

Title of Policy	SMRC [Biosecurity (Weeds) Enforcement Policy]		
Responsible Department	Environmental Management	Document Register ID	250.2019.514.1
Policy Owner	Biosecurity Manager	Review Date	Date 21 March 2022
Date of Council Meeting	Date Approved 21 March 2019	Resolution Number	Number 115/19
Legislation, Australian Standards, Code of Practice	Biosecurity Act 2015 Biosecurity Regulation 2017		
Aim	The aim of this policy is to: <ul style="list-style-type: none"> • provide transparency and consistency on how Council will make decisions on enforcement action with respect to Biosecurity legislation; • guide decision making and action by Council staff in the use of enforcement options; • ensure that regulatory powers are carried out without bias; • use regulatory tools in such a way as to best achieve Council’s strategic and operational objectives. 		

1 Purpose

This policy sets out the guiding principles that Snowy Monaro Regional Council (Council) will apply when conducting regulatory and enforcement activities and includes an approach that is:

- a) graduated and proportionate
- b) supported by sound legislative framework
- c) impartial and procedurally fair
- d) accountable and transparent
- e) consistent in terms of the enforcement response between officers
- f) in the public interest
- g) allows for application of multiple enforcement tools under appropriate circumstances.

2 Scope

Council has an obligation under the *Biosecurity Act 2015* (the Act) to ensure the prevention, elimination, minimisation and management of the biosecurity risk posed or likely to be posed by weeds. Council seeks voluntary compliance where possible and maintains an active education and extension program to meet this objective. Where breaches are identified, the Act provides a number

of formal compliance tools to enable Council to fulfill its obligations under the Act and to meet the expectations of the community that it serves. These may include the:

- Issue of written or verbal warnings,
- Issue of Penalty Infringement Notices
- Issue of Individual Biosecurity Directions,
- Acceptance of Biosecurity Undertakings
- Prosecution

In alignment with the principles of the NSW Invasive Species Plan 2018-2021 Council adopts a risk-based approach to its enforcement activities and invests resources accordingly, based on the level of risk posed by a weed incursion. The risk assessment process is guided by the NSW DPI Risk Management Framework, which in turn guides the continued development and implementation of the South East Regional Strategic Weed Management Plan 2017-2022 and the Snowy Monaro Region Local Weed Management Plan 2017-2022.

This policy recognises that most land managers wish to comply with the law and maintain their land in a sustainable manner, whereby weeds are not impacting on their lifestyle, neighbours or the broader community. The compliance and enforcement objective of Council is to protect the economy, environment and community from a the adverse impact of priority weeds.

Breaches of the NSW *Biosecurity Act 2015* may attract penalties of up to \$1,100,000 apply for an individual and \$2,200,000 for a corporation. The range of offences under the Act and Regulations vary greatly in their seriousness. Accordingly, a variety of penalties and enforcement options are available to assist Council in reaching its compliance objectives. This policy describes the options that are available to Council and provides details of the matters that will be considered in their application toward achieving the objects of the *Biosecurity Act 2015*.

3 Enforcement Activities

Snowy Monaro Regional Council conducts the following enforcement activities in response to non-compliance:

- investigation of suspected breaches of the Act
- seize, detain, treat or destroy anything in accordance with the Act
- identifying measures to compel compliance without resorting to formal court action, such as warning letters, directions, undertakings, penalty notices or a combination of these
- instigate remedial works whereby Council staff and/or contractors enter and control Biosecurity Matter (weeds)
- use force to enter a property whereby access is obstructed by a locked gate
- prosecution with a view to conviction in a court of competent jurisdiction where court-imposed penalties may include fines, imprisonment, forfeiture of assets and goods, good behaviour bonds, prohibition orders and community service orders.

4 Enforcement Principles

4.1 A graduated and proportionate response

Snowy Monaro Regional Council 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.

The compliance and enforcement options available to Authorised Officers include:

- verbal advice;
- warning letters;
- the issuing of a Penalty Infringement Notice;
- issuance of an Individual Biosecurity Direction that requires, prohibits, regulates or controls (absolutely or conditionally) the doing of anything by the person to whom the biosecurity direction is given;
- acceptance of a written undertaking (a "**biosecurity undertaking**") given by a person if the person has contravened or the authorised officer suspects that the person has contravened or is likely to contravene a requirement imposed by or under the Act.
- entering or authorising any person to enter premises and take any action on those premises that the person subject to a biosecurity direction or undertaking, is required to take by the direction or undertaking, or that are otherwise necessary to remedy that failure;
- examination, seizure, removal, disposal or destruction of biosecurity matter;
- use of force to enter premises;

4.2 Decision Making Criteria

Snowy Monaro Regional Council will select an enforcement response that is proportionate to the identified non-compliance and capable of providing sufficient incentive to a person to amend the non-compliant behaviour.

Should the circumstances surrounding an offence be considered sufficiently serious, Council may elect to employ multiple enforcement tools at the same time.

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

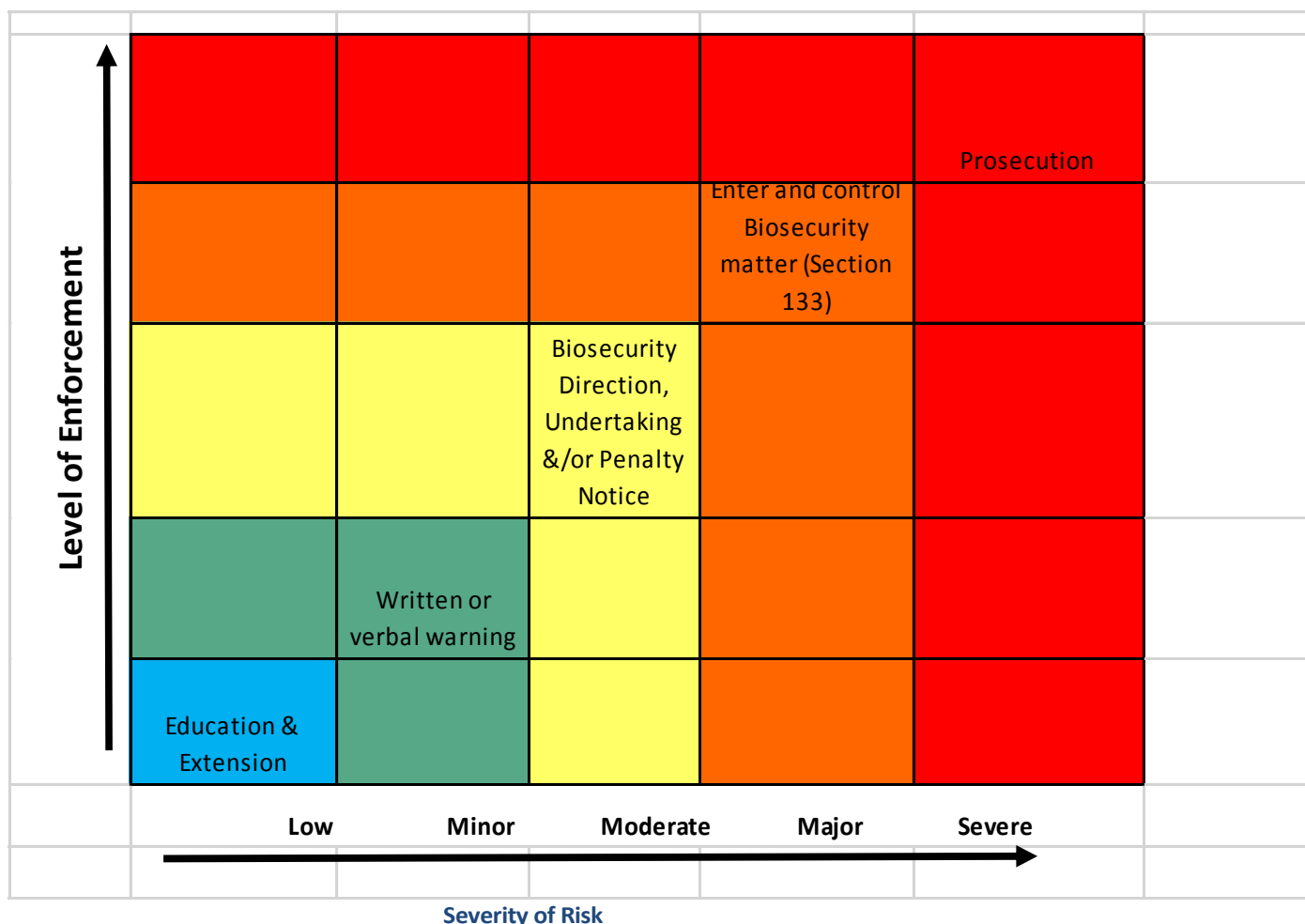
Council will consider the following factors when making decisions concerning the choice of enforcement tool:

- circumstances of the alleged offence and the individual circumstances of the offender;
- the biosecurity risk concerned;
- the degree of biosecurity impact that arises, or might arise, from the biosecurity risk;
- what the person concerned knows, or ought reasonably to know, about the biosecurity risk and the ways of preventing, eliminating or minimising the risk;

- the availability and suitability of ways to prevent, eliminate or minimise the biosecurity risk;
- the cost associated with available ways of preventing, eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.
- compliance history of the offender, in general and with respect to the specific incident
- cooperation 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 following diagram illustrates the graduated nature of enforcement responses in unity with the seriousness of the non-compliance.

Figure 1. Enforcement response



4.2.1 The 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.

4.3 Authorised by law

Authorised officers are required to act within their legal remit of statutory power when undertaking enforcement activity. Officers are to ensure that all appropriate authorisations, delegations and training requirements are in place before performing enforcement activities.

4.4 Impartiality and procedural fairness

Snowy Monaro Regional Council will undertake enforcement activity against a 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, or
- the personal feelings of the decision makers towards offenders.

Persons involved will receive written advice of available statutory rights of appeal when decisions are made by Council to apply enforcement provisions.

Reasons for a decision will be documented and included with any information (eg inspection report) provided to the offender. Ancillary notes are recorded in Council's electronic records management system to assist any administrative review of the decision.

4.5 Accountability and transparency

To ensure that Council is accountable and transparent in the application of enforcement tools it will ensure that:

- all policies and procedures remain current in light of any legislation changes
- all policies and procedures are communicated to, and understood by authorised officers
- legislation, enforcement policies, complaints procedures, appeal processes and relevant information are readily accessible to the community
- plain language is used to communicate with the community
- advice on fees and charges that may be applied in discharging enforcement obligations or providing services under the relevant legislation are readily available

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

1. [Caution Guidelines](#) and;
2. [Internal Review Guidelines](#)

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

4.6 The public interest

The overriding consideration in taking enforcement action should always be the protection of the region's social, economic and environmental values.

5 Conclusion

On a daily basis, Snowy Monaro Regional Council investigates compliance issues and applies enforcement tools. This policy provides general guidance on how Snowy Monaro Regional Council will undertake enforcement action under the *Biosecurity Act 2015*.

It does not limit the discretion of Snowy Monaro Regional Council to take enforcement action.

6 Related Procedures

7 Legislation

Snowy Monaro Regional Council is responsible for administering and enforcing the following Acts and Regulations in relation Biosecurity matter:

- The *Biosecurity Act 2015 (weeds only)*
- *The Biosecurity Regulation 2017*

8 Other Related Documents

Snowy Monaro Regional Council: Enforcement Policy

SMRC Biosecurity (Weeds) Enforcement Procedure

South East Regional Strategic Weed Management Plan 2017 - 2022

Snowy Monaro Region Local Weed Management Plan 2017-2022

Entry and Control of Biosecurity Matter

Use of force for entry to a property

Variation

Council reserves the right to review, vary or revoke this policy and should be reviewed periodically to ensure it is relevant and appropriate.