general biosecurity direction.

The Act at section 127 specifies the requirements for giving a general biosecurity direction. This includes:

- publication on the website, or
- publication in the Government Gazette (or both) .

To maximise coverage, notice of a general biosecurity direction will be published on both the website and in the Government Gazette.

In addition to the requirements specified by the Act, the authorised officer who gives the direction must ensure the direction is communicated to all relevant stakeholders. This may include copies of the direction sent to stakeholder associations, meetings and a press release to media organisations.

An authorised officer must document and maintain records of all general biosecurity directions given and the basis for the issuing of the direction. The template for a general biosecurity direction can be accessed through 'section 12 Documentation'.

### 4.1.3 What can the general biosecurity direction contain?

A general biosecurity direction may prohibit, regulate or control (absolutely or conditionally) the carrying out of any activity in connection with biosecurity matter, or carrier or a potential carrier.

The Act defines 'Biosecurity matter' (section 10) and 'Carriers' (section 11). Authorised officers must ensure that the general biosecurity direction specifies the biosecurity matter and/or carrier/potential carrier to which the direction relates.

An authorised officer must also determine whether the giving of a biosecurity direction is being exercised in the case of an emergency. If the direction is being given in the case of an emergency, then additional powers will be available to the authorised officer subject to section 126(3) of the Act. These powers are limited by section 134 of the Act.

A general biosecurity direction that is issued in the case of an emergency must include a warning that the direction is being given in the case of an emergency.

## 4.2 Individual Biosecurity Direction

An individual biosecurity direction is a direction given by an authorised officer to a person.

*Example: A farmer is given a direction to take action to prevent cattle from accessing restricted animal feed.*

An authorised officer can give an individual biosecurity direction in circumstances that are consistent with their role and responsibilities and any policy and procedure in place for the management of the relevant biosecurity risk.

### 4.2.1 When can the individual direction be given

An individual biosecurity direction can be given by an authorised officer for a number of purposes as identified in the Act (Section 128). In all cases, the authorised officer must have a reasonable belief for issuing an individual biosecurity direction. This requires the authorised officer to form a reasonable belief that giving the individual biosecurity direction is necessary for the specific purpose set out in the Act.

*A direction that prohibits, regulates or controls the doing of anything*

An authorised officer may give an individual biosecurity direction that prohibits, regulates or controls (absolutely or conditionally) the doing of anything by the person to whom the direction is

given. This direction is given on the basis that the authorised officer reasonably believes that the direction is necessary for any of the following purposes:

*Section 128(1)*

*(a) to prevent the person from contravening or continuing to contravene a requirement imposed by or under this Act,*

*(b) to prevent, eliminate or minimise a biosecurity risk,*

*(c) to prevent, manage or control a biosecurity impact that has occurred, is occurring or is likely to occur,*

*(d) to enforce, administer or execute this Act (including an instrument made under this Act).*

*A direction that requires a person to do anything*

An authorised officer may also give an individual biosecurity direction requiring a person to do anything if the authorised officer reasonably believes the direction is necessary for any of the following purposes

*Section 128(2)*

*(a) to ensure the person discharges a biosecurity duty of the person under this Act,*

*(b) to ensure that the person remedies a contravention, suspected contravention or likely contravention by the person of a requirement imposed by or under this Act,*

*(c) to prevent, eliminate, minimise or manage a biosecurity risk posed by a dealing of the person, or suspected dealing of the person, with biosecurity matter, a carrier or a potential carrier,*

*(d) to enforce, administer or execute this Act (including an instrument made under this Act)*

An authorised officer issuing an individual biosecurity direction should ensure that an individual biosecurity direction is given in accordance with section 129 of the Act.

An authorised officer should document, record and keep evidence of the basis for the authorised officer's reasonable belief. This can include observations, records of conversations, photographs and reports of analysis.

#### **4.2.2 What can the direction contain?**

An individual biosecurity direction may include provisions that prohibit, regulate or control, or that require, any of the following examples provided in the Act.

*Section 130 (1)*

*(a) the isolation, confinement or detention of any biosecurity matter or other thing,*

*(b) the erection or repair of fencing, gates or any other method of enclosure, or other specified security or containment measures in relation to any premises, biosecurity matter or other thing,*

*(c) the erection of signs,*

*(d) the movement of any biosecurity matter, carrier, potential carrier or other thing,*

*(e) treatment measures in relation to any biosecurity matter, carrier, potential carrier, premises or other thing,*

*(f) the provision of samples of any biosecurity matter or other thing,*

*(g) the testing of any biosecurity matter or other thing,*

*(h) the obtaining of a biosecurity certificate in relation to any biosecurity matter or any other thing,*

*(i) the installation or use of a device for the purpose of detecting or monitoring the presence of any biosecurity matter or other thing or capturing any biosecurity matter or other thing,*

*(j) the destruction, disposal or eradication of any thing,*

*(k) any other matters expressly authorised by the regulations.*

Authorised officers must ensure that the individual biosecurity direction adequately identifies the purpose and specifies the biosecurity matter and/or carrier/potential carrier to which the direction relates.

An authorised officer must also determine whether the giving of a biosecurity direction is being exercised in the case of an emergency. If the biosecurity direction is given in the case of an emergency, then special emergency powers in relation to inspection and treatment measures may be used (Section 131), however the extent of those directions are limited by section 134 of the Act.

An officer exercising these powers in the case of an emergency must include a warning in the direction that it is being given in the case of an emergency.

An individual biosecurity direction can require destruction of a thing only if it meets the requirements of section 136 of the Act (see Destruction Requirements).

### **4.2.3 Giving an Individual Biosecurity Direction**

An Individual Biosecurity direction can be given to a person by an authorised officer for a purpose identified in section 128 (1) & (2) of the Act. Section 130 of the Act includes examples of actions that an individual biosecurity direction can require.

Authorised officers will be responsible for ensuring compliance with the requirements of the Act across the biosecurity spectrum. Authorised officer's responsibilities may be limited by their authorisation so that, for example they may only be responsible for compliance within a discrete operational area, such as within a LGA to ensure weed control requirements are complied with. Other authorised officers may operate across multiple operational areas.

It is the responsibility of authorised officers to ensure that they only give an individual biosecurity direction consistent with their authorisation and their current position description except if the officer is directed to do so or they are required to give a direction in an emergency.

When giving an individual biosecurity direction to a person the authorised officer must ensure the following:

- the direction and the actions required are for a purpose specified in section 128(1) & (2) of the Act
- the contravention of the Act is identified on the direction. This should include the identification of the requirement of the Act that must be complied with or the duty that must be discharged
- the actions required by the person and the date the actions are to be completed have been identified
- the time specified for the person to comply with the direction is no less than what would reasonably be required to carry out the actions required
- the direction is signed by the authorised officer
- the giving of the direction ensures that it is legally enforceable.

An authorised officer may issue an individual biosecurity direction orally or by written notice to the person. While an individual biosecurity direction can be either given orally (in person) or by notice in writing served on the person, it is the NSW DPI policy that all individual biosecurity directions are given by notice in writing. NSW DPI accepts that in limited circumstances, this may not be practical and the authorised officer may give the individual biosecurity direction orally. If an individual biosecurity direction is given orally, it should be witnessed to enable enforceability and written confirmation must be served on the person within seven days after it is given, unless the direction has already been complied with.

#### **1) Orally (in person)**

Should circumstances arise where an individual biosecurity direction can only be given orally (in person) the authorised officer is to make contemporaneous notes and obtain particulars sufficient

to prepare and serve a notice in writing within seven days. The officer may also use a voice recorder as a means of recording the direction and confirming that the person understands the direction. The Act requires the oral direction to be given in person (such as not over the telephone).

When a direction is given in person it is preferable if the action can be witnessed either by another authorised officer or an independent person. This may not always be possible but it will assist if later enforcement action is required.

## 2) By notice in writing

An individual biosecurity direction that is given by notice in writing must be served on the person in compliance with section 392 of the Act. Authorised officers must ensure they use the approved templates for both a general biosecurity direction and an individual biosecurity direction.

## 3) Displaying the notice

In the case of an emergency, the notice can be given to an occupier of the premises by displaying notice of the direction in a prominent place in or adjacent to the premises.

A written individual biosecurity direction should be delivered in person. If the person (owner, occupier or person in charge of the property) is unavailable, for example, they live in another state, the individual direction may be delivered by 'person to person' registered mail which can only be collected by the addressee. A delivery receipt signed by the addressee is evidence that the person has received the direction. Officers are to keep records of the method of service.

In certain circumstances, for example weed control, an individual biosecurity direction is binding on owners and occupiers of land and their successors in title. In these circumstances, the owner of the property should be supplied with copies of any directions given to the occupier.

The authorised officer must ensure they maintain copies of all biosecurity directions they give for a minimum of 7 years. A template for an individual biosecurity direction is included in Section 12.

Authorised officers must ensure they use the approved templates for both a general biosecurity direction and an individual biosecurity direction. This includes any biosecurity risk specific templates developed by NSW DPI's biosecurity units. Direction templates for specific biosecurity risks will be available from the relevant procedure.

### **4.2.4 Revocation or variation of the direction**

Subject to section 125 (1) a biosecurity direction may be revoked or varied by a subsequent biosecurity direction.

A general biosecurity direction should only be varied or revoked with the appropriate approval. This is the same as the approval required before a general biosecurity direction can be given. See the Roles and Responsibilities section of this procedure.

An authorised officer that issued the individual biosecurity direction must inform their Manager of their decision to revoke or vary the direction.

The Secretary may also revoke or vary a biosecurity direction. This authority has been delegated and is available on the NSW DPI biosecurity website.

## **5. Special Emergency Powers**

Section 131 provides an authorised officer who gives an individual biosecurity direction, special powers in the case of an emergency. These powers are in addition to the powers conferred on an authorised officer under Part 8 of the Act. An emergency could be the presence or suspect presence of a pest or disease exotic to NSW or classified as prohibited matter such as Hendra virus, anthrax, red imported fire ant, varroa mite or citrus canker.

The special emergency powers allow an authorised officer:



- to direct a person to permit the authorised officer to inspect a person or a thing in the person's possession and/or carry out an external treatment of the person or a thing in the person's possession, care, custody or control
- to stop and inspect a vehicle or carry out a treatment of a vehicle.

Authorised officers must ensure that:

- when giving an individual biosecurity direction that includes exercising any emergency powers, this is appropriately referenced in the direction, and the person is warned that the direction is being issued in the case of an emergency,
- before issuing an individual biosecurity direction which includes exercising any special emergency powers, an authorised officer should consult with their Manager or Director unless they have already been directed to do so by their Manager or Director or an emergency is imminent and immediate action is required, and
- they have referred to any relevant policy and procedure for guidance for the biosecurity risk that may constitute an emergency.

## **6. Limitations on powers**

Sections 134 and 135 place limitations on the powers an authorised officer may exercise when issuing a general or an individual biosecurity direction which fall into four categories

### **6.1 The detention and treatment of persons**

With the exception of an emergency, an authorised officer cannot control the movement or require the treatment of a person. This does not prevent an authorised officer from giving a biosecurity direction that prohibits a person from for example, taking an animal off a property if that direction is going to indirectly impact on the movement of the person off the property.

### **6.2 The Inspection of Persons**

An authorised officer may give a person a biosecurity direction requiring them to submit to a visual inspection including the exterior of their clothes and shoes. The direction may also require the person to shake or move their hair or make available any thing in their possession available for inspection.

### **6.3 The Destruction of Things**

An authorised officer may give a direction requiring the destruction of a thing only if:

- the thing has been identified or suspected of being prohibited matter. The actions required to ensure destruction must be consistent with any relevant policy and procedure for that biosecurity risk. If the thing is suspected prohibited matter an authorised officer must consult and gain approval from their Manager before giving the direction
- the thing is a pest, for example a fox, rabbit or a weed. If the direction states the method of destruction it must be consistent with any policy and procedure in place and/or any Australian Pesticides and Veterinary Medicine Authority registration or permit requirements
- the thing is infested or infected with the biosecurity matter, poses a biosecurity risk and there are no reasonably practicable treatment measures. For example, stock feed on a dairy farm contaminated with restricted animal material. The authorised officer must consult and gain approval from their Manager before giving the direction requiring destruction
- it is required by an emergency order, control order or biosecurity zone regulation. The authorised officer must ensure they reference the requirement from the emergency order, control order or biosecurity zone regulation, in the direction.

Section 136 of the Act states: Destruction requirements

*(1) An authorised officer may, under this Part, destroy or require the destruction of a thing only if:*

- (a) the thing is, or is reasonably suspected of being, prohibited matter, or*
- (b) the thing is a pest, or*
- (c) 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*
- (d) the destruction is expressly authorised or required by an emergency order, control order or biosecurity zone regulation.*

*(2) In this section:*

- (a) reasonably practicable means reasonably practicable in the opinion of the authorised officer.*
- (b) reasonably suspected means reasonably suspected by the authorised officer.*

Before any decision to destroy or order the destruction of a thing, an authorised officer must ensure the thing does not fall within the restrictions set out in Section 137, specifically that an authorised officer must not:

- *destroy or require the destruction of any living thing that is protected fauna or native plant,*
- *destroy or require the destruction of a living thing threatened species,*
- *clear or require the clearing of native vegetation,*
- *harm or require the harming of any heritage building, work, relic etc.*

Despite these restrictions an emergency order, control order or biosecurity zone regulation may take precedence if it expressly authorises action to the contrary.

An authorised officer needs to take notice that within section 136, there is reference to an authorised officer having 'reasonable suspicion' of infection with biosecurity matter (section 136(1)(c)) and that no 'reasonably practicable' treatment measures are available to eliminate or minimise the biosecurity risk.

While 'reasonably practicable' refers to the opinion of the authorised officer, that opinion should be able to be substantiated by the officer. The authorised officer needs to ensure that relevant treatment measures have been considered and be able to justify why those treatment measures could not eliminate or minimise the biosecurity risk posed by the biosecurity matter. It is recommended that an authorised officer seeking to destroy a thing under this provision, keep records of their decision and obtain clearance from their line supervisor before doing so.

The reasonable suspicion of infection needs to be read in conjunction with section 400 – Reasonable suspicion of infection, under the Act. Sub sections of section 400 are particularly important.

It is not necessary for the 'thing' to be exhibiting signs of the disease. Reasonable suspicion is reached if for example, the authorised officer can establish that the thing is or was part of a flock, group or herd that was infected – or the thing has travelled on any land or place (or in a vehicle) in which there is/was a thing infected with a disease.

## **7. Failure to comply with a Biosecurity Direction**

**Note:** When entering property or a premises to confirm or otherwise that a person has complied with a biosecurity direction the authorised officer should do so in accordance with the requirements of Part 8, Division 3, Entry of Premises, of the Act.

The Act states at Section 98 (1) (a) that an authorised officer may enter any premises at any reasonable time, or at (b), in the case of an emergency, at any time. 'Reasonable time' could be interpreted to mean approximately between 9am and 5 pm, Monday to Friday, unless the authorised officer negotiates a time with the person that is convenient to both parties. What this means though is outside of a reasonable time the person has a right to say "No, not now".

The authorised officer must give an occupier of premises used for residential purposes a written notice which addresses the following:

- the intent for entering any part of the premises used for residential purposes
- specify the day on which the premise is going to be entered
- informing the occupier of the day prior to entering.

Notice is not required when entry is made with consent of the occupier of the premise or entry is made under the authority of a search warrant.

The authorised officer may still enter the premises at a reasonable time without the owner or occupier's consent, however in these instances, the authorised officer must be able to demonstrate they had made a reasonable effort to contact the owner or occupier and negotiate a time. It usually improves the outcome if the owner/occupier is present when the authorised officer enters a premise for the purpose of determining compliance with the Act.

If a person has failed to comply with a general biosecurity direction and action is required, then the authorised officer could inform the person that they have a legal obligation to comply with a general biosecurity direction or issue the person with an individual biosecurity direction. An individual biosecurity direction will ensure the person knows that a contravention has occurred and that action is required.

The factor that will determine the actions of the authorised officer in this circumstance is the significance of the biosecurity impact that has, is or is likely to occur. The authorised officer's response should be escalated in response to the significance of the biosecurity impact. Consultation with the relevant technical experts, policy and procedure and the authorised officer's Manager should be undertaken to determine the appropriate action.

If a person has failed to comply with a biosecurity direction, there are a number of potential factors the authorised officer should consider when determining the action required, they include following.

#### *The reasons for the person's failure to comply*

This should be identified and recorded. The person may have a reasonable excuse. Under section 139 of the Act, it is a defence to a prosecution of the offence if the person charged proves that they had a reasonable excuse for the contravention.

#### *The significance of the biosecurity impact*

This will determine the immediacy of the actions required. If the impact is significant then the person or the authorised officer may require immediate action.

#### *Any relevant policy and procedure for the biosecurity risk present*

The authorised officer must ensure their actions are consistent with any policy and procedure in place for the biosecurity risk present. If no policy and procedure is present then the authorised officer must consult with their Manager to determine the actions required.

#### *If the person has taken some action but has not completed the actions required to comply*

It is potentially significant if the person has attempted the actions required even if they have failed to complete the actions. This may indicate that the person needs more time to comply. In this circumstance the significance of the biosecurity impact that is occurring needs to be considered when determining the immediacy of the actions required.

#### *Being fair and reasonable*

It is important that the authorised officer is fair and reasonable at all times. If we have time on our side it may be better to extend the time a person has to comply rather than initiate enforcement action and risk being seen as unreasonable.

A failure to comply with a biosecurity direction is an offence under section 138 of the Act and may incur a penalty notice offence as listed in Schedule 6 of the Biosecurity Regulation 2017. An authorised officer must ensure they maintain accurate records of all the actions taken if evidence is required to support either the issuing of a penalty notice or the conduct of a prosecution.

## **8. Revocation or variation of a biosecurity direction**

The Act at section 125 provides for the revocation or variation of a biosecurity direction. For example, if the person who has received an individual biosecurity direction and has complied and no further actions are required, the direction may be marked as compliant or closed. Alternatively, a biosecurity direction may be varied to for example, extend the time a person has to comply with the direction.

The responsible authority and the authorised officer must maintain records of all revocations and variations of a biosecurity direction. This would include ensuring that the public are informed of revocations and variations to a general biosecurity direction through publication and media outlets.

To ensure that clarity is maintained for both the person who is given the direction and the authority giving the direction, if a variation is required, in most cases it would be preferable to revoke the existing direction and give a new direction.

When varying or revoking an existing individual biosecurity direction the authorised officer must issue the person with a written advice to inform the person of the variation or revocation on the approved 'Letter of Advice-Revocation or Variation of a Biosecurity Direction'.

## **9. Taking required actions and the recovery of costs**

If a person fails to comply with an individual biosecurity direction, section 133 of the Act allows an authorised officer to enter the premises, or to authorise any person to enter the premises and take action. These are the actions required by the direction or to otherwise remedy that failure.

Taking required actions could include the following.

### Entering the premises

The authorised officer may enter the premises at a reasonable time and if the premises is used for residential purposes, section 133 (6) of the Act requires the authorised officer to give written notice of an intention to enter. The written notice must specify the day and preferably the time the authorised officer proposes to enter. The notice must be given before the day on which the premises are intended to be entered. Note that section 133(8) states that notice is not required if entry is made with the consent of the occupier or entry is made under the authority of a search warrant.

### Destruction of property

Taking the required action to destroy property will require some significant justification. It is rare that the destruction of property is required and it should be given careful consideration. Generally it should only be required after all efforts to achieve compliance have failed, the person is still failing to comply with an individual biosecurity direction, the biosecurity impact that is occurring or could occur, is significant and the authorised officer obtains the appropriate NSW DPI, LLS or LGA approval.

### Recovery of costs

Taking required actions will also incur costs. The Secretary of their delegate may recover these costs from the 'liable person'. The authorised officer should provide an estimation of the potential costs involved in order to obtain approval for this action.

### Intention to 'take the required actions'

If approval is granted to take the required actions, although not required by the Act to do so, an authorised officer must advise the occupier of the premises in writing of both the intention to enter the premises and to take required actions before, taking any actions. This may achieve some cooperation from the liable person and identify any potential barriers to achieving the stated objective.

Authorised officers may be guided in these circumstances for any relevant policy and procedure such as the Virulent Footrot Procedure, by consulting with specialist in the relevant area.

## 10. Record Keeping

The responsible authority and the authorised officer must maintain records of all biosecurity directions for a minimum of 7 years. Records required are as follows.

Responsible Authority:

- authorised officers and their training, roles and responsibilities
- biosecurity directions given
- enforcement actions undertaken
- penalty notices issued
- prosecutions.

Authorised officer:

- authorisation, training roles and responsibilities
- investigations
- identified contraventions of the Act
- records of interview
- 'Letter of Advice'
- copies of all biosecurity directions given
- records of revocation or variation of biosecurity direction.
- interview following identification of failure to comply with biosecurity direction
- recommendation for Penalty Notice or Prosecution:
  - elements of the Offence, Section 138(1)
  - statement of Facts
  - records of interviews
  - statement of Witness
  - relevant evidence eg. photographs, test results.

## 11. Definitions and acronyms

LCA	Local Council Authority
LLS	Local Land Services
APLC	Australian Plague Locust Commission
DPI	NSW Department of Primary Industries

## 12. Documentation

- 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)
- Policy - Biosecurity collection, use and disclosure of information
- Procedure - Biosecurity collection, use and disclosure of information
- General Biosecurity Direction template

- Individual Biosecurity Direction template
- Letter of Advice-Revocation or Variation of a Biosecurity Direction
- Guidelines

### 13. Records

Not applicable.

### 14. 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

### 15. Contact

Compliance Systems Coordinator

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