

**NEW ENGLAND TABLELANDS
NOXIOUS PLANTS**



COUNTY COUNCIL

NEW ENGLAND WEEDS AUTHORITY

Compliance and Enforcement

POLICY NUMBER: 03/17

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Compliance and Enforcement Policy No: 03/17
Biosecurity Act 2015 and Biosecurity Regulation 2017

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DEFINITIONS

Authorised Officer	Means a person who is appointed as an authorised officer under the Biosecurity Act 2015 to manage biosecurity risk by performing certain functions, such as investigating, monitoring and enforcing compliance with the Act.
Biosecurity Direction	Means a general biosecurity direction or an individual biosecurity direction under Part 9 of the Biosecurity Act, given by an authorised Officer, which has legal force.
Biosecurity Duty	There are several biosecurity duties imposed under the Biosecurity Act in relation to specified persons. These include: <ul style="list-style-type: none"> • A duty to take action when dealing with biosecurity matters or carriers, • A requirement to notify a prohibited matter event, • A requirement to prevent, eliminate or minimise a risk posed by prohibited matter and • A duty to notify an suspected or existing biosecurity event
Biosecurity Event	A biosecurity event is something that has occurred, is occurring or is likely to occur and that has, is having, or is likely to have, a significant adverse effect on the economy, environment or community.
Biosecurity Impact	A biosecurity impact is an adverse effect on the economy, environment or the community that arises, or has the potential to arise from biosecurity matter or a carrier.
Biosecurity Matter	Biosecurity matter is: <ul style="list-style-type: none"> • Any living thing, part of a living thing or product of a living thing (other than a human), or • A disease, prion or contaminant, or • A disease agent that can cause disease in a living thing (other than a human) or that can cause disease in a human via transmission from a non-human host (ie zoonosis).
Biosecurity Risk	A biosecurity risk is the risk of a biosecurity impact occurring.
Biosecurity Undertaking	A biosecurity undertaking is a written undertaking given by a person if the person has contravened, is suspected or is likely to contravene a requirement imposed by or under the Act.
Biosecurity Zone	A biosecurity zone is established by regulation and its purpose is to prevent, eliminate, minimise or otherwise manage a biosecurity risk or biosecurity impact. Generally a biosecurity zone will apply to a specified part, or parts of NSW.
Carrier	A carrier means anything (whether alive, dead or inanimate, and including a human) that has, or is capable of having any biosecurity matter on it, or contained in it.
Compliance	Adhering to the requirements of laws, industry and organisational standards and codes, principles of good governance and accepted community and ethical standards.
Dealings	Dealings is used in the context of “dealing with” biosecurity matter or carrier or to “engage in a dealing”.

Enforcement	Making sure a rule, standard, court order or policy is properly followed.
General Biosecurity Duty	The general biosecurity duty can apply to anyone. It provides that any person who deals with biosecurity matter or a carrier, and who knows (or ought reasonably to know) of the biosecurity risk posed (or likely to be posed), has a biosecurity duty to ensure that the risk is prevented, eliminated or minimised – so far as is reasonably practicable.
Local Control Authority	The council of a local government area is the local control authority for land within the local government area unless the weed control functions for the area have been conferred on a county council under any other Act. If the weed control functions for an area have been conferred on a county council, the county council is the local control authority for that area.
Mandatory Measure	A requirement set out in regulation for a person who deals with biosecurity matter or carriers to take specified actions to prevent, eliminate or minimise a biosecurity risk posed, or likely to be posed, by the biosecurity matter, carrier or dealing.
NEWA	New England Weeds Authority.
Prohibited Matter	Prohibited matter is biosecurity matter that is listed in Schedule 2 of the Biosecurity Act 2015.
Reasonably Practicable	What is reasonably practicable means that which is reasonably able to be done, taking into account and weighing up all relevant matters including the nature of the biosecurity risk concerned, the availability and suitability of ways to manage the biosecurity risk concerned, and the cost involved.
Regulation	The Biosecurity Regulation 2017.
Tenure Neutral approach	A tenure neutral approach means that the Biosecurity Act 2015 applies equally to all land in the state, regardless of whether it is publically or privately owned
The Act	Biosecurity Act 2015.
Voluntary Compliance	Where landholders/land managers voluntarily adhere to the requirements of laws, industry and organisational standards and codes, principles of good governance and accepted community and ethical standards.

1. BACKGROUND

The Biosecurity Act 2015 (the Act) and Biosecurity Regulation 2017 (the Regulation) came into effect on 1 July 2017, replacing 10 previous Acts, including the Noxious Weeds Act 1993, as well as repealing sections of a further 4 Acts relating to biosecurity.

The Act complements the principles of the NSW Biosecurity Strategy 2013 – 2021, that biosecurity is a shared responsibility between governments, industries and individuals/community, outlining the need to work together to identify, eradicate, minimise, respond and to manage biosecurity risks. The Act takes a tenure neutral approach to Biosecurity.

The broad objectives of biosecurity in NSW as outlined in the NSW Biosecurity Strategy 2013 – 2021 are to manage pests, disease and weed risks by:

- preventing their entry into NSW,
- quickly finding, containing and eradicating any new entries and
- effectively minimising the impacts of these pests, diseases and weeds that cannot be eradicated.

The Act and the Regulation provide the legislative framework to achieve these objectives.

Biosecurity matter is defined as any living thing, part of a living thing or product or a living thing (other than a human), or a disease, prion or contaminant, or a disease agent that can cause disease in a living thing (other than a human) or that can cause disease in a human via transmission from a non-human host (ie zoonosis).

The *Regulation* establishes biosecurity zones for the management of key biosecurity risks and specifies mandatory measures, or actions, that a person must take with respect to particular biosecurity matter or carriers. These include duties to notify of the presence or suspected presence of pests, diseases, weeds and contaminants.

It also encompasses a General Biosecurity Duty that can apply to anyone, as it provides for any person who deals with biosecurity matter or a carrier, and who knows (or ought reasonably to know) of the biosecurity risk posed (or likely to be posed), has a biosecurity duty to ensure that the risk is prevented, eliminated or minimized, so far as is reasonably practicable.

Where these measures apply to a particular dealing or activity then the relevant person must comply with these measures, regardless of whether they know or ought to know what the risks posed are or likely to be posed.

2. INTRODUCTION

This Policy governs the regulatory functions of the New England Weeds Authority (NEWA), recognising the obligations placed upon the Authority by the Act and its Regulation, that the Authority may use any or all of the powers conferred upon it by the Act to prevent, eliminate, minimise and manage the biosecurity risk posed or likely to be posed by weeds in relation to the land for which it is the local control authority. In addition Section 371 of the Act also provides that as a local control authority, NEWA has the following functions:

- to develop, implement, co-ordinate and review weed control programs,
- to inspect land in connection with its weed control functions,
- to keep records about the exercise of the local control authority's functions under the Act.

This policy explains how NEWA will conduct its regulatory functions to achieve compliance with the Act and to drive continual improvement.

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

The Policy guides the most efficient and effective use of NEWA's resources to achieve the best outcomes for the Authority and stakeholders.

3. PURPOSE

The enforcement policy purpose is to:

- outline NEWA's general approach to compliance and enforcement.
- explains how NEWA undertakes activities that reduce biosecurity risks relating to weeds and enhance compliance with established standards.
- explains how NEWA will conduct their activities to protect the economy, environment and community from negative impacts associated with weeds.
- assists with decision-making to ensure that enforcement actions are consistent, fair, and based on best practice.
- The aim of this policy is to:
- promote compliance with New South Wales legislative provisions consistent with the objects of the Act(s).
- promote transparency to stakeholders on how NEWA will make decisions on enforcement action.
- guide decision making and action by staff in the use of enforcement options.
- encourage use of regulatory tools in such a way as to best achieve NEWA's organisational objectives.

- have a risk-based approach to compliance and enforcement activities through adoption of a graduated and proportionate response to non-compliance.
- have a cooperative and collaborative approach with stakeholders or between jurisdictions to legislative compliance and one that does not place unnecessary impost on stakeholders in NEWA's area.
- protect stakeholders from inappropriate and/or misleading trade practices.

4. SCOPE

This Policy outlines NEWA's approach to compliance and enforcement, and explains how NEWA will conduct its regulatory functions to drive continual improvement.

The policy sets out the principles adopted by the NEWA to achieve compliance with the law, and outlines the regulator's functions, priorities, strategies and regime.

Duty to prevent, eliminate or minimise biosecurity risk

A duty imposed on a person to prevent, eliminate or minimise a biosecurity risk so far as is reasonably practicable is a duty:

- (a) to prevent or eliminate a biosecurity risk so far as reasonably practicable, and
- (b) if it is not reasonably practicable to prevent or eliminate the biosecurity risk, to minimise the biosecurity risk as far as reasonably practicable.

Enforcement – Making sure a rule, standard, court order or policy is properly followed

NEWA is a single purpose Council for the administration of legislation that protects and manages biosecurity risks relating to weeds for its constituent member Councils of Walcha, Uralla Shire and Armidale Regional. NEWA has built partnerships with landholders and the community to encourage greater understanding of biosecurity weed risks, practices and support for innovation.

To build a culture of voluntary compliance and enable landholders and the community to take responsibility for ensuring their activities do not cause unlawful harm, enforcement action is sometimes necessary.

Enforcement action provides a strong deterrent to non-compliance. The effective protection of biosecurity weed risks, as well as good regulatory practice, requires NEWA to have clear strategies governing the undertaking of enforcement action.

This Enforcement Policy complements NEWA's *Annual Operational Plan*, and the *NSW Biosecurity Strategy 2013 – 2021*, the *Northern Tablelands Regional Strategic Weed Management Plan 2017 - 2022* and other documents which set out NEWA's approach to its enforcement activities.

It is the goal of the NEWA's enforcement activities to:

- achieve outcomes consistent with legislation.
- deter non-compliant behavior.
- assertively apply consistent and proportionate enforcement action.

5. OUTCOMES

This Policy sets out the guiding principles NEWA will apply when conducting regulatory and enforcement activities and includes an approach that is:

- graduated and proportionate.
- authorised by law.
- impartial and procedurally fair.
- accountable and transparent.
- consistent in terms of the enforcement response between regulators.
- in the public interest.
- allows for application of multiple enforcement tools under appropriate circumstances.

5.1 A graduated and proportionate response

NEWA will apply a graduated and proportionate approach to the application of enforcement tools upon stakeholders. This involves the application of mild enforcement tools to offenders in the first instance; to be followed by more severe tools should the non-compliant activity continue.

Mild enforcement tools that may be employed include provision of educational information, the issuing of a voluntary compliance request following a property inspection or warning letters.

More severe tools include the entering into a biosecurity undertaking, issuing of a biosecurity direction, issuing penalty notices, or prosecution.

NEWA may at times consider mediation and conciliation as preliminary steps in enforcement processes. Mediation and conciliation provides the landholder or affected party the opportunity to explain mitigating circumstances of the non-compliance. Following this explanation, NEWA may make a determination on an appropriate course of action.

5.2 Proportionate response

NEWA will select an enforcement response that is proportionate to the identified non-compliance and capable of providing sufficient incentive to the landholder or affected person to amend the non-compliant behaviour.

Should the circumstances surrounding an offence be considered sufficiently serious (e.g. an imminent risk to the Region and/ or State biosecurity status or public health and safety), NEWA may elect to employ multiple enforcement tools at the same time.

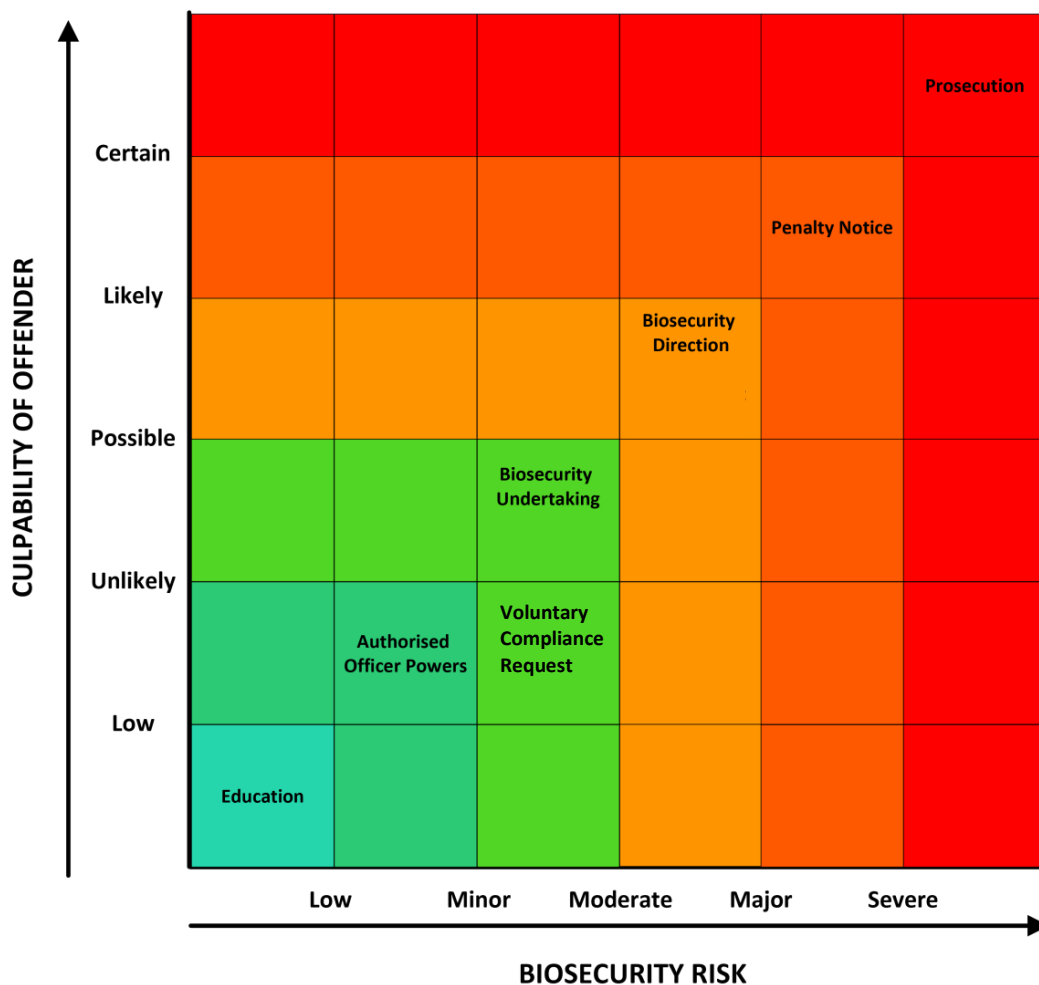
This policy should not be interpreted as a means of preventing NEWA from exercising any such enforcement powers.

NEWA will consider the following factors when making decisions concerning the choice of enforcement tool:

- circumstances of the alleged offence and the individual circumstances of the offender associated with the property.
- compliance history of the offender, in general and with respect to the specific occurrence.
- co-operation demonstrated by the alleged offender.
- remedial action implemented by the alleged offender to address the non-compliance.
- timeframe over which the offence was committed.
- the need to provide NEWA staff with a safe working environment within the requirements of work health and safety laws, particularly in relation to matters involving assaults and intimidation.

The following diagram illustrates the graduated nature of enforcement responses in accord with the seriousness of the non-compliance.

Diagram 1. Enforcement response



5.3 Authorised by law

Authorised officers are required to act within their legal remit of statutory power when undertaking enforcement activity. People or landholders should not be required, either directly or by inference, to observe requirements that are not authorised by law.

When collecting evidence:

- any evidence obtained by authorised officers relating to actual or alleged offence should be obtained within the requirements of legislation and criminal law.
- all decisions should be based on evidence. Enforcement action is to be supported by appropriate evidence. Evidence should be admissible and sufficient to establish that an offence has been committed (this will assist in ensuring that enforcement action is only taken under appropriate circumstances).
- it should be sufficient to support a case against appeal.
- it does not need to be assembled into a full prosecution brief for minor enforcement action, however evidence should be sufficient to substantiate the offence.

5.4 Impartiality and procedural fairness

NEWA will undertake enforcement activity against the landholder or affected person in a timely manner that is procedurally fair and impartial. This will assist in minimising opportunities for arbitrary or inexplicable differences between the handling of individual cases, or classes of cases, to occur.

Discrimination (e.g. with regard to ethnicity, religion, age or gender) by authorised officers when undertaking enforcement action is unacceptable.

Decision making about applying enforcement provisions should not be influenced by:

- political advantage or disadvantage to a government or any political party or group.
- the consequences of a decision on the personal or professional circumstances of staff.
- the personal feelings of the decision makers towards the offenders.

5.5 Right of Appeal

Landholders and/or affected persons involved will receive written advice of available statutory rights of appeal when decisions are made by NEWA to apply enforcement provisions.

Reasons for a decision will be documented and included in a statement of reasons as part of any administrative review of the decision.

5.6 Accountable and transparent

To ensure that NEWA is accountable and transparent in the application of enforcement tools the authorised officers will:

- ensure that legislation, enforcement policies, complaints procedures and relevant information are readily accessible to landholders and the public.
- use plain language to communicate with the public and the industry.
- ensure that policies and procedures addressing issues associated with enforcement action are readily available.
- advise of available complaint or appeal processes associated with enforcement action inclusive of timeframes applicable to these processes.
- provide advice on fees and charges that may be applied in discharging enforcement obligations or providing services under the relevant legislation.

In relation to issuing penalty notices, NEWA has adopted guidance from two documents, which can be found on the NSW Justice website at www.justice.nsw.gov.au:

- [Caution Guidelines](#) and;
- [Internal Review Guidelines](#)

5.7 Privacy

The constraints of any privacy legislation and confidentiality provisions when initiating enforcement action against landholders (unless a statutory requirement exists to disclose the information) will be observed.

5.8 Promote consistency of enforcement activity between regulators

NEWA will work with other state and territory jurisdictions to promote consistency in the application of enforcement provisions by regulators. This ensures stakeholders in different local control authority jurisdictions do not receive differential treatment with respect to measuring compliance with legislative obligations.

5.9 The Public Interest

The overriding consideration in taking enforcement action should always be the protection of the community, plant and animal health and safety.

5.10 Application of multiple enforcement tools

A graduated approach to the application of individual enforcement tools does not preclude the simultaneous application of multiple enforcement tools.

There may be circumstances where there are multiple non-compliances detected, each of varying significance. In such circumstances, the use of different enforcement tools may also be warranted.

6. APPEALS TO COUNCILLORS

A Councillor who is contacted by a person affected by an enforcement action should refer the matter to the General Manager for attention.

7. RESPONDING TO COMPLAINTS

Every effort will be made to ensure that complaints lodged with the Authority are dealt with on a priority basis having regard to the relative seriousness of the matter. Response times may vary depending on the staff and other resources available, however, the Authority will acknowledge the complaint and inform the complainant of the outcome.

8. REVIEW AND AMENDMENT

- a) This policy will be reviewed annually, to ensure it meets all statutory requirements and needs of this Authority.
- b) This policy may be amended by the Authority at any time without prior notice or obligation.

9. CONCLUSION

This policy formalises in one document the processes and decision pathway that has proven to be functional and of benefit in the community which this Authority serves.

The basis of its development, adoption and use is that it will clarify the processes used by NEWA for compliance and enforcement purposes for every person associated with weed control issues in the area, for which it is the local control authority, in a positive fashion and act as a reference for the broader community.

Implementation of the policy will play a part in protecting the local economy, the environment and community from the negative impacts associated with weeds, as well as enhancing the social and agricultural sustainability / values of the New England region. The commitment to its review will ensure that it meets contemporary needs and addresses changes in the future.

10. LEGISLATION

NEWA is responsible for administering and/or enforcing the following Acts and Regulations:

- Local Government Act 1993 and Regulations thereunder.
- *Pesticides Act 1989 and Regulations thereunder.*
- *Agricultural and Veterinary Chemicals (New South Wales) Act 1994.*
- *Biosecurity Act 2015 and Regulation thereunder.*

11. OTHER RELATED DOCUMENTS

- NEWA Business Activity Strategic Plan 2017 – 2027
- NEWA 4 Year Delivery Plan 2017 – 2021
- NEWA Annual Operational Plan
- NTLLS Regional Strategic Weed Management Plan 2017 - 2022

12. REVISION HISTORY

Version	Date issued	Notes	By
1.0	01.07.2017	Policy File	General Manager

Review date: 30.06.2018