

Our ref: CTS 30780/19



Queensland
Government

Department of
Agriculture and Fisheries

Mr Terry Martin SC
Inquiry Chair
Queensland Racing Integrity Commission
PO Box 15666
CITY EAST QLD 4002

Dear Mr Martin

Thank you for your letter dated 22 November 2019 inviting Biosecurity Queensland to make a submission to the *Inquiry into animal cruelty in the management of retired racehorses in Queensland*. Biosecurity Queensland, a part of the Department of Agriculture and Fisheries (DAF), welcomes the opportunity to assist the Inquiry.

Queensland's current animal welfare laws include the *Animal Care and Protection Act 2001* (the Act) and the *Animal Care and Protection Regulation 2012*.

The Act and Regulation promote the responsible care of animals and provide standards for the care and use of animals that achieve a reasonable balance between the welfare of animals, the interests of persons whose livelihood is dependent upon animals and community expectation.

The Act imposes a duty of care obligation on persons in charge of animals, prohibits and regulates certain conduct, regulates certain surgical procedures and provides for the registration of certain users of animals for scientific purposes and compliance with the scientific use code.

The Regulation details the standards for the care and use of different animal species in Queensland.

The current (voluntary) Codes of Practice for the Welfare of Animals are being replaced over time by (mandatory) Australian Animal Welfare Standards and Guidelines (Standards). These Standards are developed nationally with extensive consultation with a wide range of groups such as animal industries, animal welfare organisations, governments, universities and specialist organisations such as the Australian Veterinary Association. National standards, adopted as mandatory codes under the Act, are already in place for domestic fowl, pigs and the transport of livestock including horses. Standards for cattle, sheep and livestock at saleyards have been finalised and are about to be adopted as mandatory codes of practice under the Act. It should be noted that draft Standards for livestock at processing establishments are still being developed through the national standards and guidelines process.

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Biosecurity Queensland is the lead agency for the administration of the Act and Regulation and works in partnership with RSPCA Queensland Inc. to provide animal welfare services. There is a formal agreement between the two parties which covers areas of jurisdiction, the transfer and assistance policies for animal welfare complaints, training, appointment requirements, accountability and reporting mechanisms.

Under the agreement, Biosecurity Queensland has primary responsibility for enforcement of the Act in relation to animals used in commercial livestock production (i.e. where the keeping of such livestock is a significant or primary business of the person or organisation involved), feral animals, exhibited animals and animals used for scientific purposes.

Biosecurity Queensland and RSPCA Queensland Inc. work collaboratively with the Queensland Racing Integrity Commission in relation to welfare issues involving racing animals.

The primary focus of Biosecurity Queensland's animal welfare compliance strategy is ensuring the welfare needs of animals are met. A mix of regulatory and non-regulatory tools are used to promote animal welfare, including education about welfare needs and the responsibilities of those who deal with animals.

All allegations of animal welfare breaches received by Biosecurity Queensland are reviewed. At an operational level, inspectors have some discretion about their response. Inspectors generally take an educational approach in the first instance and escalate the response if this is unsuccessful. For example, inspectors may:

- issue a warning letter
- issue an animal welfare direction
- obtain evidence for a prosecution
- seize animals

If a person in charge of an animal continues to fail to meet their duty of care and the animal welfare situation does not improve, further action, including the commencement of prosecution, is undertaken.

In your letter, you advised the Inquiry wishes to determine the extent to which Biosecurity Queensland has a robust animal welfare management framework in place and requested further information in relation to some specific points. The following information is provided in relation to these points.

A copy of Biosecurity Queensland's animal welfare strategy/strategic plan or equivalent

Biosecurity Queensland contributes to the Department's strategic planning process. DAF's 2019 – 2023 strategic plan¹ sets out the Department's vision and priorities for the next four years. The plan outlines how DAF contributes to the Queensland Government's *Our Future State: Advancing Queensland's Priorities* and assisting the Minister delivering on the government's commitment to agricultural industry development.

Animal Biosecurity & Welfare is the business unit responsible for animal welfare on behalf of Biosecurity Queensland. The Animal Biosecurity & Welfare Business Plan 2019 – 2022 (Attachment 1) outlines how the unit's work aligns with the Department's strategic plan and contributes to the Biosecurity Queensland Business Plan.

Flowing from the business plan, the policy work areas and the operational team within the Animal Biosecurity & Welfare unit develop annual activity plans which outline their priorities and deliverables for the next 12 months. This includes animal welfare activities.

Any implementation/progress or performance report that evidences the implementation of that strategy/strategic plan

Animal Biosecurity & Welfare has an established reporting mechanism conducted on a quarterly basis where work areas provide an update on their annual priorities and deliverables. Examples of these reports can be provided to the Inquiry for further examination upon request.

Details of the triage process used to assess, assign and finalise animal welfare complaints

Following the registration of an animal welfare complaint, the complaint undergoes an initial assessment process by a senior inspector. This includes:

- Is the complaint within the scope of the Act?
- Is the complaint in relation to a matter/ issue, which occurred within the legal boundaries of Queensland?
- Determine who has jurisdictional responsibility for the complaint (subject to the terms of the service agreement between Biosecurity Queensland and RSPCA Qld Inc.)
- Based on the information provided, assign a priority of critical, major, secondary or minor to the complaint (N.B. the priorities are related to response times to alleviate the pain and suffering of the animal).

The complaint is then assigned to an inspector who then determines an appropriate response to the animal welfare complaint based upon the initial assessment and the circumstances. The response needs to be proportional to the situation.

If the circumstances change or additional information becomes known, the response may change. In all cases, the first priority is to ensure that the immediate welfare needs of the animal are met.

Inspectors have a range of regulatory tools available to them when determining a response. Biosecurity Queensland has developed several documents to assist staff in their regulatory

role. The first is the Compliance Strategy August 2016 (Attachment 2) which outlines the approach to regulatory compliance and the range of activities to ensure the effective administration of legislation, including the *Animal Care and Protection Act 2001*. The second document is the Compliance and Enforcement Guidelines August 2016 (Attachment 3) which assists staff in the determination of the most appropriate outcome following investigations into alleged breaches of relevant legislation.

From a compliance point of view, better outcomes are usually achieved where inspectors educate and inform the person in charge of the animal about welfare requirements before the situation deteriorates to the point where the person commits an offence.

Generally, once an offence has been committed, the animal has already suffered. The compliance approach considers this and provides the tools to avoid this where possible.

While all complaints are assessed, the majority of complaints lead to either no further action being required, the conduct of educational or awareness activities or ongoing monitoring of compliance. Some complaints may require further regulatory actions to support positive welfare outcomes.

The procedures for complaint management are outlined in sub-section C2 of The *Animal Care and Protection Act 2001* – Operational Procedures and Guidelines April 2015 for further information (Attachment 4).

Any documented process or standard for the issuing of Animal Welfare Directions

Section 159 of the Act defines an animal welfare direction as a written direction requiring stated action about the animal or its environment. Failure to comply with an animal welfare direction is an offence under the Act (Maximum penalty: 100 penalty units or 1 year's imprisonment).

Animal welfare directions are one regulatory tool used by inspectors and can result in the timely resolution of significant animal welfare issues.

In general, an animal welfare direction should be reasonable, realistic, specific, understandable and attainable.

Before an inspector issues an animal welfare direction, they must consider the following factors:

- Is the direction both necessary and reasonable for the welfare of the animal?
- Can the matter be handled by education or negotiation?
- Is the matter serious enough to require a direction?
- What is the intention and/or ability of the person to comply with the direction?
- The need to build in reasonable timeframes to achieve compliance with requirements.
- The obligation of the inspector to check compliance with all directions issued.
- The resource implications for the agency if the direction is not complied with?
- The cost implications to the individual in complying with the direction

The procedures for issuing an animal welfare direction are outlined in clause 4.8.1 of the *Animal Care and Protection Act 2001* – Operational Procedures and Guidelines April 2015. (Attachment 4).

Detail of the Key Performance Indicators that the Biosecurity Management Team monitor to ensure the quality of animal welfare management processes, including inspections and investigations

Within Biosecurity Queensland, the role and responsibilities of an Animal Biosecurity & Welfare inspector is diverse as they are appointed under both the *Animal Care and Protection Act 2001* and the *Biosecurity Act 2014*. Though some of the inspector powers are similar, the nature of the two Acts are very different.

As previously discussed, the Animal Biosecurity & Welfare business unit reports on a quarterly basis about its performance.

With respect to animal welfare responsibilities, the following measures are monitored and reported on:

- Animal welfare complaints received per zone (Queensland is divided into four zones: Central, North, South and South East)
- Animal welfare investigations conducted per zone
- Total time recorded by inspectors in relation to animal welfare complaints, animal welfare investigations and other duties

Besides the quarterly reporting, there is an ongoing process of monitoring the quality of the management of animal welfare complaints by senior inspectorate staff at the local level.

The number of animal welfare complaints received by Biosecurity Queensland in 2018/ 2019, a breakdown of their outcome including the number of successful prosecutions

During the 2018/ 2019 financial year, Biosecurity Queensland received a total of 2818 animal welfare complaints. Of these, 2818 complaints were assessed and/or investigated and 2428 of the complaints were closed out with 390 remaining open as ongoing cases.

There was one prosecution by Biosecurity Queensland during this period. The matter was not in relation to the transport of horses or a horsemeat processing facility.

Whether complainants are provided with feedback on the outcome of complaints?

Biosecurity Queensland's policy is to provide feedback to complainants only when requested. In certain cases, inspectors may choose to provide direct feedback to a complainant to increase the efficiency of administering the Act.

Due to privacy restrictions, feedback provided may include the following:

- That the complaint has been investigated on a given date.
- Whether an animal welfare problem was identified but not the nature of the problem.
- Whether the problem is being or has been addressed, but not how it is being addressed

Refer to sub-section B12 of the Animal Care and Protection Act 2001 – Operational Procedures and Guidelines April 2015 for further information (Attachment 4).

What expertise, experience and approved training are required before an individual can be appointed as an inspector under Section 114(2) of the ACPA?

Before an individual can be considered for appointment as an inspector, they must meet the requirements outlined in section 114(2) of the Act.

This includes:

- Successfully completing the online Animal Care and Protection Act training package. The training package consists of the following modules:
 - Module 1 – Introduction
 - Module 2 – Concepts and Structure of the ACPA
 - Module 3 – Animal Welfare Codes and the law
 - Module 4 – Making an entry under the ACPA
 - Module 5 – Using the Procedural Guidelines
 - Module 6 – Assessment

Trainees need to demonstrate a good understanding of the Act and the processes being used. A number of senior inspectorate staff are responsible for conducting the assessment process, which is scenario based.

- Following completion of the training package, the applicant is required to complete an application for appointment as an inspector under the Act. The applicant's supervisor or operations / program manager or director must endorse the application. Another business unit reviews the application and an instrument of appointment drafted for approval by the chief executive or their delegate. An identity card detailing their appointment is then issued to the inspector.

If the Inquiry requires any further clarification regarding this submission or information in relation to the regulatory and oversight arrangements for the operation of abattoirs and other facilities accepting horses for slaughter and the management of retired Thoroughbred and Standardbred racehorses, please contact me as soon as possible.

Yours sincerely



Malcolm Letts

Deputy Director-General and Chief Biosecurity Officer

Enc (4)

3/12/19.

¹ <https://www.publications.qld.gov.au/dataset/strategic-plan-department-of-agriculture-and-fisheries/resource/8ef395a4-0304-4cae-9755-e5061b8510c4>

DAF VISION | A productive and profitable agriculture, fisheries and forestry sector, on a sustainable basis.

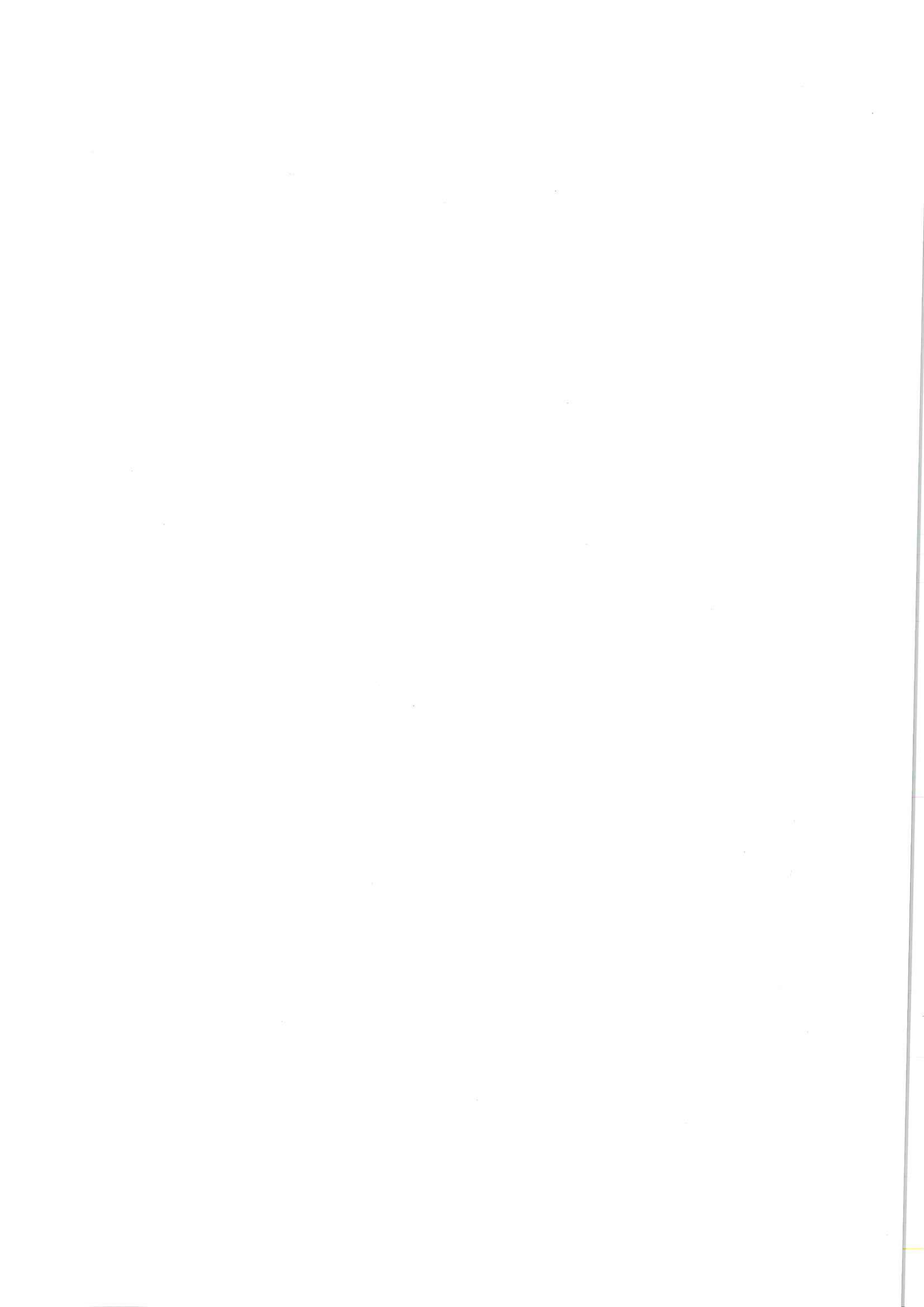
DAF PURPOSE | Promote a sustainable and innovative agriculture, fisheries and forestry sector, develop rural businesses and add value to communities and the economy.

ANIMAL BIOSECURITY AND WELFARE BUSINESS PLAN 2019-2022

<p>Our role</p> <p>Biosecurity Queensland mitigates the risks and impacts of animal and plant pests and diseases and weeds to the economy, the environment, social amenity and human health. Biosecurity Queensland also upholds standards for animal welfare and agricultural chemical use. Biosecurity Queensland works closely with national and local governments, industry bodies, producers and the community to maintain a strong biosecurity system.</p> <p>Animal Biosecurity and Welfare’s focus is on:</p> <ul style="list-style-type: none"> • animal pests and disease risk mitigation • biosecurity diagnostics and other laboratory and product services • animal welfare and management • biosecurity incident responses, due to restricted matter, prohibited matter or emergent incidents. <p>Animal Biosecurity and Welfare aligns with the following DAF objectives and underlying strategies and outcomes.</p> <p>Objective 1. Innovative – Work with industry to create the conditions to drive innovation, productivity and jobs.</p> <ul style="list-style-type: none"> • Strategy: Inspire talent, investment and ideas to drive industry development • Outcomes: <ul style="list-style-type: none"> ◦ Increased exports and job opportunities from businesses entering new and high-value markets <p>Objective 2. Responsive – Build capacity of agribusinesses and communities to meet sector challenges</p> <ul style="list-style-type: none"> • Strategy: Anticipate and respond to the emerging needs of our environment, economy and people • Outcome: <ul style="list-style-type: none"> ◦ Increased industry and community participation in biosecurity prevention and response ◦ Greater consumer and market confidence in the quality and supply of Queensland’s agricultural products ◦ Easier business transactions with the department <p>Objective 3. Sustainable – Promote responsible use of natural resources to underpin productivity, environmental sustainability and healthy lifestyles</p> <ul style="list-style-type: none"> • Strategy: Support agricultural, fishing and forestry industries to be sustainable and responsible • Outcome: <ul style="list-style-type: none"> ◦ Increased transparency and traceability across the supply chain 	<p>FTE allocation</p> <p>144.59</p> <hr/> <p>2019-2020 budget allocation</p> <p>\$25,594,519 (\$18,057,853 base funding)</p>
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BQ impact area	Animal Biosecurity and Welfare impact pathway	Section responsibility	Objective alignment
Strategy and policy frameworks (External)	<p>Strategic policy</p> <ul style="list-style-type: none"> Influence the management of terrestrial and aquatic animal biosecurity, animal welfare, ethics and management by providing national, state and local decision makers with strategic information and advice. <p>Collaborative governance</p> <ul style="list-style-type: none"> Build joint risk-based decision-making capacity with key partners to achieve ownership of sustainable biosecurity solutions. Invest financial, material and human resources in biosecurity activities commensurate with risk. <p>Stakeholder engagement and partnerships</p> <ul style="list-style-type: none"> Coordinate and deliver education and awareness programs and engagement services to Queensland animal industries, research teaching organisations, advocacy groups and communities to build trust and awareness of animal welfare, management and ethics and shared biosecurity responsibilities and obligations to mitigate the adverse effects of animal pests and disease on the economy, human health, social amenity, the environment and community. Engage at all levels and demonstrate influence through relevant committees and forums. <p>Prioritisation and preparedness</p> <ul style="list-style-type: none"> Prioritise and prepare for emergency animal biosecurity and welfare threats to Queensland's animal industries using a robust risk-based approach, which considers economic, human health, social and environmental impacts. Develop and maintain capacity and capability to respond to emerging pests and disease, welfare and natural disaster incidents across Queensland. <p>Prevention</p> <ul style="list-style-type: none"> Provide systems, programs and initiatives for all Queenslanders to prevent the introduction of pests and disease to protect market access, industry profitability, human health, social amenity, the environment and community. For example, swill feeding prevention activities. 	GM; Director	2
Stakeholder capability building (External)	<ul style="list-style-type: none"> Coordinate and deliver education and awareness programs and engagement services to Queensland animal industries, research teaching organisations, advocacy groups and communities to build trust and awareness of animal welfare, management and ethics and shared biosecurity responsibilities and obligations to mitigate the adverse effects of animal pests and disease on the economy, human health, social amenity, the environment and community. Engage at all levels and demonstrate influence through relevant committees and forums. 	GM; Director	2
Prevention and preparedness (External)	<ul style="list-style-type: none"> Prioritise and prepare for emergency animal biosecurity and welfare threats to Queensland's animal industries using a robust risk-based approach, which considers economic, human health, social and environmental impacts. Develop and maintain capacity and capability to respond to emerging pests and disease, welfare and natural disaster incidents across Queensland. <p>Prevention</p> <ul style="list-style-type: none"> Provide systems, programs and initiatives for all Queenslanders to prevent the introduction of pests and disease to protect market access, industry profitability, human health, social amenity, the environment and community. For example, swill feeding prevention activities. 	All ABW	2
Surveillance (External)	<p>Surveillance</p> <ul style="list-style-type: none"> Provide surveillance systems, programs and initiatives for all Queenslanders for early detection of pests and diseases to protect market access, industry profitability, human health, social amenity, the environment and community. For example, horizon scanning and fore-sighting, active and passive disease surveillance programs and disease investigations. <p>Animal pest and disease scientific services</p> <ul style="list-style-type: none"> Deliver animal health diagnostic services and RD&E for priority biosecurity threats to facilitate for effective surveillance of pests and diseases, protection of animal and human health and market access for Queensland's animal industries. 	Director; Manager Operations; Manager OCVO	2
Incident / incursion response (External)	<p>Biosecurity incident response</p> <ul style="list-style-type: none"> Deliver incident responses in collaboration with government, industry and community stakeholders to minimise the impacts of significant animal pests and diseases in Queensland. Respond to emerging pests and disease, welfare and natural disaster incidents across Queensland. <p>Animal pest and disease scientific services</p> <ul style="list-style-type: none"> Deliver animal health diagnostic services for priority biosecurity threats to facilitate effective response to pests and disease, protection of animal and human health and market access for Queensland's animal industries. 	Manager BSL	2 & 3
Established pests and diseases (External)	<p>Control and containment</p> <ul style="list-style-type: none"> Develop pest and disease control and containment systems and tools with partners to exclude or limit the spread of established animal pests and disease in order to protect market access, industry profitability, human health, social amenity, the environment and community. <p>Tick fever control</p> <ul style="list-style-type: none"> Provide the products and services necessary for the control of tick fever to contribute to the sustained productive capacity of Queensland's cattle industry. 	All ABW	2
Market access (External)	<p>Traceability, certification, licensing and assurance systems</p> <ul style="list-style-type: none"> Provide Queensland's animal industries with solutions to gain and/or retain entry for animals and their products to international and domestic markets with relevant restrictions to facilitate trade and expand market access and success. Apply industry integrity and assurance systems. For example, property of origin certification, RBE, NLIS, cattle tick accredited certifiers. 	Manager BSL	1 & 2
Care and use of animals (External)	<p>Animal welfare and management</p> <ul style="list-style-type: none"> Deliver a framework that provides appropriate animal welfare and management outcomes to protect and manage animals in Queensland in line with industry and community expectations. Support the animal welfare and management framework through adoption of agreed national/state standards and guidelines, delivery of Government commitments and implementation of legislative processes. 	Director; Manager Operations	2
		Manager TFC	1 & 2
		Director; Manager OCVO; Manager Operations	2 & 3
		Director; Manager Policy (AW); Manager Operations	2 & 3

<p>An effective biosecurity system for Queensland (Internal)</p>	<p>Biosecurity system leadership</p> <ul style="list-style-type: none"> Establish a clear strategic direction, operational biosecurity and animal welfare and management policy and legislative framework that delivers on Queensland government priorities and aligns with and influences national frameworks in order to maximise return on investment across the biosecurity and animal welfare system and provide a clear operating environment. 	<p>GM</p>	<p>2</p>
<p>High quality and accountable business services (Internal)</p>	<p>Business performance</p> <ul style="list-style-type: none"> Coordinated business planning, reporting, monitoring and evaluation, administration, stakeholder engagement and financial management of Animal Biosecurity & Welfare in order to improve business performance and increase stakeholder confidence. 	<p>GM; Director; Manager Policy (AV); Manager Policy (AB); Manager OCVO; Manager Operations; Manager BSL; Manager TFC</p>	<p>2</p>



Compliance Strategy

Biosecurity Queensland

August 2016

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Introduction

The purpose of this strategy is to outline Biosecurity Queensland's approach to regulatory compliance and the range of activities that ensure the effective administration of biosecurity legislation.

In undertaking regulatory compliance, Biosecurity Queensland seeks to:

- coordinate the government's efforts to prevent, respond to, and recover from pests and diseases that threaten the economy and environment,
- work to ensure continued market access for our products,
- maintain our reputation for high standards of animal care and keeping,
- reduce the risks that chemical contaminants pose to agricultural food production systems and the environment; and
- help to ensure Queensland land and the environment is healthy and resilient.

The Biosecurity Queensland Compliance Strategy supports 'Biosecurity Queensland 2020: Transforming the way we work' by:

- articulating roles and responsibilities in managing biosecurity risks,
- developing the capability to deliver flexible, responsive and proportionate regulation; and
- identifying priority areas and ensuring effective risk-based prioritisation and management processes for regulatory compliance.

Our Legislation

Biosecurity Queensland administers the following Acts, associated regulations and statutory instruments:

- *Agricultural and Veterinary Chemicals (Queensland) Act 1994*
- *Agricultural and Veterinary Chemical (Administration) Act 1992 (Cwth)*
- *Agricultural Chemical Distribution Control Act 1966*
- *Animal Care and Protection Act 2001*
- *Animal Management (Cats and Dogs) Act 2008*
- *Biological Control Act 1987*
- *Biosecurity Act 2014*
- *Brands Act 1915*
- *Chemical Usage (Agricultural and Veterinary) Control Act 1988*
- *Drugs Misuse Act 1986 (Part 5B only)*
- *Nature Conservation Act 1992, *Nature Conservation (Administration) Regulation 2006*, *Nature Conservation (Wildlife Management) Regulation 2006**
- *Veterinary Surgeons Act 1936*

Guiding Principles

The following principles are adopted by Biosecurity Queensland to guide compliance activities.

Responsiveness

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 will be proportionate to the level of risk, potential impact and seriousness of any activity. More serious offences and higher risk activities will attract a more formal response and proportional enforcement.

Accountability

We will be accountable for our actions and decisions and be able to satisfy judicial and public scrutiny.

Consistency

Compliance activities and responses will be undertaken consistently across locations. We aim to ensure that incidents of a similar nature result in a similar enforcement response and that clients of Biosecurity Queensland receive consistent advice and service.

Targeting

Resources and activity will be directed to priority areas that pose the greatest risk to industry, the community, the environment and animal welfare.

Transparency

Information will be provided to enable the community to understand;

- Biosecurity Queensland's expectations and legislative requirements,
- how Biosecurity Queensland operates,
- the potential impact of biosecurity risks to the community,
- the consequences of non-compliance,
- the rights of individual's affected by decisions or enforcement action and how they may review or appeal those decisions.

Legal Correctness

Biosecurity Queensland's activities will be undertaken in a manner consistent with the principles of procedural fairness and in line with the Queensland Government's Model Litigant Principles.

Impartiality and 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 ethnicity, personal relationships with staff, or position or status within a community.

Efficiency and Effectiveness

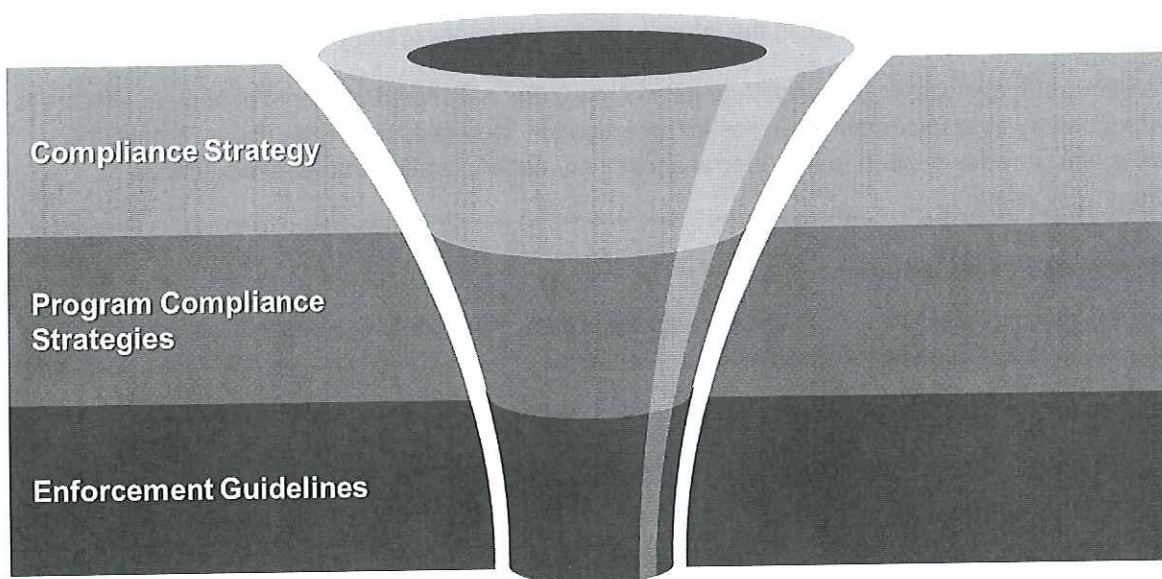
Biosecurity Queensland aims to be an efficient and effective regulator by protecting Queensland's economy, community and environment whilst minimising unnecessary regulatory burdens.

Achieving Compliance

Overview

Biosecurity Queensland takes a holistic approach toward achieving high levels of compliance. The promotion of voluntary compliance through education and awareness is a fundamental base of Biosecurity Queensland's approach to regulation. The proactive use of education, monitoring and auditing activities is further supported by effective program compliance strategies and proportionate enforcement activities.

Biosecurity Queensland Compliance Framework



Program Compliance Strategies

Each Biosecurity Queensland program has a Program Compliance Strategy which details current priority issues relevant to particular industries and provides appropriate compliance responses for their management.

All cases for compliance activity will be assessed in accordance with the specific response strategy identified in the Program Compliance Strategy.

Education and Awareness

The dissemination of information to assist the community and industry in achieving compliance will occur direct to the individual and is delivered through electronic, media and face-to-face means.

Proactive Monitoring

Biosecurity Queensland conducts a number of scheduled activities to monitor compliance with legislation, including audits of statutory approvals and programs monitoring specific industry activities. These are proactive steps to monitor compliance levels and prevent risks being realised or aggravated through continued non-compliance.

Enforcement Response

Assessment and Selection

All reported incidents of non-compliance with legislation will undergo assessment to determine the level of risk the incident presents (present and future) and the severity of the non-compliant activity.

Biosecurity Queensland's response to non-compliance aims to:

- control the potential or actual biosecurity risks or ensure improvements to animal welfare,
- identify any non-compliance with legislation and, if so, identify the responsible parties,
- gather information and evidence that will support enforcement decision making (and be admissible in criminal or administrative proceedings),
- support current program and industry priorities,
- deter future and similar non-compliance; and
- improve public confidence in the integrity of the regulatory system.

In certain circumstances, Biosecurity Queensland may refer suspected incidents of non-compliance to other regulatory or enforcement agencies for investigation. During such investigations, Biosecurity Queensland provides support to the referral agency on matters relating to the administration of biosecurity legislation.

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 ('Warning Letter')
- issuing a Statutory Notice or Direction (seeking a commitment for future compliance)
- seeking a Court Order
- prosecution (serious non-compliance or strategic)
- taking No Further Action (including an 'Advisory Letter')
- cancellation or Suspension of Licences, Permits or other approvals.

All enforcement action undertaken by Biosecurity Queensland will be in accordance with the relevant Program Compliance Strategy and guided by the Biosecurity Queensland Compliance and Enforcement Guidelines.

Investigations and Enforcement

It is not possible for Biosecurity Queensland to investigate every reported instance of non-compliance with our legislation. The effective and efficient allocation of resources means that priorities must be clearly identified.

A tiered response model is adopted to manage incidents and direct investigation effort that considers the:

- varying levels of seriousness of the non-compliance,
- addresses issues of risk related directly or indirectly to non-compliant behaviour,
- need to ensure the efficient allocation of resources; and
- range of enforcement options available to deal with non-compliance.

Review

Review involves the analysis and re-evaluation of all actions taken in dealing with reported non-compliance to ensure that:

- assessment categories are relevant and effectively applied,
- inquiry standards are appropriate and applied consistently,
- enforcement action is consistent with the Compliance and Enforcement Guidelines,
- emerging trends or indicators of serious non-compliance are identified appropriately reflected in program strategies,
- legislation is current, relevant and contributes to Biosecurity Queensland's effectiveness; and
- a high level of overall performance is maintained.

The review process also serves to identify training needs, planning processes and improving policies and procedures.

Communication

Media

Biosecurity Queensland recognises the value of publicising its compliance activity to the community to improve awareness of legislation, deter non-compliance and to reinforce our commitment to administering biosecurity legislation.

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
- 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 or speculate on investigation outcomes.

Persons under Investigation

A person of interest in an investigation shall be provided reasonable information as to the progress of the investigation, once they become aware that they are the subject of inquiries. The information provided must not however compromise the ongoing nature of open investigations, or any decision-making processes.

At the conclusion of an investigation, all persons of interest who were advised that they were the subject of inquiries will be advised of the outcome in writing.

Approved By

Signature

Date

Jim Thompson
Chief Biosecurity Officer
Biosecurity Queensland

Enquiries:

Manager, Statutory Compliance and
Investigations

Biosecurity Queensland

Compliance and Enforcement Guidelines

Biosecurity Queensland

August 2016

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Introduction and Scope

These Guidelines are designed to assist Biosecurity Queensland staff determine the most appropriate outcome following investigations into alleged breaches of biosecurity legislation.

This guide advocates a risk-based approach to compliance and enforcement activities through the adoption of a graduated and proportionate response to legislative non-compliance. In addition, as a customer focused organization, Biosecurity Queensland seeks a cooperative and collaborative approach with industry and one that does not place unnecessary impost on stakeholders.

The decision to undertake enforcement action should not be taken lightly and must involve a multi-tiered decision-making framework, with input from experienced staff.

The decision maker must, before making the decision, ensure that:

- All necessary enquiries and investigation has been completed; and
- they have received all available relevant information relating to the incident.

These guidelines are to be applied to all legislation administered by Biosecurity Queensland.

General Approach

Overview

When deciding the appropriate enforcement response to an incident, Biosecurity Queensland staff must act lawfully, ethically and adopt the Guiding Principles outlined in the *Biosecurity Queensland Compliance Strategy*. Decisions must be impartial and evidence based without bias, political advantage or discrimination.

Use of Discretion

Whilst the need for flexibility in decision-making is recognised, the use of discretion must be appropriately managed to ensure all decisions are defensible, transparent and consistent. These guidelines incorporate the ability for the decision-maker to exercise discretion to ensure that the enforcement outcome is appropriate to the circumstances under consideration.

In addition, the decision-maker must consider the below factors in determining an appropriate outcome;

- The Queensland Public Service Code of Conduct and *Public Sector Ethics Act 1994*,
- The *Biosecurity Queensland Risk Based Decision Making Model*,
- program compliance strategies, guidelines and standard operating procedures (SOP's),
- statutory requirements in relation to the legislation being administered or enforced,
- the circumstance of any incident and facts supporting the use of discretion; and
- the Queensland Government recordkeeping standards (including Information Standard 40 and the *Public Records Act 2002*).

In the event that a matter requires deviation from the application of these guidelines, the decision (including the grounds for which) should be clearly and comprehensively recorded in the appropriate program format (i.e. memorandum/file note) and under approval of the program General Manager.

Case Assessment and Selection

Not all complaints warrant investigation. The case assessment process allows Biosecurity Queensland programs to categorise, prioritise and select issues that directly relate to its' role. This process is based on the principles of risk management; and assessments are made after considering the non-compliant behaviour in conjunction with the likely consequences of that behaviour impacting upon respective markets and industries.

The case assessment process does not replace the discretion of the assessment officer, it is provided as guidance to assist in deciding a case's risk categorisation and subsequent level of response. Every Biosecurity Queensland compliance response should be coordinated in proportion to the risk and severity of the incident under consideration; and in accordance with the respective program compliance strategy.

If Biosecurity Queensland has made a decision not to accept a complaint or issue for compliance action, the following information is to be recorded in memorandum/case note format on the complaint file:

- The reason the matter was declined (outline the assessment process),
- details of the officer making the decision; and
- any action resulting from that decision, e.g. 'Matter closed' or 'Referred to another agency'.

The *Compliance Response Model* is provided in Appendix A to assist staff through the critical phases of an operational compliance response.

Leniency

Enforcement action is ultimately determined on a case-by-case basis and leniency may be considered for a person of interest who:

- Voluntarily provides the investigation with valuable information relevant to the offence that was unlikely to have been discovered without their assistance; and
- demonstrates that they took prompt and effective mitigating action to prevent the continuation of the offence or minimise its potential impact; and
- cooperated fully with the investigation; and
- has not previously been subject to enforcement action for similar offences.

Leniency is less likely to be considered for a person of interest who is identified as having directed or coerced other parties to commit the offence, or is identified as the 'controller' or 'originator' of the activity that lead to the offence.

Consideration of Biosecurity and Animal Welfare Risks

It is important for the decision-maker to identify what action is required to manage any relevant biosecurity and animal welfare risks and issues separate to identifying the appropriate enforcement response. The use of a statutory notice or direction may be appropriate for both decisions but the decision-maker should also consider whether additional enforcement responses (e.g. prosecution, warning) may also be appropriate to ensure the alleged offence is adequately dealt with and the person of interest appreciates the seriousness of the offence and consequences of any future offences.

Selecting the Appropriate Person of Interest

Level of Culpability

The decision-maker should consider the range of enforcement responses available in relation to all parties to the offence. This includes identifying the 'principal offender' as well as those who assisted or aided the commission of the offence or benefited from the offence, including any corporate entities. More serious enforcement responses should be directed towards those persons of interest who are directly responsible for the offence and those who were in a position of authority that enabled them to control or prevent the offence.

Corporate Entities & Employees

Legislation often contains provisions making corporate entities and their executive officers liable for offences committed on their behalf by their agents and employees. Biosecurity Queensland will consider the culpability of any executive officers or employees of the company and take appropriate enforcement action in relation to their involvement.

Key factors to be considered in this decision are:

- The level of involvement of the individual in relation to decision-making, or directions provided that resulted in the offence being committed,
- the level of authority and influence the individual possesses in the corporate entity,

- the opportunity for the individual to prevent the offence, including whether the individual negligently or wilfully ignored activities that lead or contributed to the offence and exercised 'due diligence' in their role.

Generally, Biosecurity Queensland will use less severe enforcement responses (e.g. warnings) for employees of offenders where evidence exists that the employee was acting under some level of compulsion. More serious action will be considered if the circumstances indicate it to be appropriate.

Circumstances to be considered in this instance can include:

- The nature of the offence indicates that the individual should have understood or known that the activity was illegal,
- the seriousness of the offence,
- the role and responsibilities of the individual in the organisation including their level of authority and influence,
- the degree to which they were provided with and followed relevant information, training, supervision and instruction; and
- any preventative or other mitigating action by the individual to prevent the continuation of the offence or minimise its' potential impact.

Juvenile Persons

The *Youth Justice Act 1992* establishes the basis for administering juvenile justice and includes special considerations that apply to a juvenile person of interest. The *Youth Justice Act 1992* provides alternative restorative justice outcomes which may be a more appropriate enforcement response. Refer to the Biosecurity Queensland Investigations Unit for advice on dealing with juvenile persons of interest.

Selecting the Appropriate Enforcement Response

Overview

The enforcement action employed in response to an incident will be decided at the conclusion of the investigation, when all evidence is available for the decision-maker to consider.

When an individual or entity fails to comply with legislation, Biosecurity Queensland will consider a range of graduated enforcement options (the enforcement response) including:

- Issuing a warning (written),
- issuing a statutory notice or direction,
- seeking a court order,
- prosecution,
- cancellation or suspension of licences, permits or other approvals,
- taking no further action (including an advisory letter).

In the course of determining the appropriate response to instances of reported non-compliance, two key tests must be applied by the decision-maker, the sufficiency of evidence test and the public interest test.

More than one option (e.g. prosecution and statutory notice) may be used with a single person of interest. Different options may be used for separate persons of interest involved in the same incident, based on the specific circumstances of each individual and their level of culpability.

Sufficiency of Evidence Test

An assessment of the sufficiency of evidence test should satisfy the decision-maker on whether they possess a **reasonable belief** that an offence has been committed in that:

- A prima facie case exists to demonstrate that all elements of the offence can be proven with available and reliable evidence; and
- all possible exemptions, exceptions and defences have been negated or discounted.

Public Interest Test

The public interest test involves the assessment of the following factors:

- The seriousness of the alleged offence,
- any mitigating or aggravating circumstances,
- the age, intelligence, physical health, mental health or special infirmity of the alleged offender/witness,
- the alleged offender's background (in relation to relevant compliance activity) and the degree of culpability of the alleged offender in connection with the offence,
- the length of time elapsed since the alleged offence,
- the obsolescence or obscurity of the law,
- whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;
- the availability and efficacy of any alternatives to prosecution,

- the prevalence of the alleged offence and the need for deterrence (including the likely deterrent value of the prosecution),
- whether the consequences of any resulting conviction would be unduly harsh and oppressive,
- whether the alleged offence is of considerable public/environmental concern,
- any entitlement of the department or other person/body to compensation, reparation or forfeiture if prosecution action is taken,
- whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so,
- the necessity to maintain public confidence in Biosecurity Queensland,
- the potential financial benefit the alleged offender stands to make from the illegal activity.

Advisory Letter and No Further Action

No further action will be taken where:

- Insufficient evidence exists to prove all elements of the suspected offence, or
- the impact and potential risk of the offence is considered low, or
- the matter is not cost-effective to pursue further,
- the examination of the 'public interest' test indicates no further action should be taken, or
- another agency has taken action and issues of duplicity arise if Biosecurity Queensland takes further action, or
- legislation is not applicable in the circumstances or a valid statutory exemption, exception or defence exists.

Confirmation to a person of interest, in the form of an advisory letter that no further action will be taken, should be taken as an opportunity to ensure the person of interest understands their obligations and responsibilities under the relevant legislation.

Approval level: *Manager Operations, Principal Biosecurity Officer.*

Warning Letter

The purpose of a 'warning' is to ensure the person of interest is aware of the non-compliance and potential ramifications of their actions and to prevent a reoccurrence.

Warnings must be issued in writing to ensure an accurate record of the action exists.

A warning may be issued where:

- The 'sufficiency of evidence' test has been satisfied; and
- the subject offence is relatively minor and
- the offence has been discontinued.

The person of interest has

- Not previously been subject to enforcement action for a similar offence; or
- previously been warned for a similar offence but cooperated fully with this investigation.

Although not a legislated sanction, a warning is issued on a discretionary basis following a determination that a person or entity has committed a breach of biosecurity legislation. This will often encompass acts and omissions that result in a low level of risk, may be regarded as technical in nature or not deemed to be in the public interest. In addition, a warning may be issued for a more

serious offence where the offence has been detected or proven but statutory limitations prevent the commencement of proceedings.

The decision to issue a warning is an administrative decision that includes legislative interpretation and may be subject to formal review and appeal processes. It is for this reason that all warnings must be able to be supported by available evidence that has been obtained in accordance with the provisions of the legislation. A warning will only be issued where evidence has been gathered following a sufficient investigation; and where all standards of proof have been met and all available defences negated.

Approval level: *Manager Investigations, Principal Investigations Officer.*

Statutory Notices or Directions

A number of the Acts administered by Biosecurity Queensland allow for a variety of notices, directions or other orders to be served. A statutory notice or direction may be issued where:

- The relevant legislation presents this as an option and all statutory conditions have been satisfied, and
- it is reasonable to use the statutory notice or direction in order to ensure the
- person of interest achieves compliance or rectifies an issue related to the offence within a specified time period.

Statutory notices or directions aim to rectify or prevent the impact of the incident and are likely to be used in conjunction with other enforcement responses such as prosecution or warnings.

Approval level: *Subject to the relevant Instrument of Appointment or Instrument of Delegation, any officer appointed under the relevant Act with the required authority to issue the notice may issue the notice. The decision to limit enforcement action to a statutory notice resides with the General Manager of the respective Biosecurity Queensland program.*

Cancellation or Suspension of Statutory Approvals

Biosecurity Queensland issues and administers a range of statutory licences, permits, accreditations and other approvals. The cancellation or suspension of such approvals may be appropriate where the offence relates to the breach of a condition of that approval, or is otherwise related to the scope of the approval.

An approval may be **suspended** if:

- The relevant legislation presents this as an option; and
- all statutory conditions have been satisfied including providing the approval holder 'natural justice' prior to making the decision; and
- the sufficiency of evidence test for the relevant offence has been satisfied in relation to the approval holder; and
- the subject incident involves a failure by the person of interest to maintain systems or processes to ensure compliance with the approval; and
- it is reasonable to allow the approval holder a period of time to rectify that issue, whilst ensuring no further activity occurs until the issue is being rectified.

An approval may be **cancelled** if:

- The relevant legislation presents this as an option; and
- all statutory conditions have been satisfied including providing the approval holder 'natural justice' prior to making the decision; and

- the sufficiency of evidence test has been satisfied; and
- the nature of the offence and level of culpability of the person of interest indicates that the approval holder is unsuitable to retain that approval, or unable or unwilling to develop or maintain systems to ensure compliance with the conditions of the approval.

Approval level: *In accordance with the relevant statutory delegation.*

Prosecution

In addition to the considerations outlined in this guideline, the decision to commence a prosecution will be in accordance with the *DAF Prosecution Policy*.

Approval level: *Principal Legal Officer, In-house Legal (on endorsement of the Manager Investigations or delegate).*

Court Orders

An application for a court order may be made where:

- The relevant legislation presents this as an option, and
- the nature of the offence involves issues that require a resolution that can be achieved via a court order.

If a statutory notice or direction is available to remedy the offence, that option will normally be utilised as a more efficient enforcement response to achieve a similar outcome. A court order will normally be sought in conjunction with prosecution proceedings.

Approval level: *Principal Legal Officer, In-house Legal (on endorsement of the program General Manager).*

Application for Investigation/Legal Costs

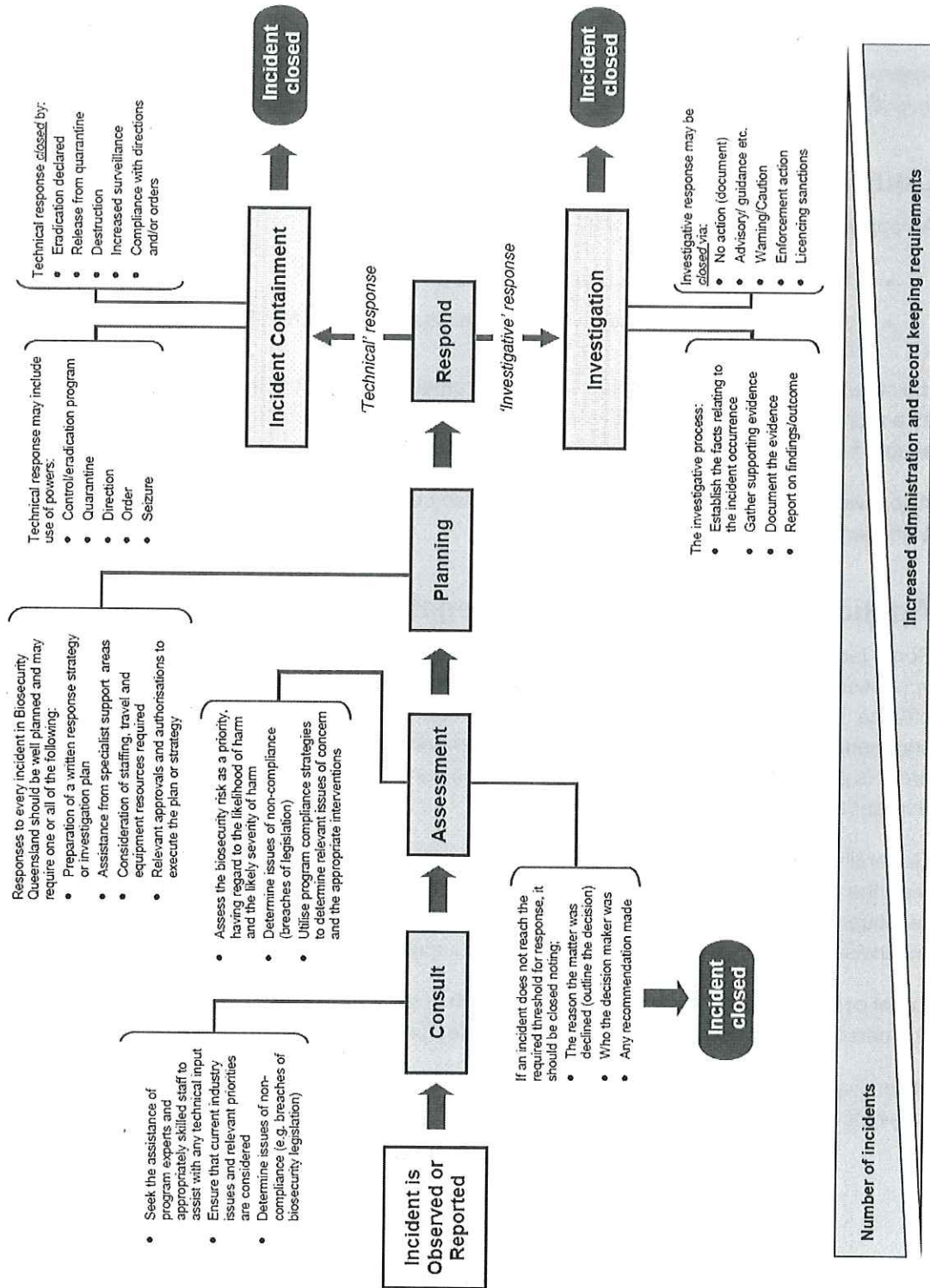
Some legislation administered by Biosecurity Queensland allows for an application for costs incurred in relation to an investigation, court proceeding or in relation to damages caused as a result of the offence. The recovery of such costs will not be used as grounds on which a prosecution is commenced. However, if a prosecution is commenced and an application to the court for a costs order is permitted by statute, Biosecurity Queensland will consider seeking such costs where appropriate.

Generally, costs will not be sought if the court proceeding is finalised with an 'early plea of guilty' other than the cost of registering a complaint and summons with the court. Investigation costs will generally be sought if the investigation was prolonged due to actions or inactions of the defendant or is otherwise complex, or if the court proceeding is contested.

Legal costs will generally be sought where such costs were incurred as a result of delays caused by the person of interest or in the event of contested proceedings.

Approval level: *Manager Investigations or delegate in consultation with the General Manager of the relevant Biosecurity Queensland program.*

Appendix A Compliance Response Model



Approved By

Signature

Date

Jim Thompson

Chief Biosecurity Officer

Biosecurity Queensland

Enquiries:

Manager, Statutory Compliance and
Investigations

Biosecurity Queensland

