

Biosecurity - Emergency Powers

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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 powers provided by the *Biosecurity Act 2015* (the Act) in the case of an emergency. This includes identifying the roles and responsibilities of staff in a biosecurity emergency.

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) and Local Control Authorities (LCA), who are responsible for enforcing, administering and executing the Act.

This procedure should be read in conjunction with any relevant policy and procedure that is in place for the management of a biosecurity risk.

What is a biosecurity emergency?

A biosecurity emergency occurs when a biosecurity risk is present or imminent that has, is having or may have a **significant biosecurity impact**. Section 13 of the Act defines **biosecurity impact** as an adverse effect on the economy, on the environment or the community that arises, or has the potential to arise, from biosecurity matter, a carrier or dealing with biosecurity matter or a carrier.

'Significant' is not defined in the Act. This allows 'significant' to be determined by the context of the biosecurity impact on a case by case basis. Significant is usually taken to mean something is important, substantial or momentous. In the biosecurity context, this can be expressed in terms of the potential loss of stock or crops and their potential monetary value or the impact on other species or an ecosystem.

Biosecurity matter that is capable of having a significant biosecurity impact has been included in Schedule 2 of the Act as Prohibited Matter however; the emergency powers available under the Act are not limited to an incidence of prohibited matter.

Biosecurity legislation summary

Emergency orders, control orders and biosecurity directions will enable the rapid deployment of resources in response to a biosecurity emergency. The Act's tools are complementary and when used simultaneously can provide a hierarchy of legislative requirements. If there is inconsistency between an emergency order and another legal instrument, under section 57 of the Act, the emergency order takes precedence.

The focus of this procedure is the application of the tools that enable the use of special powers in the case of an emergency; the emergency order, the powers of authorised officers and the general and individual biosecurity directions.

Emergency order

Part 9 of the Act provides for the Secretary to make an emergency order if the Secretary is satisfied, or reasonably suspects, that there is a current or imminent biosecurity risk that may have a significant biosecurity impact. An emergency order can remain in force for a period not exceeding six months. The Secretary can extend an emergency order but not by more than six months. The authority of the Secretary to make an emergency order has been delegated. (see **Appendix 1** Delegations, Section 44).

The Act includes powers for the Secretary to specify emergency measures in an emergency order in response to the biosecurity emergency. This includes powers to prohibit, regulate or control activities and the movement, isolation, treatment and destruction of anything.

The emergency measures are subject to certain limitations. This includes limiting the inspection of a person to a visual inspection of their exterior and limiting the destruction of anything to when the Secretary is of the opinion that it is reasonably necessary or to ensure the emergency measures do not have, or continue to have, an adverse effect on animal welfare.

Powers of authorised officers in the case of an emergency

Section 91(1) of the Act states:

*A provision of this Part that enables an authorised officer to exercise a function **in the case of an emergency** enables the authorised officer to exercise that function if:*

- (a) the authorised officer is required or authorised to exercise the function under an emergency order, or*
- (b) the authorised officer otherwise reasonably believes it is necessary to exercise the function because:*
 - i. a biosecurity emergency has occurred, is occurring or is imminent, or*
 - ii. the authorised officer reasonably suspects a biosecurity emergency has occurred, is occurring or is imminent.*

Sections 126 and 131 of the Act provide special powers for an authorised officer when giving a general biosecurity direction or an individual biosecurity direction respectively, **in the case of an emergency**. This includes directing the person to permit the authorised officer to inspect the person, to stop a vehicle and inspect anything in the person's possession.

Many of these provisions are similar to the powers available under previous NSW legislation but with some key differences – most notably, they may be used when the Secretary or an authorised officer '*reasonably suspects a biosecurity emergency has occurred, is occurring or is imminent*'. It is therefore not necessary to confirm the presence of a biosecurity risk (for example through laboratory analysis or identification) before implementing emergency measures. However it is important to always consider that the decision may be reviewed as to what justification there was to provide the 'reasonable suspicion' of an emergency.

The intent of these provisions is to provide appropriate powers so that an emergency biosecurity risks can be contained quickly, increasing the chance the actions will succeed.

Permits

An emergency permit is a permit that authorises an action or inaction that would or might contravene an emergency order, issued under Section 44 of the Act, or a biosecurity direction given in the case of an emergency.

During an emergency, prohibited matter permits will also be available for dealings with prohibited matter.

The granting, amending, revoking, renewal, suspension and cancellation of an emergency permit or a prohibited matter permit will be restricted to authorised officers with the appropriate departmental delegation and authorisation (and stated on the officer's authorisation).

The collection, use and disclosure of information

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 exercising a biosecurity risk function.

Relationships with other Acts and the National Emergency Response Agreements

The *State Emergency and Rescue Management Act 1989* provides powers for enabling a response to an emergency, actual or imminent, which endangers the safety of people, animal or property in the State. This includes (but is not limited to) emergencies caused by fire, flood, storm or epidemic. The *Biosecurity Act 2015* may therefore be complementary in the event of an emergency, which involves an epidemic or a natural disaster. Before any decision, the powers of an authorised officer to destroy or require the destruction of a thing are subject to certain restrictions set out in Section 137 of the Act, 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.*

NSW is a signatory to Australia's Inter-Governmental Agreement on Biosecurity and the national emergency response agreements:

- The Emergency Plant Pest Response Agreement (EPPRD),
- The Emergency Animal Diseases Response Agreement (EADRA), and
- The National Emergency Biosecurity Response Agreement (NEBRA).

In the event of an outbreak of an emergency pest or disease, that is the subject of one of these agreements, an emergency response plan is prepared and then approved by the National Management Group. The actions contained within the plan will be enacted in NSW exercising the powers that are available under the *Biosecurity Act 2015*, where required.

Work health and safety

The *Work Health and Safety Act 2011* places an obligation on the agency (NSW DPI and LLS) 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 emergency powers procedure

1. Roles and responsibilities

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

- An emergency order is made by the Secretary or an officer with the appropriate delegation in accordance with section 44 (2) of the Act
- The powers provided in Part 5 of the Act for emergency orders are exercised by the Secretary or an officer with the appropriate delegation (Appendix 1 Delegations)
- A general biosecurity direction in the case of an emergency is only given by an authorised officer for a purpose identified in section 126(1) (2) & (3) of the Act
- A general biosecurity direction in the case of an emergency 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 or delegated officer.
- An individual biosecurity direction in the case of an emergency is only given by an authorised officer in accordance with the purposes prescribed in section 128(1) & (2) of the Act
- The powers provided by the Act to the Secretary for emergency permits are exercised by the Secretary or an officer with the appropriate delegation and authorisation (Appendix 1, Delegations)
- A group emergency permit can only be granted 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 or delegated officer.
- Authorised officers are trained in the use of their emergency powers
- Communication between the agencies and within the agencies occurs so that all relevant staff are informed of matters the subject of an emergency order or a biosecurity direction issued following the exercise of special emergency powers
- Records of emergency orders and all related enforcement actions are maintained.

Authorised officers must ensure that:

- they report a biosecurity emergency or suspect biosecurity emergency either by contacting their Manager or calling the [Biosecurity hotline](#) immediately
- where possible they consult with their manager before exercising special emergency powers that require the inspection or treatment of a person
- individual biosecurity directions given in the case of a biosecurity emergency are appropriately identified and consistent with the powers available under the Act (refer to section 5 below, Special emergency powers)
- biosecurity directions are given consistent with any relevant policy and procedure for the management of the biosecurity risk. If the biosecurity matter is unidentified or in the absence of a policy or procedure, officers should consult with relevant technical and compliance staff, unless an emergency is occurring or is imminent
- managers are informed of any biosecurity directions issued that exercise special emergency powers
- records of all biosecurity directions given in an emergency are maintained

- emergency permits and prohibited matter permits are given consistent with the officer's authorisation and their current role description except if the officer is directed to do so or if they are required to issue a permit in an emergency situation
- emergency permits and prohibited matter permits are granted consistent with relevant policy and procedure for the management of a biosecurity risk
- they demonstrate they are being fair and reasonable at all times.

2. Evaluating risk

When a biosecurity risk has been identified an authorised officer should refer to the relevant policy and procedure in place for the management of the biosecurity risk for guidance in evaluating the risk and identification of the actions required.

If the biosecurity risk is unidentified and the authorised officer reasonably believes or suspects that the biosecurity risk has, is or may result in a significant biosecurity impact which would constitute an emergency, then the authorised officer has the power to exercise special emergency powers.

Prior to exercising special emergency powers or issuing a biosecurity direction in the event of an emergency, authorised officers should consult with their Manager except when an emergency is occurring or is imminent. The authorised officer should inform their Manager of their actions in the event of an emergency as soon as possible afterwards.

Before exercising emergency powers an authorised officer should:

- make an assessment of the situation and record the evidence of the presence of a biosecurity risk and or biosecurity impact
- where possible, document your decision making process and reference any resources that have assisted you in making your decision
- discuss your determination with your Manager or relevant technical specialist to determine if emergency powers should be exercised.

3. Emergency order

The principal objective of the emergency order 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.

3.1 When can an emergency order be made?

The Act, section 44(2) provides for the Secretary or a delegate to make an emergency order if they are **satisfied** or **reasonably suspect** that there is a current or imminent biosecurity risk that may have a **significant biosecurity impact**.

This means that there must be sufficient evidence to support the identification of the current or imminent biosecurity risk. Similarly, there must also be evidence or information that the biosecurity risk is causing or could cause a significant biosecurity impact. For example, a laboratory test confirming the identification of a prohibited matter disease and or the presence of dead and dying animals.

It is therefore essential that the Secretary or the delegate who makes the emergency order is in possession of the relevant evidence in relation to the biosecurity risk and the potential significance of the potential biosecurity impact, before the order is made.

Where possible the Director with the appropriate technical background should be responsible for making the order. For example, the Chief Veterinary Officer in the case of animals diseases or the Chief Plant Protection Officer in the case of plant pests and diseases.

The officer responsible for making the emergency order must document, record and keep evidence that formed the basis of the officer's reasonable belief that an emergency is occurring. This can include observations, records of conversations, photographs and reports of analysis.

3.2 Contents of an emergency order

Section 45 of the Act states that an emergency order must specify:

- (a) the biosecurity matter, biosecurity risk or biosecurity impact that is the subject
- (b) of the emergency,
- (c) the emergency zone or zones,
- (d) the emergency measures,
- (e) the persons or class of persons to whom the emergency measures apply,
- (f) the duration of the emergency order.

The '*zone or zones*' to which the '*emergency measures*' apply must be supported by evidence and the relevant technical information for the stated biosecurity matter.

The '*emergency measures*' must be consistent with sections 50 and 51 of the Act and must be appropriate for the specified biosecurity risk.

An emergency order may be in place for a period not exceeding six months however the duration of the order should be no more than what would reasonably be required to carry out the actions required.

3.3 Special Powers

Emergency measures can include the use of special powers provided by section 52 of the Act.

An emergency order cannot prohibit, regulate or control the movement of a person except as provided for by section 52 (3), whereby the Act does not limit the use of emergency measures that have an impact on the movement of a person but are not imposed for the purpose of restricting the movement of a person. For example, an emergency measure may require all persons to enter and exit an emergency zone through specified entry and exit points.

The use of emergency measures that impose restrictions on the movement of people and in particular require inspection or external treatment of a person have to be justifiable and supported by evidence and technical information.

When making an emergency order that includes the use of special powers, the officer maintain records of supporting evidence.

3.4 Making an emergency order

The preparation of an emergency order is the responsibility of the Department of Industry's Biosecurity & Fisheries Law unit. The unit responsible for the biosecurity risk must identify the objectives and actions required and the rationale, including the technical evidence that supports the use of an emergency order.

The Act requires the Secretary to give notice of an emergency order by publication on either the Department website or the Government Gazette (or both). For greater transparency and to improve coverage, emergency orders should be published on both the website and the Government Gazette.

In addition to the publication requirements, the officer who makes the emergency order must ensure it is communicated to all relevant stakeholders. This may include sending copies of the emergency order to stakeholder associations, conducting meetings and/or a press release.

An officer must document and maintain records of emergency orders and the basis for making the emergency order. A template for an emergency order is available from **Section 10. Documentation.**

3.5 Limitations that apply to an emergency order

Part 6, Division 3 prescribes the following limitations in relation to an emergency order:

Treatment of persons

An emergency order can only require the external treatment of a person. An emergency order cannot require a person to provide samples of their blood, hair, saliva or any other body part or fluid.

Inspection of persons

A requirement of an emergency order that a person permit themselves to be inspected by an authorised officer is limited to a visual inspection, including the exterior of the person's clothing or shoes and to shake or otherwise move a person's hair.

Destruction requirements

An emergency order cannot require or authorise the destruction of biosecurity matter or any other thing unless the Secretary is of the opinion that the destruction is reasonably necessary to prevent, eliminate or minimise a significant biosecurity impact.

Therefore, the officer who is required to make the emergency order must have sufficient evidence or information to support a destruction requirement. The officer must maintain records of all supporting documentation upon which the decision to require destruction was made. A decision to require the destruction of property should be made in consultation where possible, with the relevant stakeholders that may be impacted by the decision.

Although not required by the Act if time permits before an emergency order is made requiring the destruction of native flora and fauna (within the meaning of the *National Parks and Wildlife Act 1974*), a threatened species (*Threatened Species Conservation Act 1995*), native vegetation (*Native Vegetation Act 2003*) or building the subject of a heritage order (*Heritage Act 1977*), that consultation with the agencies responsible for the administration of the relevant Acts occurs.

The Secretary cannot require the destruction of biosecurity matter unless it is an animal and the Secretary is of the opinion that the destruction is necessary to ensure that other emergency measures do not have or continue to have an adverse effect on animal welfare.

4. Powers of authorised officers in the case of an emergency

Section 91(1) of the Act states:

*A provision of this Part that enables an authorised officer to exercise a function **in the case of an emergency** enables the authorised officer to exercise that function if:*

- (a) the authorised officer is required or authorised to exercise the function under an emergency order, or*
- (b) the authorised officer otherwise reasonably believes it is necessary to exercise the function because:*
 - i. a biosecurity emergency has occurred, is occurring or is imminent, or*
 - ii. the authorised officer **reasonably suspects** a biosecurity emergency has occurred, is occurring or is imminent.*

4.1 Require information

Section 97 of the Act, states that a person is not excused from a requirement of an authorised officer to furnish records or information or to answer a question on the grounds that the information may incriminate the person, if the authorised officer makes the requirement **in the case of an emergency**.

The authorised officer must warn the person that the request for records, information or to answer a question is in response to an emergency.

4.2 Entering a premises

Section 98 of the Act provides for an authorised officer to *enter a premises in the case of an emergency, at any time*. An authorised officer cannot enter any part of a premises used for residential purposes without the permission of the occupier or the authority of a search warrant.

An authorised officer should attempt to obtain permission from the land owner or occupier before exercising this power. It is better to obtain the person's permission and potentially also their cooperation. The authorised officer should also be reasonable and if possible arrange a time that suits both parties, unless this defeats the purpose for the authorised officer's entering the property or results in a delay that could have a negative impact on the emergency response action.

5. Special Emergency Powers

5.1 Biosecurity direction in case of an emergency

Section 131 of the Act provides special emergency powers for an authorised officer when giving an individual biosecurity direction *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 and are subject to the limitations included in sections 134, 135 and 136 of the Act.

5.1.1 Inspection and treatment of a person

In the case of an emergency, an authorised officer may give a person an individual biosecurity direction requiring them to:

- (a) permit the authorised officer to inspect the person (Section 131 (1)(a)) or
- (b) permit the authorised officer to inspect anything in the person's possession (Section 131 (1)(b)), or
- (c) to carry out an external treatment of a person (Section 131 (1)(c)), or
- (d) to carry out a treatment of anything in the person's possession (Section 1312 (1)(d)).

These powers should only be exercised with the approval of the authorised officer's Manager or Director and are subject limitations included in Section 7.

5.2 Inspect and stop vehicles

In the case of an emergency, an authorised officer may give a person in control of a vehicle, an individual biosecurity direction requiring them to:

- (a) permit the vehicle to be inspected or
- (b) carry out a treatment measure or permit a treatment measure to be carried out.

Authorised officers should ensure where possible that when exercising the power to stop, inspect and treat a vehicle during a biosecurity emergency it is performed in a facility designed for this purpose and in accordance with any relevant policy and procedure and any work health and safety requirements.

6. Limitation on powers

6.1 The detention or treatment of persons

Section 134 of the Act states that an authorised officer cannot prohibit, regulate or control the movement or a person or require the treatment of a person except if authorised by the Act in the case of an emergency. An authorised officer may give an individual biosecurity direction that

prohibits a person from, for example, entering a property or require the external treatment of a person before leaving a property, in the case of an emergency.

Authorised officers must ensure that before exercising a power to control the movement or require the treatment of a person they consult with their Manager or Director, and they have referred to any relevant policy and procedure in place for the biosecurity risk for guidance.

6.2 Inspection of persons

The power to require a person to submit to an inspection, requires the person to do any of the following:

- (a) submit to a visual inspection, including the exterior of the person's clothing or shoes
- (b) to shake or move the person's hair
- (c) to make available for inspection anything in the person's possession.

6.3 Destruction requirements

An authorised officer may give an individual biosecurity direction requiring the destruction of a thing but only if:

- the thing has been identified or suspected of being prohibited matter.
- 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 licences 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. 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.

An authorised officer needs to take notice that within section 136 *Destruction requirements*, 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.

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.

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 other 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 Manager before doing so.

6.4 Interaction with restrictions imposed by other Acts

Before any decision to destroy or require 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.

7. Biosecurity directions

Section 122 of the Act enables an authorised officer to exercise a function **in the case of an emergency** enables the authorised officer to exercise that function if:

- (a) the authorised officer is required or authorised to exercise the function under an emergency order, or*
- (b) the authorised officer otherwise **reasonably believes** it is necessary to exercise the function because:*
 - i. a biosecurity emergency has occurred, is occurring or is imminent, or*
 - ii. the authorised officer **reasonably suspects** a biosecurity emergency has occurred, is occurring or is imminent.*

7.1 General biosecurity direction in the case of an emergency

A general biosecurity direction is potentially a useful 'first-response' tool in a biosecurity emergency as it can be made quickly by an authorised officer with the appropriate authorisation and can provide for the use of special emergency powers.

A general biosecurity direction can also direct actions after an emergency order has been put in place.

Example: Grain harvesting equipment and grain transport vehicles must be cleaned to ensure it is free of soil and plant material before leaving the 'emergency zone'.

7.1.1 When can a general biosecurity direction be given in the case of an emergency?

The authorised officer must **reasonable believe** it is necessary to give a general biosecurity direction or any purpose set out under Section 126 of the Act. In the case of an emergency the authorised officer may give a general biosecurity direction if they **reasonable suspect** a biosecurity emergency has occurred, is occurring or is imminent.

When considering whether it is necessary to give a general biosecurity direction in the case of an emergency, the authorised officer must have formed a belief that that there is a current or imminent biosecurity risk that may have a significant biosecurity impact.

A laboratory test result confirming the presence of the pest or disease would be sufficient to form a reasonable belief. The authorised officer might have the necessary experience and qualifications to positively identify certain biosecurity risks and therefore form a reasonable belief. Section 6.3 of this procedure is also relevant in regards to the forming of a reasonable suspicion. So too are sections 400 & 401 of the Act.

Authorised officers should seek guidance from the relevant policy or procedure in place for the management of the biosecurity risk or through consultation with technical specialist staff and or their Manager.

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

7.1.2 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.

A general biosecurity direction in the case of an emergency must only be 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 or delegated officer.

The Act in section 127 specifies the requirements for giving a general biosecurity direction. In the case of an emergency an authorised officer may give a general biosecurity direction by displaying a copy of the direction in a prominent place in or adjacent to any premises to which (or the vicinity of which) the direction applies. Biosecurity direction forms may be located [here](#).

If an authorised officer gives a general biosecurity direction in the case of an emergency the direction must include a warning if the direction relates to the use of emergency powers.

7.1.3 Publication

The Act requires that a general biosecurity direction should be published on the Department's website or in the Government Gazette or both. For transparency and to improve the coverage of the publication it has been determined that general biosecurity directions should 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

7.1.4 What can the general biosecurity direction contain?

If the general biosecurity direction is 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. In the case of an emergency a general biosecurity direction may:

- prohibit, regulate or control entry to or exit from any specified premises or area
- prohibit, regulate or control the use of any road within or going into or out of a specified area or premises (including by closing roads).
- In the case of an emergency a general biosecurity direction may also:
- prohibit, regulate or control the movement of a person
- require a person to undergo any treatment measures or require treatment measures to be carried out in relation to a person.

However section 134 (2) of the Act includes limitations that an authorised officer cannot, in a biosecurity direction, require a person to provide samples of the person's blood, hair, saliva or any other body part or body fluid.

7.2 Individual biosecurity direction in the case of an emergency

The authorised officer must **reasonable believe** it is necessary to give an individual biosecurity direction or any purpose set out under Section 128 of the Act. In the case of an emergency the authorised officer may give an individual biosecurity direction if they **reasonable suspect** a biosecurity emergency has occurred, is occurring or is imminent.

In the case of many emergencies, an individual biosecurity direction will be the first response tool providing for example, an immediate prohibition on the movement of biosecurity matter, hosts/carriers from the infected property.

Example: An authorised officer gives a farmer an individual biosecurity direction to stop the movement of cattle and regulate the movement of people from the property due to a suspect outbreak of anthrax

An authorised officer should only 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, unless directed to do so.

The authorised officer must have formed a **reasonable belief or reasonable suspect** that giving the individual biosecurity direction is necessary for the specific purpose set out in section 128(1) or (2) 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.

Section 6.3 of this procedure is also relevant in regards to the forming of a reasonable suspicion. So too are sections 400 and 401 of the Act.

7.2.1 Giving an Individual Biosecurity Direction in the case of an emergency

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.

An individual biosecurity direction can be given orally (in person) but the authorised officer must serve the direction in writing within 24 hours, in the case of an emergency.

A written individual biosecurity direction in the case of an emergency must be delivered in person. If the person 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.

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.

7.2.2 Revoking or varying the direction

A general biosecurity direction should only be varied or revoked with the appropriate approval. This is the same as the approval required for giving a general biosecurity direction in an emergency. See the 'Roles and Responsibilities' section 1, of this procedure.

The Secretary may also revoke or vary a biosecurity direction. This authority has also been delegated.

8. Permits

During a biosecurity emergency, permits will be available to provide for exceptions to requirements imposed under an emergency order or a biosecurity direction given in the case of an emergency.

An emergency permit authorises an action or inaction that would or might contravene an emergency order, issued under Section 44 of the Act, or a biosecurity direction given in the case of an emergency, and that is expressed to apply to the emergency concerned.

For example:

- *an individual emergency permit may be granted to a horse owner to move a horse from a property the subject of an emergency order due to an outbreak of Hendra virus*
- *a group emergency permit is granted to allow the movement of vaccinated stock out of an emergency zone identified by an emergency order.*

During an emergency, prohibited matter permits will also be available for dealings with prohibited matter, that would otherwise be prohibited under the Act.

For example:

- *An individual prohibited matter may be granted to a person to move farm machinery contaminated with Parthenium weed to a site cleaning.*
- *A group prohibited matter permit may be granted to provide for the transport of samples of plant material infected with a prohibited matter disease to a laboratory for testing.*

The granting, amending, revoking, renewal, suspension and cancellation of an emergency permit or a prohibited matter permit will be restricted to authorised officers with the appropriate departmental authorisation (and stated on the officer's authorisation).

Note: The power of the Secretary to grant an emergency permit or a prohibited matter permit has been delegated, subject to section 379 (2) (c) & (d) of the Act, to 'Category C & G' level staff within NSW DPI to enable operations during an emergency response.

Staff should refer to the Biosecurity permit procedure for more information regarding the grant of permits.

9. Recovering costs

If a person fails to comply with an emergency order, the Secretary (or their delegate) may authorise a third party to enter the premises and undertake the required actions. The person may then be liable for all costs and expenses incurred by the Secretary to complete the required actions.

In a biosecurity emergency the decision to require the destruction of biosecurity matter including private property is usually made subject to the terms of the relevant national emergency biosecurity response agreement. Compensation is payable to the owner of the property in these circumstances. Staff and authorised officers should always ensure that they have the approval of the Secretary or a delegate (Section 59) before taking any actions with the intent of recovering costs.

10. Record keeping

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

Responsible authority:

- emergency orders made, revoked, amended or varied
- general biosecurity directions given in the case of an emergency

- emergency permits and prohibited matter permits granted
- authorised officers and their training, roles and responsibilities
- revocation or variation of a general biosecurity direction.

Authorised officer:

- biosecurity directions given in the case of an emergency
- authorisation, training roles and responsibilities
- copies of all biosecurity directions given
- revocation or variation of an individual biosecurity direction
- copies of emergency permits granted and prohibited matter permits granted.

11. Definitions and acronyms

LCA	Local Council Authority
LLS	Local Land Services
DPI	NSW Department of Primary Industries.

12. Documentation

Procedure - Biosecurity Direction
 Procedure - Biosecurity Permit
 Procedure - Biosecurity collection, use and disclosure of information
 Policy - Records Management (IND-I-177)
 Policy - Information Security (IND-I-197)
 Policy - Classified Information (IND-I-196)
 Policy -Government Information (Public Access) (IND-I-178)
 Policy - Biosecurity collection, use and disclosure of information (IND-0-229)
 Emergency Order template
 General Biosecurity Direction template
 Individual Biosecurity Direction template

13. Revision history

Version	Date issued	Notes	Issued By
1	03/07/2017	New procedure in response to the <i>Biosecurity Act 2015</i>	Director Biosecurity and Food Safety Compliance

14. Contact

Director Biosecurity and Food Safety Compliance
 02 6391 3691

Appendix 1 Emergency orders and Emergency permits - Delegation of the Secretary's authority

Section of Act	Summary of functions	Delegation category	Equivalent Positions
44	Make an emergency order declaring biosecurity emergency and establishing measures to respond to emergency.	C	Director-General NSW DPI Deputy Director General, Biosecurity and Food Safety (reports to the Director-General NSW DPI) Directors and Group Directors in the Biosecurity and Food Safety Branch NSW DPI (report to the Deputy Director General, B&FS).
46	Publish emergency order and take reasonable steps to ensure affected persons are aware of it.	C	As above
47	if considered appropriate, serve property specific emergency order on owner, occupier or person apparently in charge	C	As above
48 (2), (3)	Extend period of force of emergency order (up to 6 months) any number of times	C	As above
56	Ensure copy of order requiring destruction of thing is given to owner or person in charge, authorise carrying out of order in absence of person in charge if considered appropriate.	C	As above
59	Authorise entry to premises and taking of actions to remedy a failure to comply with emergency order, and charge a fee.	C	As above
60	Amend or revoke an emergency order.	C, F	'As above' and Executive Director State Operations Local Land Services or an authority that occupies the role of a Public Sector Senior Executive, Executive Director, Band 2. Member of staff who reports to the Executive Director State Operations Local Land Services or an authority.

337	Grant an emergency permit	C,G	As above for 'C' and For 'G', a person appointed under section 361 of the Act as an authorised officer, subject to any limitations in the instrument of appointment of that person.
338	Grant a prohibited matter permit	C,G	As above
344	Vary a permit	C,G	As above for both emergency and prohibited matter permits
346	Renew or refuse to renew a permit	C,G	As above
347 (2) (a)	Impose conditions by variation to a permit	C	As above for 'C'
354	Suspend a permit by notice in writing	C,G	As above
356	Cancel an emergency permit by notice in writing	C,G	As above
358(3)	Impose new conditions or vary or revoke existing conditions on suspension or cancellation of an emergency permit, by notice in writing	C,G	As above