

RELEASE - DAF

# Regulatory Policy

## Biosecurity Queensland

Version 3 – October 2010

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## Version Control

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1	July 2010	Draft for discussion
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## Introduction & Scope

The purpose of this policy is to articulate Biosecurity Queensland's approach to regulatory compliance and provide a consistent framework for making decisions relating to regulatory compliance activities.

Regulatory compliance is the range of activities that ensure the effective administration of legislation. It may equally be applied to activities designed to raise awareness and achieve voluntary compliance as the use of measures to require compliance and deter non-compliance. Biosecurity Queensland is responsible for a diverse portfolio and undertakes regulatory compliance in the form of:

- Issuing statutory approvals to permit specific activities,
- Auditing statutory approvals to ensure ongoing compliance with the conditions of those approvals,
- Monitoring activities for compliance with legislation, Codes of Practice and sub-ordinate legislation,
- Providing advice & information to the community to raise awareness of legislation and the responsibilities and requirements that exist in that legislation, and
- Investigating suspected non-compliance & undertaking enforcement action.

Regulatory compliance, by its very nature, may result in the restriction of the activities of individuals for the benefit of the wider community. A key focus of Biosecurity Queensland's activities is to ensure the greatest 'public benefit' by focusing resources and activities on those areas that provide the most value to the general community.

All staff involved in regulatory compliance activities must be aware of, and apply, this policy. Staff authorised to undertake regulatory compliance activities on behalf of other agencies (e.g. staff appointed as Inspectors under the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (Cth)) must also be aware of, and comply with, the relevant guidelines and other procedural documents published by the administering authority.

Questions in relation to the content and application of this Policy should be directed to the Manager (Investigations). This policy is not justiciable and cannot limit the discretion of Biosecurity Queensland to take a particular course of action.

## Glossary

- **AIMS** – Biosecurity Queensland case management system
- **Enforcement Response** – any action to finalise an investigation including issuing a Statutory Notice or Direction, No Further Action, Penalty Infringement Notice, Caution, or commencing Court Proceedings
- **Incident** – any event, act or omission that may involve non-compliance with legislation administered by Biosecurity Queensland
- **Investigating Officer (I/O)** – the Biosecurity Queensland staff member responsible for leading the investigation of an incident
- **Investigation** – a series of enquiries and activities to identify if offences have been committed during an incident and to identify the person(s) responsible for those offences
- **Person of Interest (POI)** – any individual or entity that is the subject of an investigation of an incident
- **Regulatory Compliance** – any activity designed to encourage, require, or enforce compliance with legislation
- **Regulatory Power** – any authority provided to an Authorised Officer (or similar) under legislation to investigate and enforce that legislation. For example – the power to enter a place, seize evidence or other things, require information or the production of documents
- **Statutory approval** – a licence, permit, accreditation or other approval issued to permit an individual or entity to conduct an activity that might otherwise be restricted or illegal
- **Statutory Notice or Direction** – a notice, issued under the authority of a specific Act, requiring a person to complete or desist from a specified activity.
- **Very High Public Interest** – a level of public interest in an incident or Biosecurity Queensland's response to an incident as shown by significant public debate, coverage in the media or a large number of reports (e.g. more than five separate sources) in relation to the incident

# Strategic Approach

## Objectives

In undertaking regulatory compliance, Biosecurity Queensland seeks to:

- Protect the Queensland community from diseases and pests that will adversely effect the State's economy, the community and the environment and to ensure high standards of animal welfare,
- Encourage an understanding of the need for shared responsibility in achieving biosecurity and animal welfare outcomes with stakeholders,
- Focus on preventative measures but retain the capacity to respond effectively to non-compliance, emergency situations and established pest and diseases,
- Use the appropriate enforcement response to address non-compliance,
- Ensure staff understand their roles and responsibilities and have the systems, skills and support to undertake regulatory compliance activities.

The Biosecurity Queensland Regulatory Policy supports the Queensland Biosecurity Strategy 2009-14 by:

- Articulating roles and responsibilities in managing biosecurity and animal welfare,
- Developing the capability to deliver on those roles and responsibilities,
- Ensuring advisory and governance arrangements are in place and supported by appropriate information systems, decision-making frameworks, and procedures,
- Encouraging a 'preventative' and 'proactive' approach to regulatory compliance with activities aimed at coordinated and efficient early detection, appropriate communication, awareness and information distribution with the community and partners and ultimately supported by effective reactive management and enforcement measures, and
- Identifying priority areas and ensuring effective risk-based prioritisation and management processes for regulatory compliance.

## Guiding Principles

The following high-level principles are adopted by Biosecurity Queensland to guide regulatory compliance activities.

### Responsiveness

Our regulatory activity will take neither a solely deterrent nor a solely passive approach. We will combine the principles and effects of 'voluntary compliance' and enforcement to motivate and influence the community to comply.

### Proportionality

The level of our responses and any enforcement action will be proportionate to the level of risk, potential impact, and seriousness of any activity or offence and the past history of any identified offenders. More serious offences and higher risk activities will

warrant more prompt response and the possibility of more severe enforcement responses.

### **Accountability**

Decision-makers must be able to justify their actions and decisions and be able to satisfy judicial and public scrutiny. Staff will be accountable for their actions and decisions.

### **Consistency**

Regulatory compliance activities and responses will be undertaken consistently across locations and across Programs. We will take a similar approach in similar circumstances to achieve similar outcomes. This will aim to ensure that incidents with similar circumstances lead to similar enforcement responses and that clients of Biosecurity Queensland receive consistent advice and service.

### **Targeting**

Resources and activity will be directed to those priority areas that pose the greatest risk to industry, the community, the environment and animal welfare. Serious incidents will receive priority and less serious incidents will be managed or monitored with a view to prevent escalation or to resolve the issue effectively.

### **Transparency**

Information will be provided to enable the community to understand:

- Biosecurity Queensland's expectations and legislative requirements,
- How Biosecurity Queensland operates,
- The consequences of non-compliance,
- The rights of individual's affected by decisions or subject to enforcement action and how they may request reviews or appeal those decisions

### **Legal Correctness**

Biosecurity Queensland's activities will be undertaken in a manner that accounts for the principles of natural justice and legislative responsibilities. Staff with regulatory powers will exercise those powers in accordance with the legislation and these guiding principles.

### **Impartiality & Fairness**

We will ensure that our decisions and actions will be undertaken without bias. Individuals will not receive preferential or adverse treatment on the basis of ethnic background, personal relationships with staff, nor position or status within a community.

### **Efficiency & Effectiveness**

Biosecurity Queensland aims to be an efficient and effective regulatory agency by protecting Queensland's economy, community and environment whilst minimising unnecessary regulatory burdens. This means that at times Biosecurity Queensland will recognise that a lower-level response is appropriate as opposed to conducting a full investigation. The 'Response model' outlined in this Policy supports this approach.

# Achieving Compliance

## Overview

Biosecurity Queensland believes that a holistic approach is required to achieve high levels of compliance. This means that a proactive use of education, monitoring and auditing activities is supported by effective reactive management and enforcement efforts. Biosecurity Queensland has adopted a Compliance Framework that consists of an interconnected suite of Policies, Strategies and Guidelines to support staff in regulatory compliance.

This Regulatory Policy outlines Biosecurity Queensland's broad approach to regulatory compliance.

Enforcement Guidelines are provided to assist decision-makers and staff to identify the most appropriate enforcement option to use at the conclusion of an investigation.

Compliance Strategies will be implemented for each program or, where necessary, specific issues to guide the practical implementation of the Regulatory Policy. These Compliance Strategies will identify priorities, required activities undertaken by Biosecurity Queensland to maximise compliance levels, and the process for measuring performance.

Staff will also be supported with:

- An Investigation Manual to guide how incident investigations are managed,
- A Case Management System to record the detail of all incidents and response activities and decisions, and
- Appropriate training in exercising regulatory powers & conducting investigations.

## Education and Awareness

The promotion of voluntary compliance through education and awareness activities is a fundamental base of Biosecurity Queensland's approach to regulation. The dissemination of information to assist the community and industry in achieving compliance can occur direct to the individual or through third parties including other government agencies, industry and representative groups, and other interested parties. This information will be delivered through electronic, media and face-to-face means.

## Proactive Monitoring

Biosecurity Queensland conducts a number of scheduled activities to monitor compliance with legislation. This can include audits of statutory approvals and monitoring programs of specific industries or activities. These activities are proactive steps to monitor compliance levels as well as preventing related risk being realised or aggravated through continued non-compliance.

## Investigations & Enforcement

### Investigation Response Model

It is not possible for Biosecurity Queensland to investigate every possible offence and complaint received in relation to the legislation it administers. The effective and

efficient allocation of resources means that priorities must be clearly identified. The three Program areas of Biosecurity Queensland will develop Compliance Strategies to identify priority areas for regulatory compliance activity.

When responding to an incident with pest or disease control, animal welfare, or agricultural and veterinary chemical and contaminants issues, the first priority is to ensure the incident is controlled and those issues are managed effectively and take precedence. It is important however that, wherever preventable, action taken to control or manage an incident does not compromise any subsequent investigation or enforcement action.

A two-tiered Response Model is adopted to manage incidents and direct investigation efforts that considers the:

- Varying levels of seriousness of incidents,
- Need to ensure the efficient allocation of resources, and
- Range of enforcement options available to deal with non-compliance.

Appendix A explains the Investigation Response Model.

### **First Tier or 'Containment' Investigations**

First tier responses or 'containment' investigations will be used for incidents where a satisfactory outcome can be limited to action to prevent the continuation of the offence or to rectify any impact or non-compliance. Generally, less serious offences will result in a containment investigation. These responses will often result in an outcome that will impact on an individual through the use of statutory notices or directions and must still occur at a standard that is defensible and consistent with the Guiding Principles outlined in this Policy.

A first tier response may be escalated to a 'full' investigation on the basis of new information or changes in circumstances.

### **'Full' Investigations**

Second tier responses will involve 'full' investigations to support the use of a wider range of enforcement responses.

## **Communication**

### **Media**

Biosecurity Queensland recognises the value of publicising its regulatory compliance activity to the community to improve awareness of legislation, deter non-compliance, and reinforce Biosecurity Queensland's commitment to enforcing the law.

Consistent with the "[Media Guidelines](#)", Biosecurity Queensland will consider releasing media statements in relation to investigations and enforcement activity where:

- Details of the investigation are already in the 'public arena', a request for further information is received and it is deemed necessary to clarify or correct those details, or
- A court result is achieved or other enforcement action undertaken that provides the opportunity to raise awareness of the relevant legislation or issue, or



- Assistance is to be sought from the public to gather information relevant to the investigation, and
- The release of the information is not expected to prejudice any subsequent court proceedings, enforcement action nor speculate on investigation outcomes.

The Manager (Investigations) must be advised of any intended media release or statement relating to an investigation or enforcement response before it is released.

### **Persons under Investigation**

A POI in an investigation must be provided reasonable information as to the progress of the investigation once they become aware that they are subject of that investigation. The information provided must not however compromise the investigation or any decision-making processes.

At the conclusion of the investigation, all POI who were aware that they have been under investigation must be advised of the outcome in writing even if 'no further action' is proposed.

### **Witnesses and Informants**

A person who has assisted Biosecurity Queensland in an investigation (e.g. the informant / complainant or a witness) should be provided reasonable information where possible as to the outcome of the investigation where such information does not breach the *Information Privacy Act 2009* or the investigation itself.

The identity of witnesses and informants should be protected and the requirements of the *Information Privacy Act 2009* considered in making any comment that may identify witnesses and informants.

### **Other Regulatory Agencies**

Information requests from other regulatory agencies should be considered in consultation with the Investigations Unit. In principle, such requests will be granted where the purpose is for achieving or investigating compliance with an Act or otherwise authorised under law.

Staff acting under legislation administered by other agencies (e.g. *Agricultural and Veterinary Chemicals (Administration) Act 1992* (Cth) and the Australian Pesticides and Veterinary Medicines Authority) must be aware of the information sharing arrangements and procedures relating to that activity and other agency.

### **Right To Information Act 2009**

The *Right To Information Act 2009* provides a right of access for members of the public to certain records.

Where a person has requested information relevant to an investigation, staff should consider this Policy or consult with the Investigations Unit before deciding to release that information. Where access is refused, the person should be advised that they may make a 'Right To Information' (RTI) application for that information and the location of the relevant RTI application forms.

The *Right To Information Act 2009* specifies a number of exemptions to access to public records and investigating officers should consult with the RTI Decision-maker where they believe access to a document in response to a RTI application should be exempt.

## Roles & Responsibilities

**All Biosecurity Queensland staff** are responsible for supporting Biosecurity Queensland's regulatory compliance role.

Any staff member who becomes aware of possible non-compliance with legislation administered by Biosecurity Queensland must ensure a record of the incident is made in accordance with the Biosecurity Queensland Investigation Procedures Manual.

Any regulatory compliance activity undertaken by a staff member must be in accordance with their appointment as an Authorised Officer/Person or Inspector under legislation and any relevant delegation, procedural documents or other work practice.

**The Investigating Officer** must ensure the investigation is conducted professionally, lawfully, ethically and in a timely manner.

The Investigating Officer is responsible for:

- Planning and conducting the investigation and escalating any issues affecting progress to their Zone Leader,
- Recording details of all actions and decisions undertaken as part of the investigation,
- Issuing Statutory Notices or Directions where required and where the officer has the appropriate appointments or delegations to issue that Notice or Direction, and
- Submitting a recommendation for an appropriate enforcement outcome to their Zone Leader consistent with the Enforcement Guidelines

**Zone Leaders** are responsible for the initial assessment of, and response to, incidents in their zones and program's area of responsibility.

This includes the decision to request the Investigations Unit to take responsibility for the response. Zone Leaders are responsible for monitoring progress of the response and the enforcement decision-making in accordance with the Enforcement Guidelines. Zone Leaders will also ensure that this assessment and response is in accordance with this Policy and any relevant Compliance Strategy or procedural document.

**Operations Management** is responsible for the state-wide overview of operational compliance activities and ensuring effective liaison between Operations and Policy staff.

**General Managers (and their delegates)** are responsible for setting strategic compliance priorities within their program area, including the development of Compliance Strategies, and providing feedback and advice in relation to legislative issues and direction.

**Investigations Unit** is responsible for providing advice and support to all staff in relation to investigative procedures and management, compliance strategies, and training as well as managing court proceedings and enforcement action with the assistance of the DEEDI Legal Unit and supporting the Case Management System used by Biosecurity Queensland.

In accordance with the Enforcement Guidelines, the Manager Investigations or delegate is responsible for assessing enforcement actions endorsed by Zone Leaders and, where required, liaising with DEEDI Legal or delegates of the Chief Executive or other statutory positions to gain approval to undertake enforcement action and ensuring the completion of such enforcement action.

The Investigations Unit will investigate incidents referred to them where there is a:

- **Level of complexity** - *For example: The investigation requires interviews of a number of POI's and witnesses throughout the State*
- **Significant long-term impact** on the community, industry or the environment - *For example: The incident poses a significant risk to human health or ongoing market access for an industry or could cause significant environment harm*
- **'Very High' Public Interest** - *For example: The incident receives widespread media coverage throughout Queensland or nationally*
- **Need for whole-of-agency coordination** due to multiple jurisdictions - *For example: The incident involves likely breaches of a number of Acts administered by a number of different agencies*

Despite an incident meeting one or more of these criteria, a Zone Leader or the Principal Investigations Officer may decide that a local officer will lead the investigation.

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## Decision-making

Biosecurity Queensland seeks to provide decision-makers with guidance to ensure appropriate resource allocation, exercise of powers, and enforcement decision making in response to an incident. Staff will exercise discretion at three points of any response as identified below.

### Incident Response

The decision on the level and priority of response to suspected non-compliance is the responsibility of the Zone Leader for the relevant Program in the area where the incident occurred. These decisions must be guided by the relevant Compliance Strategy. All incident responses will be conducted at a standard that ensures any enforcement action, including prosecution, can be supported through a proper investigation.

Every incident or complaint will be assessed and assigned a priority in accordance with Appendix B. The priority assessment determines the promptness of the response relative to other incidents. The preferred timeframe for the commencement of the response is also identified.

### Exercising Regulatory Powers

In the course of an audit or investigation, Biosecurity Queensland staff appointed under legislation may exercise regulatory powers to complete the audit or investigation. Staff who hold these appointments are issued with identity cards and will either produce them or have the cards visible prior to exercising regulatory powers on a person.

Generally, staff will seek the cooperation of a person being audited or investigated prior to relying on a regulatory power. However, to ensure efficient and effective audits and investigations, regulatory powers may be used at the staff member's discretion. This will occur in accordance with the requirements and limitations provided in the specific legislation and staff must ensure the use of any regulatory powers is correctly recorded.

### Enforcement Responses

When an individual or entity fails to comply with legislation, Biosecurity Queensland will consider a range of enforcement responses including:

- Issuing a Caution
- Issuing a Statutory Notice or Direction
- Penalty Infringement Notice
- Seeking a Court Order
- Prosecution
- Taking No Further Action (including an 'Advisory Letter')
- Cancellation or Suspension of Licences, Permits or Other Approvals

Staff must consider the "Enforcement Guidelines" in identifying an appropriate enforcement response and determining the appropriate level of approval to carry out that action.

## Appendix A – Investigation Response Model

Biosecurity Queensland's response to an incident where non-compliance is suspected aims to:

- Control the potential or actual biosecurity risks or ensure improvements to animal welfare,
- Gather information and evidence that will support enforcement decision-making and will be admissible in any possible criminal or administrative proceedings,
- Identify any non-compliance with legislation and, if so, identify the person(s) responsible and an appropriate enforcement outcome,
- Deter future non-compliance, and
- Ensure public confidence in Biosecurity Queensland

### Incident Detection

Biosecurity Queensland staff may become aware of possible non-compliance through monitoring, auditing or other activity, reports from the public or industry groups, or reports from other government agencies.

Where a Biosecurity Queensland staff member becomes aware of possible non-compliance they are responsible for ensuring the incident is recorded in the 'Auditing and Investigations Management System' (AIMS) accordance with the Biosecurity Queensland Investigation Procedures Manual.

### Incident Assessment

Once an incident with possible non-compliance is detected, the incident must be assessed by the Zone Leader of the relevant Program where the incident is believed to have occurred.

The Zone Leader will ensure that the incident is within their jurisdiction and conduct an initial assessment to identify the type of response required and the priority of the incident. If the incident is not within the Zone Leader's jurisdiction, they will contact the correct Zone Leader or the relevant agency to refer the incident to them. These decisions will be recorded in AIMS.

A response may either be a 'Containment Investigation' or a 'Full Investigation' as defined in the Biosecurity Queensland Regulatory Policy. The Zone Leader will determine the appropriate level of response in accordance with the relevant Compliance Strategy.

The priority will be categorised by the Zone Leader as one of the priority levels specified in Appendix B.

If the incident meets the criteria for referral to the Investigations Unit, the Zone Leader will discuss passing responsibility for leading the response to the Principal Investigations Officer.

### Investigation

The Zone Leader (or Principal Investigations Officer for responses by the Investigations Unit) is responsible for allocating the incident to the appropriate

Biosecurity Queensland officer to conduct an investigation and then monitoring progress of that investigation.

The Investigating Officer is responsible for planning and conducting the investigation in accordance with the Investigation Procedures Manual. The officer is also responsible for identifying an appropriate enforcement outcome and submitting a recommendation to their Zone Leader (or Principal Investigations Officer for responses by the Investigations Unit). All investigation activity and decisions must be recorded in AIMS.

## **Investigation Review**

The investigation and recommendations will be reviewed by the Zone Leader in the first instance (or Principal Investigations Officer for responses by the Investigations Unit) to ensure the sufficiency of the investigation. In the event of a 'Containment Investigation', the Zone Leader must ensure that limiting the investigation to 'containment' is still appropriate.

A decision, consistent with the Enforcement Guidelines, is made by the nominated decision-maker and referred to an officer to complete.

## **Closure**

Once all required further action has been completed, including the monitoring of compliance with any Statutory Notice or Direction, the investigation file should be closed in AIMS.

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## Appendix B – Incident Priorities

Category	General Incident Description	Expected Response Timeframe
<b>Critical</b>	Incident involves significant actual or potential threat to one or more industries, communities, or has likely widespread and long-term impact on the environment	Immediate or very prompt response (e.g. within 24-48 hours) with early containment measures
	Incident involves the need to urgently alleviate pain and suffering to an animal	Immediate (within 24 hours)
<b>High</b>	<p>Incident involves:</p> <ul style="list-style-type: none"> <li>high actual or potential threat to industry, community, or the environment, or</li> <li>an offence that carries a significant maximum penalty that includes a term of imprisonment or exceeds 1000 penalty units, or</li> <li>an offence that involves obstruction of an Authorised Officer / Authorised Person / Inspector, or</li> <li>refusal to comply with a Statutory Notice or Direction, or</li> <li>Pain and suffering to an animal and a need to take timely action to alleviate that pain and suffering, or</li> <li>A very high degree of public interest</li> </ul>	A prompt response (e.g. within 14 days) however a more immediate initial response may be required to 'contain' the potential threat or to alleviate pain and suffering to an animal
<b>Medium</b>	<p>Incident involves a potential threat to an industry, community, or the environment</p> <p>Incident involves an animal welfare issue that does not result in pain or suffering to an animal</p>	A response is commenced in the medium-term (1-6 months)
<b>Low</b>	Incident involves negligible risk to industry, community or the environment	Response is likely to undertaken if and when resources are available. Otherwise, the incident is recorded for future reference and monitoring
<b>Very Low</b>	Incident involves a 'technical breach' with no or minimal risk to industry, community or the environment	Response is unlikely and the incident is recorded for future reference and monitoring