



Australian Government

Department of Agriculture
and Water Resources

Biosecurity compliance statement

Biosecurity

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Foreword

The *Biosecurity Act 2015* (the Act) commences 16 June 2016 providing a wider range of legislative tools to both reward compliant importers, and to pursue those who choose not to comply. This statement will complement the implementation of the Act by setting out the Department of Agriculture and Water Resources' approach to compliance management.



Lyn O'Connell
Deputy Secretary

The statement outlines the tools and approaches the department uses to manage compliance with biosecurity requirements—one of the department's largest regulatory roles.

The huge volume of work undertaken by the department at the border is only part of Australia's biosecurity risk management system. The department works closely with exporting countries, importers, logistics and travel service providers, as well as entities involved in the entry of international travellers, vessels, and goods.

The majority of those we regulate comply with biosecurity requirements. Some are able to comply consistently using systems and processes that manage biosecurity risk. The department's differential approach to compliance management means that these entities may be rewarded with reduced intervention levels and savings to their businesses.

Some of those we regulate inadvertently fail to comply with Australia's biosecurity requirements. In these cases the department focuses on education and providing guidance, and may increase intervention rates depending on the nature of the non-compliance.

Unfortunately, wherever there are commercial gains to be made a small fraction of regulated entities will choose to break the rules. The department responds to deliberate and serious non-compliance with the full force of the law. People who deliberately contravene Australia's biosecurity regulations can expect a strong response from the department, including criminal prosecution where an offence has occurred.

Introduction

Australia is free from many of the pests, weeds and diseases that negatively impact agricultural productivity and the environment in other parts of the world. The absence of these organisms is partly due to our geographical isolation, and the biosecurity measures we put in place to keep them out.

The Department of Agriculture and Water Resources works across the biosecurity continuum to manage biosecurity risk. This includes working closely with foreign governments, relevant international organisations, and state and territory governments. One of the department's most important roles as a regulator is managing the biosecurity risks associated with the arrival of international travellers, vessels, and goods.

Biosecurity regulation needs to balance potential costs of preventing and managing exotic pests, weeds and diseases entering and establishing in Australia, with the benefits of unimpeded commerce. In achieving this balance, the department recognises that biosecurity risk cannot be completely eliminated. Our stated *Appropriate Level of Protection* is to reduce biosecurity risk to a very low level, but not zero (*s5 Biosecurity Act 2015*).

Maintaining Australia's *Appropriate Level of Protection* is achieved by setting import conditions based on a scientific assessment of biosecurity risks, and ensuring that these conditions are met. In many cases these conditions require that treatments are carried out prior to arrival in Australia—managing the risk offshore provides the highest level of protection, and in these cases departmental interventions at the Australian border are used to verify compliance, rather than manage biosecurity risk directly.

This statement outlines the department's approach to managing compliance with biosecurity conditions, but does not consider the development or review of these conditions.

Our approach to compliance management involves recognising regulated client (client) behaviours and adjusting our compliance posture accordingly. The department applies a range of regulatory tools to manage compliance, from routine inspections and audits through to criminal prosecution.

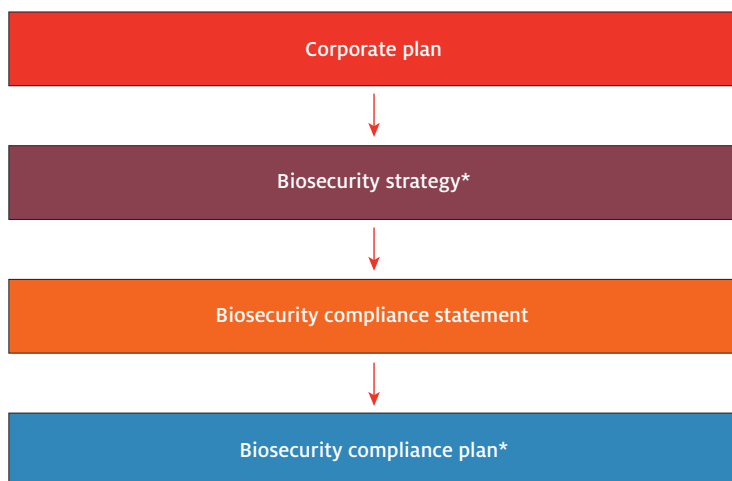
This statement outlines the treatment clients can expect from the department, depending on their level of compliance, and their approach to achieving compliance.

Purpose

This statement helps clients understand the department’s approach to biosecurity compliance management, and specifies how various compliance management tools fit together to drive compliant behaviour.

This statement complements the department’s *Corporate plan*, *Biosecurity strategy* (currently under development), and *Biosecurity compliance plan* which details focus areas for targeted interventions (currently under development). Figure 1 provides an overview of this relationship, and how these documents should be read together.

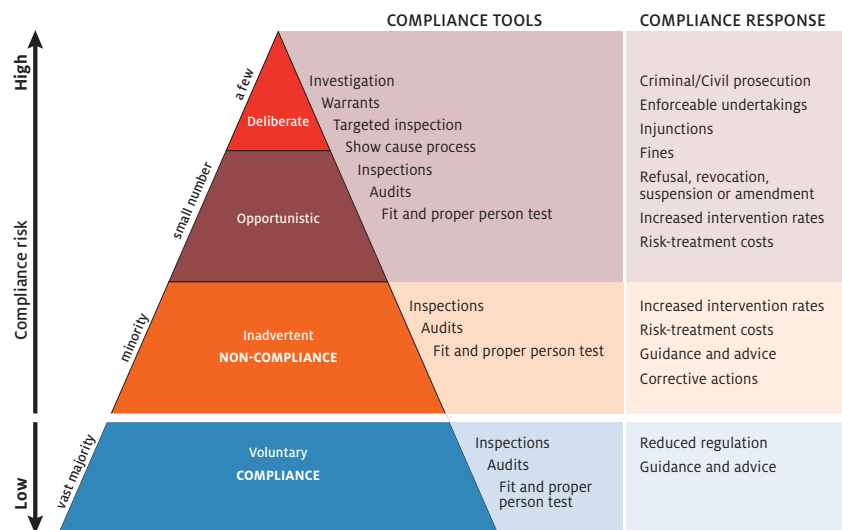
FIGURE 1 Relationship between the Biosecurity Compliance Statement and associated documents. *currently under development.



Biosecurity compliance management model

The department uses a differentiated approach to compliance management. This approach focuses on promoting voluntary compliance, and responding to non-compliance in a way that complements the behaviours of those involved. Figure 2 provides an overview of the department's biosecurity compliance management model.

FIGURE 2 The department's differentiated approach to biosecurity compliance management. Adapted from Ayres and Braithwaite (1992) "Responsive Regulation: Transcending the deregulation debate". New York: Oxford University Press.



Recognising client behaviour

The department's biosecurity compliance model assumes that most clients will comply, or try to comply, with their obligations. For these entities, the department responds by providing clear guidance and advice to facilitate voluntary compliance.

For clients that are able to demonstrate ongoing compliance with biosecurity regulations, the department may enter into compliance arrangements that reward compliance with reduced intervention levels.

Despite having the intention to comply, some clients inadvertently fail to comply because they don't understand Australia's biosecurity requirements. In addition to providing guidance and advice the department may increase monitoring/auditing rates for these entities until a clear pattern of compliance can be established.

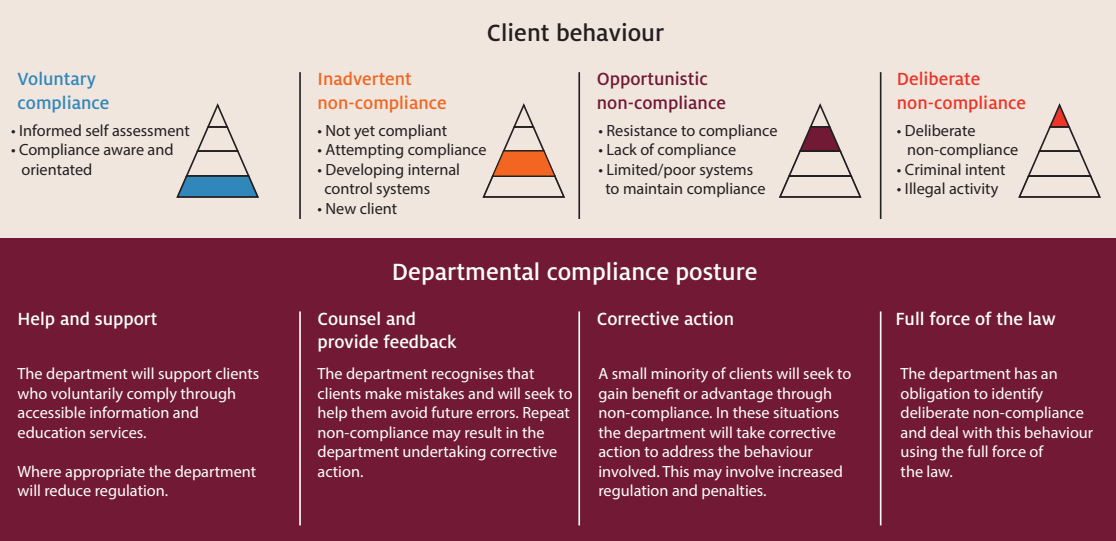
Some clients choose not to comply with Australia's biosecurity conditions when opportunities arise. These entities will see increased monitoring or auditing rates, may be the focus of targeted intervention activities, and may be subject to formal investigation and enforcement actions. The aim of these regulatory responses is to address and deter non-compliance.

A small number of entities choose to deliberately contravene Australia's biosecurity regulations and take steps to avoid regulatory actions. The department responds to deliberate non-compliance with the full force of the law. This includes formal investigation, administrative actions and criminal prosecution. Entities found to have undertaken deliberate non-compliance will also receive ongoing increased levels of monitoring or auditing, as well as targeted interventions.

The department employs a responsive approach to compliance management, where the department's compliance posture is dependent on stakeholder behaviours. Some decisions under the Act are subject to internal and external review.

To facilitate a smooth transition to the biosecurity legislation the department will adopt a specific compliance posture to guide the implementation and operation of the new legislation in its early phase. The approach provides some concessions during a six month transition period from 16 June 2016, allowing time for existing clients to adjust to the new operating environment.

FIGURE 3 The department’s compliance posture is dependent on client behaviours.



Compliance tools and responses

Inspection

The department inspects goods (including cargo, mail and personal effects) and conveyances to verify that biosecurity conditions have been met. The department's decision to inspect particular goods is based on the information declared by the importer or supplier, and the biosecurity conditions detailed in the department's **BICON database**.

Commercially imported goods are generally subject to a documentary assessment prior to inspection, where importers or their agents are required to provide documents such as phytosanitary certificates, import permits, or further declarations about the goods. Consignments that meet all documentary requirements may be released without inspection or treatment. Documentary assessment results are recorded by the department for use in compliance analysis and the development of intelligence products.

The department also reviews the Pre-Arrival Reports provided by the masters of international vessels to determine whether **inspections are required**.

The department undertakes a variety of routine inspections of goods and conveyances, including:

- rural tailgate inspections for sea cargo containers destined for a **rural location**
- inspections of the external surfaces of sea cargo containers and unit load devices used in air cargo transport
- commodity specific inspections for goods such as bulk fertiliser, timber, used machinery, fresh produce, or cut flowers
- inspections of personal effects
- screening of international mail using X-ray and detector dogs
- commercial and non-commercial vessel inspections
- surveillance inspections on wharves and in and around premises approved under an Approved Arrangement.

In addition to routine inspections, the department inspects randomly selected consignments to measure the effectiveness of risk profiles. For example, the department inspects around 6 000 randomly **selected consignments** of commercial sea cargo each year.

For certain commodities, the department may reduce inspection rates where ongoing compliance can be demonstrated. For example, certain plant products eligible for the **Compliance-Based Inspection Scheme**.

Non-compliant goods may be directed for treatment, export or destruction. The department may provide the importer with guidance and advice for future consignments, and these consignments may be subject to increased inspection rates.

Inspection results are recorded by the department for use in compliance analysis and the development of intelligence products.

Audit

The department routinely audits Approved Arrangement holders to ensure that requirements of a particular arrangement are met. The department rewards compliant arrangement holders with reduced audit rates, while those who are non-compliant can expect more frequent audits.

Where non-compliance is detected at audit, the department may direct that corrective actions be undertaken. In more serious cases the department may instigate a *show cause* process, where arrangement holders are given an opportunity to demonstrate compliance prior to the amendment, suspension or revocation of the arrangement.

Audit results are recorded by the department for use in compliance analysis and the development of intelligence products.

Show cause process

In cases where non-compliance is serious enough to warrant the amendment, suspension or revocation of an Approved Arrangement the department will invite the arrangement holder to demonstrate why the arrangement should not be amended, suspended or revoked in writing.

Whilst an Approved Arrangement is subject to a *show cause* process, review audits and other compliance monitoring activities will continue to be conducted.

The results of a *show cause* process include:

- suspension of an arrangement until appropriate measures are implemented or specific conditions are met
- revocation of the arrangement
- refusal to renew the arrangement prior to expiration
- refusal to approve a new arrangement
- allowing the arrangement to continue.

Targeted inspection

The department regularly targets imported goods including mail, cargo (commercial and non-commercial), and international travellers and their personal effects.

Targeting is based on intelligence products, which are produced using a range of information sources, including:

- the results of previous inspections, post quarantine detections, audits or investigations
- information provided by other Australian border, law enforcement, and intelligence agencies through the National Border Targeting Centre
- information provided by the public
- publically available information
- pattern analysis.

Where non-compliance is detected during a targeted inspection, goods may be directed for treatment, export or destruction at the cost of the importer. The department may issue a fine, and future consignments may be subject to increased inspection rates.

Where non-compliance involves an Approved Arrangement holder, the department may increase audit rates, or employ a *show cause* process.

Where non-compliance involves a potential criminal offence, the department may proceed with a criminal investigation.

Fit and proper person test

Under the *Biosecurity Act 2015*, the department will apply a *fit and proper person test* to those seeking to enter into an Approved Arrangement, and may apply the test to those seeking an import permit. The test will consider any matters deemed relevant, and will establish whether persons involved in the arrangement, or their associates, have:

- been convicted of an offence, or subject to a pecuniary penalty under a number of Commonwealth Acts
- a debt payable under a number of Commonwealth Acts
- had a permit application or Approved Arrangement application previously refused
- previously had an Approved Arrangement suspended or revoked.

Failure to pass a *fit and proper person test* may result in refusal of the application.

A *fit and proper person test* may also be applied to those who hold an existing Approved Arrangement, and those found not to be a fit and proper person may have their arrangement varied, suspended, or revoked.

Warrants

Warrants are a common tool in Commonwealth legislation that enable compliance and enforcement activities to be undertaken, including the entry of premises without consent, and the exercising of powers in certain circumstances.

Under the *Biosecurity Act 2015* the department can obtain warrants to support monitoring and investigations, as well as a range of warrants relating:

- to risk assessment
- control orders,
- response and monitoring zones,
- adjacent premises and conveyances,
- premises possession,

intended to manage specific biosecurity risk incidents. To ensure that warrants are only used when appropriate, they are available only to authorised Biosecurity Enforcement Officers, and a range of protections are also provided in the legislation.

Investigation

The department develops intelligence products, and conducts investigations of non-compliant behaviour in accordance with the [Australian Government Investigation Standards, 2011](#).

Under the *Biosecurity Act 2015* the department may seek a Civil Penalty Order from a relevant court where a contravention of a civil penalty provision has occurred. A wide range of provisions in the Act are designated as civil penalty provisions.

Where a criminal offence has occurred, the department may refer a brief of evidence to the Commonwealth Director of Public Prosecutions (CDPP), who has responsibility for prosecuting offences against Australian Government law.

The department favours a referral to the CDPP where any of the following circumstances occur:

- The level of criminality is evident.
- The offence produced real or potential harm to the Australian Government or the community, including harm to biosecurity or the well-being of Australia or Australians.
- The Australian Government or the community would reasonably expect that the offence will be dealt with by prosecution conducted in public before a court.
- The offence is of such a nature or magnitude that is important to deter potential offenders and prosecution is likely to act as an effective deterrent.
- When previous administrative or civil responses to contraventions by the suspect have not prevented non-compliance.

The final decision on whether a prosecution proceeds rests with the CDPP and is made in accordance with the [Prosecution Policy of the Commonwealth](#). In making the decision, the CDPP takes into account the views expressed by the department on the issue.

A person found guilty of committing a criminal offence may receive a criminal record, fine, and/or a custodial penalty.

Additional powers

Under the *Biosecurity Act 2015* the department will have enforcement and compliance powers that were not available under the *Quarantine Act 1908*.

These powers include the approval of Enforceable Undertakings—written agreements between the department and someone who poses a risk of non-compliance with the Act. In the event that a client fails to comply with the obligations of an Enforceable Undertaking, the department may choose to commence a civil prosecution.

The Act also provides for the use of Injunctions, which are issued by a relevant court, and compel a person to undertake a particular action, or to refrain from carrying out a particular action.

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The 'Biosphere' Graphic Element

The biosphere is a key part of the department's visual identity. Individual biospheres are used to visually describe the diverse nature of the work we do as a department, in Australia and internationally.



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