

Draft Submission - Statutory Review of the Biosecurity Act 2015

FEBRUARY 2023

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.



OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs more than **55,000 people**



Local government in NSW looks after more than **\$136 billion of community assets**



Local government in NSW spends more than **\$1.9 billion each year on caring for the environment, including recycling and waste management, stormwater management and preserving and protecting native flora and fauna**



NSW has 450 council-run libraries that attract more than **34.8 million visits each year**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



NSW councils manage an estimated **3.5 million tonnes of waste each year**



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to provide comment on the *Discussion Paper: Statutory Review of Biosecurity Act 2015*. The Biosecurity Act 2015 (the Act) provides a framework for the prevention, elimination, and minimisation of biosecurity risks, and a key objective is to promote biosecurity as a shared responsibility between government, industry, and communities.

LGNSW consulted with staff in councils and other local government organisations that perform the role of Local Control Authority (LCA) in relation to weeds. We have used the term LCA in the submission to reflect this.

This submission is provided as a draft, pending endorsement by the LGNSW Board. We will advise of any amendments to the submission in due course.

Background

Section 406 of the Biosecurity Act 2015 requires a statutory review of the Act as soon as possible after a period of five years from its commencement. A report is to be tabled in Parliament by 30 June 2023.

The purpose of this review is to determine whether the following policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Local governments' role with respect to the Biosecurity Act include:

- fulfilling its general biosecurity duty and other regulatory requirements as a land manager, and
- as a local control authority (LCA) for weeds.

Response

The introduction of the Biosecurity Act in 2015 brought together 14 separate pieces of legislation and introduced an outcomes-focused framework for the management of invasive pests, weeds and diseases. New tools and increases in fines were viewed by LCAs as helpful in encouraging compliance. However, this has been overshadowed by the complexity of the Act and its supporting documents which are cumbersome and difficult for the average person in the community and authorised officers to navigate and understand what is required of them.

A more transparent Act is required, which would enable LCAs to readily undertake compliance and enforcement activities with confidence and enable community members to readily understand their role and responsibilities.

Of greatest concern to LCAs as they implement the Act is resolving outcomes-focused concepts like 'shared responsibility' and 'reasonably practicable' with the task of (prescriptively) directing individuals to fulfil their general biosecurity duty and enforce compliance with the Act. This delicate tight rope walk is one which LCAs seek greater support from the legislation and from government agencies on.

LGNSW has collated LCA views on the questions posed in the discussion paper (in blue) below.

Biosecurity Duties

There are several biosecurity duties imposed under the Act, which include:

- A duty to take action when dealing with biosecurity matter or carriers
- A requirement to notify a prohibited matter event
- A requirement to prevent, eliminate or minimise a risk posed by prohibited matter
- A duty to notify a suspected or existing biosecurity event.

The Act also outlines that anyone who deals with a biosecurity matter has a general biosecurity duty, to be aware of the risks posed by pests, diseases, weeds, and contaminants in their surroundings and take action to prevent their introduction and spread.

QUESTION– Comment is sought on whether industry and the community understand what is meant by the general biosecurity duty and what it means for them to have a responsibility to uphold their general biosecurity duty?

The view of Local Control Authority (LCA) staff that we consulted is that the General Biosecurity Duty (GBD) concept is not well understood by the general public and even some weed professionals. Those responsible for enforcing the legislation can find it difficult to know how to apply it fairly and effectively, particularly in residential contexts. It is challenging to quickly yet effectively communicate the concept of GBD.

There is also a lack of clarity on what constitutes *biosecurity risk* in various contexts. The Act has been in place for almost eight years (and in force for five) and there seems to have been minimal advertisements (TV or other) that explains GBD to the general public.

Recommendation 1: That DPI provide more consistent and direct information in relation to the Act that outlines how individuals can discharge their General Biosecurity Duty.

Even when the GBD concept is grasped, the practical application of the GBD on ground is problematic, particularly for LCAs when undertaking compliance and enforcement. There is lack of clarity around what constitutes effective and “reasonably practicable” management by a landholder.

The term ‘reasonably practicable’ has resulted in a wide range of reasons that individuals provide to argue why they cannot or do not have to comply with their GBD. These include:

- the cost of undertaking control work verses productivity/income – as per s16(e) of the Act.
- the constant change in seasonal conditions
- labour/contractor shortage
- chemical shortage, availability or cost
- illness/poor health
- organic or alternate farmer – seeking to use not yet substantiated methods, or there is no data to show effective control work.
- risk of off-target damage
- conflict with other legislation eg Biodiversity Conservation Act, Local Land Services Act
- accessibility.

In addition, the definition of *biosecurity impact* in section 13 of the Act is vague and subjective. Is there a way to qualify what is an adverse effect on the community?

Recommendation 2: That the following terms in the Biosecurity Act be modified as follows:

- ‘reasonably practicable’ be replaced, or at least defined with more prescriptive terminology so that it is clear to everyone what is required.

- 'biosecurity impact' be more clearly defined e.g. What is considered an impact on amenity, health, or infrastructure?

The previous legislation (Noxious Weeds Act) was more prescriptive and much clearer with regards to roles and responsibilities, and what was required by landholders on the ground. From an LCA perspective interpreting the meaning of GBD into Act compliance has been difficult despite the development of advisory material and guidance provided by Regional Strategic Weed Management Plans (RSWMP). Additional State-led guidance is needed to support LCAs in their regulatory function as well as to provide greater understanding and confidence for stakeholders as to how they can discharge their GBD.

There is a strong need in the community for a pathway to resolve neighbour to neighbour weed complaints. Council officers are often caught in the middle of these, and the Act provides little framework or guidance other than the conceptual and subjective GBD. The Act could be clearer on its position relating to these incidents. i.e., it either unequivocally steers away from dealing with this sort of dispute, or whole-heartedly embraces it and provides a framework for dealing with it.

Consideration should be given to whether the Act could be strengthened, for example by mandating the RSWMPs. Under current arrangements regional priority weeds are managed under the GBD principle. Whilst RSWMP provides guidance on how these weeds should be controlled so stakeholders can meet their GBD obligations, these recommendations hold no legal status because the Act provides that the person with the GBD is considered best placed to decide what is reasonably practical to manage the biosecurity risk. As a result, RSWMPs often use the term "should" when outlining priorities and actions.

From a LCA's perspective this makes compliance difficult. Mandating RSWMPs would strengthen the LCA's compliance ability by providing direct guidance as to what is Best Practice Management (BPM) for that weed and what "must" be undertaken to ensure both reasonable and practical weed management outcomes.

Recommendation 3: That DPI consider and consult on the mandating of Regional Strategic Weed Management Plans.

QUESTION – Comment is sought from stakeholders if they understand the purpose of the Biosecurity Regulation 2017 and if they know how to use the Biosecurity Regulation 2017 to find relevant information for their industry?

Local control authority staff are generally across the purpose of the Regulation and how to use it, however there are LCAs where due to limited resourcing (particularly lack of time) this knowledge could be improved through access to training.

For staff who are regularly using the Regulation one of the biggest concerns is that the Regulation is incomplete and it therefore falls short in properly supporting the implementation of the Act. Specifically, section 132 of the Biosecurity Act provides that an authorised officer who gives an Individual Biosecurity Direction may charge the person to whom it is given a fee for preparing the direction. The fee charged is to be an amount provided for by or calculated in accordance with the Regulations. However, Schedule 5 of the Biosecurity Regulation 2017 does not include a figure relevant to Section 132 of the Act. As a result, no fee can be charged for preparing the direction as it is not specified anywhere in the Regulation.

We note that both section 132 (biosecurity direction) and section 142 (undertakings) refer to Part 20 of the Act which provides for the recovery of recoverable amounts via cost recovery orders. However, the cost recovery method needs a fee (in the Regulation) to reference.

In addition, s132(3(a)) indicates the fee is payable to the Secretary. Section 321 of the Act provides that the power conferred on the Secretary to make a cost recovery order under Part 20 may be exercised by a delegate of the Secretary, It is not clear whether the costs recovered are still to be paid to the Secretary or are also conferred to the Secretary's delegate.

These disconnects between the Act and the Regulation must be addressed for the legislation to operate effectively and enable its objectives to be met.

Recommendation 4: That DPI update Schedule 5 of the Biosecurity Regulation to include figures for all fees and charges.

An additional issue that LCAs have raised is that the Biosecurity Act provides for a direction to be served to the person (landholder) rather than the land (as was the case with the previous Noxious Weeds Act). Under the previous legislation, new owners were notified that there was a notice on the property following a sale / transfer.

LCAs are finding it difficult to successfully issue biosecurity directions for weeds to a person. One reason is that it is more difficult to track down an individual if they move or sell the property, and even more difficult to get them to take action on a property they are selling. If the property is sold a direction must be issued to the new owners and this can cause extensive delays. New owners need to be given a reasonable amount of time to complete the work (so as to be 'reasonably practicable'), keeping in mind the new owner may not have known they were inheriting the biosecurity problem.

There is also a concern as to whether it is 'reasonably practicable' to issue a direction, for example to a vendor to control weeds on land which they no longer own or have access to. If the LCA is aware of the sale/transfer date they could issue a direction with a timeframe to match, but that may not be considered 'reasonably practicable' depending on the timeframe, season etc.

If the direction is linked to the property then the direction or undertaking stays with the land parcel and there is a greater likelihood of the LCA (usually council) to follow up and have any fees or fines recovered.

Recommendation 5: That the Biosecurity Act be amended so that biosecurity directions and undertakings for weed-related matters are recorded against the land.

QUESTION – Comment is sought from stakeholders if they understand the purpose of the Biosecurity Order (Permitted Activities) 2019 and if it clearly outlines requirements for their industry?

QUESTION – Comment is sought from stakeholders if they understand how the obligations under the Biosecurity Order (Permitted Activities) 2019 interacts with the Act and the Regulation for their industry?

There is generally good knowledge of the Biosecurity Order (Permitted Activities) 2019 amongst LCA staff although staff in some LCAs have noted they would welcome further training.

In relation to the content of the Order, there is concern that it is not fit for purpose when it comes to priority weeds. For example, Division 5 of the Order sets out the conditions for importing equipment from Queensland to prevent Parthenium weed spread. As required by the Order, grain harvesters and comb trailers are diligently checked at the border through

the border inspection program. However, support vehicles such as utilities, field bins and trucks are not subject to checks.

The latest records of Parthenium infestations show that no infestations have resulted from headers but instead have come from grain and hay distributed into NSW particularly during the 2016-2019 drought. This shows that the settings within the Order, particularly with regard to Parthenium, require review to reflect what is occurring on-ground.

LCAs have also noted that South Australia and Western Australia require cross-border movements of grain and fodder (for example) to be traceable and permitted. Given the spread of Parthenium into NSW we have already experienced, the introduction of checks such as these for high-risk pathways in NSW is warranted.

Recommendation 6: That the Biosecurity Order (Permitted Activities) 2019 be revised, particularly with regard to Parthenium weed, to reflect and address known pathways for weed spread.

Management tools and powers

QUESTION – Comment is sought if industry and the community are aware of the range of management, compliance, and operational tools available to NSW DPI to manage biosecurity risks?

There are nine key management tools for biosecurity risk available to NSW DPI under the Act including prohibited matter, emergency orders, control orders, biosecurity zones, mandatory measures, certification and auditing. In addition, compliance and enforcement tools can be used in conjunction, including authorised officer powers, biosecurity directions and undertakings and permits.

Councils and LCAs are aware of the tools available under the biosecurity framework. However, the complexity of the framework and staff turnover means continuing education and training is required, particularly with regard to delivering biosecurity directions.

There are a large number of tools in the biosecurity framework, which can be quite confusing for those who regularly use it let alone for members of the community to grapple with. A smaller list of tools would be beneficial in terms of administration and education. In addition, a clearer and concise explanation of the management, compliance and operational tools available and what they mean – for both LCAs and the community – would assist everyone to understand the framework and enable a more consistent approach to biosecurity weed identification and control.

Control orders have duration of 5 years, with the intent being that orders be used for biosecurity matters that can be eradicated in that timeframe. However, no eradications have yet occurred. We understand that consideration is currently being given to listing Chinese Violet even though it has been a weed of concern for over 20 years. Examples such as this, where the evidence would not seem to warrant the action or tool applied, are of concern to LCAs.

Further to the above, the Act does not specify the duration of biosecurity zones declarations nor provide for their review. This is an oversight that LCAs recommend be addressed in the Act review.

Recommendation 7: That DPI review the range of management, compliance and operational tools, their duration and review mechanisms, with the aim of streamlining the biosecurity framework. In particular, the Act should provide timeframes for and review provisions for biosecurity zones.

A tool which LCAs have identified they would like to see added is for the Act to contain provisions by which prospective purchasers of land can apply to their LCA for an inspection. This would be similar to a building inspection or a strata management check, to inform prospective buyers of their current or potential liabilities when it comes to weed management on ground. The inspection would apply to State-listed priority weeds only as defined under Prohibited Matter, Control Order and Biosecurity zone listings.

Recommendation 8: That the Act be amended to add provisions for LCAs to undertake pre-purchase weed inspections for State-listed priority weeds, and that the Regulations specify a relevant fee.

Undertakings

Section 142 of the Act provides that an authorised officer may accept written biosecurity undertakings from persons instead of giving the person a biosecurity direction. In practice, undertakings are often being written by DPI or LCAs for the person to review and then formally submitted back to DPI/LCA.

There are concerns with local government that if the landowner prepares an undertaking that is sub-par, after how many attempts does an LCA conclude that the landowner has been given sufficient opportunity to submit a suitable undertaking? Who decides if the undertaking is 'reasonably practicable'?

Recommendation 9: That the Act provisions relating to undertakings (s142) be reviewed to clarify the process.

Act Objectives

Shared responsibility

QUESTION – Comment is sought on whether the Act does enough to support the concept of shared responsibility between government, industry, and communities?

Biosecurity as a shared responsibility is a fundamental principle of the Act and policies, however the term 'shared responsibility' is only used once - in section 3 (Objects of the Act).

Shared responsibility is inferred through the concept of General Biosecurity Duty (GBD), but as highlighted earlier there is limited understanding of GBD amongst users and in the community. In short, by 'sharing' responsibility and therefore not outlining roles and responsibilities, the result is confusion and gaps in practice. Section 371 of the Act outlines the functions of an LCA, however this is high-level, leaving room for interpretation. Consideration should also be given to defining industry and community responsibilities, so as to give a complete picture for all users of the Act.

Recommendation 10: That the Act articulate roles and responsibilities (and how they are shared) and that this be supported by more detailed communications material and training.

QUESTION – Comment is if industry and the community understand the concept of shared responsibility and where their individual responsibilities lie?

Councils and LCAs understand the *concept* of shared responsibility however there is less comfort in understanding how this works in practice e.g. when dealing with biosecurity risk associated with common wide-spread pest species.

As already noted, there is confusion in the community as to where responsibilities lie and who does what. This results in individual interpretation of the legislation, making the LCAs' task of implementing and enforcing the legislation difficult. Information provided by local government is often overlooked or disregarded by land managers, and therefore information explaining the concept of shared responsibility needs to come directly from the NSW Government (DPI) and also be written into the Act to make it clearer.

Recommendation 11: That the Act and Regulation provide more detail on how 'shared responsibility' is to be implemented.

Timely and effective management of biosecurity threats and risks

QUESTION – Comment is sought on whether the Act provides an appropriate framework for the timely and effective management of biosecurity threats and risks?

The Act provides a good framework for high level threats and risks but is not as effective for low-risk situations. For example, a wide-spread weed species may pose a low biosecurity risk to NSW, however it may be having a significant impact upon an individual. How does the Act envisage LCAs would apply risk-based decision-making in these situations? If the dealer refuses to discharge their GBD, it is a high-risk strategy for an LCA to take them to court.

The timely and effective management of biosecurity threats and risks is ultimately dependent on suitably qualified and trained biosecurity officers, excellent communications materials and an active program of inspections. There is also a currently untapped resource in terms of citizen scientists (the eyes and ears in our community), who could assist with reporting anything unusual in their area.

As with all management frameworks they need to be reviewed periodically to retain relevance and ensure they continue to deliver timely and effective management to biosecurity risks and threats. Ongoing support post emergency response is also critical in ensuring recovery from the biosecurity impact.

Risk-based decision making

QUESTION – Comment is sought on whether the Act provides an effective framework which enables risk-based decision-making in relation to biosecurity?

The biosecurity framework (which includes the Act) provides for risk-based decision making through the Regional Strategic Weed Management Plans (RSWMPs) and the weed risk management system. However, these components of the framework are not specifically referred to in the Act and therefore are limited in their effectiveness, particularly from a compliance perspective.

The RSWMPs are based on the 'shared responsibility' concept and that every individual and organisation has a general obligation to minimise the risks of weeds establishing and spreading. The objective of each plan is to establish a framework for coordinated management of weeds at the regional scale, and to determine regional priorities so that

investment can be directed towards those activities which will achieve the greatest outcomes in terms of preventing weeds from establishing, eradicating new weeds and minimising the impact of weeds where established.

The Plans are targeted to all individuals as well as public and private organisations that occupy land, and are therefore responsible for managing weeds, however they do not have a legal basis and actions are couched in terms of what 'should' be done rather than 'must'. This makes compliance and enforcement more difficult e.g. if a landholder wants to argue what they are or are not doing on-ground if it doesn't align with the RSWMP priorities, they can say the plan only outlines what they 'should' do. Recommendation 10 above calls for RSWMPs to be mandated or their legal status strengthened.

In addition, LCAs would like more support from agencies with the development of Local Weed Plans, such as through provision of a local weed plan template to enable consistency across NSW and training. Other desirable tools include better spatial analyses of existing DPI datasets to enable forward planning.

To allow for local governments to create biosecurity management plans for their LGAs (or at least bushland reserves), Division 12 of the Regulation that relates to Biosecurity management plans could be amended as follows (in bold):

*"This Division applies to a place **or area** at which—*

*(a) a commercial or educational **or management** activity is carried on for the purpose of intensive or extensive agriculture or horticulture, **recreation, or conservation, commercial, residential** or for the purpose of processing agricultural or horticultural products, and ..."*

<p>Recommendation 12: That the Biosecurity Regulation be amended to support the development of local weed plans, and that DPI provide templates and training to support the consistent preparation of these plans.</p>

The other fundamental part of the risk-based approach to biosecurity for weeds is the NSW Weed Risk Management system, originally developed for use with the former Noxious Weeds Act. The system uses a series of questions to score weed risk and feasibility of coordinated control. The system has not been reviewed or updated since its development despite the introduction of the Biosecurity Act which is based on risk assessments to determine biosecurity duties.

When assessing risk for species with limited data – mostly new incursions – the weed risk management system does not work effectively as it considers risk for one landscape type whereas weed risk will vary depending on the landscape it is in. Weeds Officers need to make risk evaluation assessments at a range of spatial scales (regional/local) for individual weed species. The current system is not designed to do this but rather to assess risk at the state-wide level.

To ensure an effective framework which enables risk-based decision making in relation to biosecurity the current weed risk management system needs to be reviewed. This review should provide additional components to enable finer scale assessments to be undertaken.

Consideration should also be given to developing a new scoring system as the current scoring system can be problematic and not easy to follow. Weed risk assessment should also be aligned to the invasion curve and general biosecurity duty.

The identification of risk in a consistent way at an appropriate landscape scale is fundamental to the effective implementation of the Act. The issues outlined above with the weed risk management system (and consequently with the RSWMPs) mean they do not provide a strong basis for developing plans and programs that are commensurate to the risk at the right scale, let alone for communicating what general biosecurity duty looks like in that context.

Recommendation 13: That the weed risk management process that informs the implementation of the Act be reviewed and updated to enable finer scale assessments and improved scoring.

Harmonisation with national legislation

QUESTION – Comment is sought as to whether the Act sufficiently meets requirements and gives effect to intergovernmental biosecurity agreements?

The Biosecurity Act and the Intergovernmental Biosecurity Agreement (IGAB) are both based on a shared responsibility approach to biosecurity, with risk prioritisation as a fundamental tenet. A core IGAB outcome is ‘a consistent approach to biosecurity risk prioritisation and investment across the system’, however LCAs are concerned that issues with the NSW weed risk assessment system are skewing investment decisions in NSW.

If funding is to be directed to certain weeds in specific locations there needs to be a corresponding risk assessment and transparent rationale provided to demonstrate how this investment outweighs funding other activities, otherwise it undermines the work done to assess and identify State, regional and local priorities.

Funding for LCAs to undertake their roles in regulating weed management has effectively not increased in the last five years, despite the explosion of weeds across the landscape and increased need for on-ground capacity to advise and support landholders undertake their general biosecurity duty.

Recommendation 14: That the NSW Government provide funding stability for LCAs and increase funding via the Weed Action Program to \$20M per year.

Flexibility – incident response and market capability

QUESTION – Comment is sought on whether the Act provides an effective framework for responding to biosecurity incidents?

The Act provides a framework for authorised officers to respond to biosecurity incidents but there is not enough supporting information to effectively explain the framework and its importance to the community. As noted elsewhere in this submission, further literature or more explanation of what is expected by members of the community is needed for the Act to be truly effective in achieving its objectives.

Issues for Consideration

Prohibited Matter, Prohibited Dealings, and Registrable Dealings

QUESTION– Comment is sought as to whether or not the current listings for prohibited matter, prohibited dealings and registrable dealings should be reviewed?

A review of the current system to improve responsiveness of the system to add/remove species and matters would be beneficial. There is concern though that removing weeds that

are deemed too difficult to control defeats the purpose of the legislation and sends the wrong message. What is needed in these circumstances is more action on reducing the spread of these weeds rather than accepting they are beyond control.

For example, frogbit is currently a prohibited matter and there have been various programs to tackle outbreaks of the weed involving councils. However we understand that there is some discussion within government of de-listing frogbit. This would undo much of the awareness raising and compliance work already undertaken to get the message out to the broader community.

LCAs also consider that more needs to be done in preventing the import or sale of prohibited matter online / across social networks. This vast and increasing pathway for the introduction of prohibited matter and invasive species in general is difficult to control, and the work DPI has already done to monitor and educate networks and halt higher risk trades is welcomed. We strongly support the allocation of more resourcing to tackle this issue through education, online monitoring and targeted enforcement.

QUESTION– Comment is sought as to whether or not the current approach to species listing is working well in NSW, or if NSW should consider adopting an alternative approach to species listing?

The current approach to listing of weeds using the weed risk management system is not working effectively. Please refer to the comments in earlier section on the weed risk management system and the need for its review.

QUESTION – Comment is sought if NSW DPI should strengthen its powers under the Act by including a new requirement in the Act for notification of prohibited dealings?

The DPI proposal appears reasonable.

QUESTION– Comment is sought if the Act should exempt people from committing an offence if they are dealing with prohibited matter as part of a ‘permitted pest animal incursion program’?

If the person dealing with prohibited matter is only doing so in the course of a permitted program to contain or prevent a further incursion then it would seem reasonable that they be exempt from committing an offence.

Powers of Authorised Officers – Seizure and Destruction

Part 8 of the Act outlines the powers of authorised officers under the Act. As part of these powers, authorised officers can seize, destroy, or eradicate anything if there is an authorised purpose for their action. Authorised purposes are detailed in section 89 of the Act.

The discussion paper highlights that recent compliance activities involving seizure and destruction have highlighted some limitations for authorised officers. NSW DPI considers that amendments could be made to the Act to:

- clarify arrangements around destruction of things that have been moved off the premises (section 102)
- clarify exemptions for the requirement to give a 21-day notice period in certain circumstances (section 110), for example, when an owner cannot be identified or located, and it is not lawful for the person to have the ‘thing’, such as prohibited matter, and

- allow for destruction of a thing without waiting for a one-day notice period in certain circumstances (section 114). For example, in circumstances where the destruction is expressly authorised by an emergency order, control order or biosecurity zone regulation.

QUESTION– Comment is sought from industry and the community if they support proposed amendments to the Act which enable authorised officers to more effectively carry out their roles with regards to seizure and destruction of things?

In broad terms, amendments that allow authorised officers to practically enforce the legislation are strongly supported. The proposed seizure and destruction amendments appear reasonable.

In addition, clarification is needed on the interaction of the Biosecurity Act with other legislation such as the Public Spaces (Unattended Property) Act, the LLS Act and Biodiversity Conservation Act (in relation to native vegetation provisions). Specifically, clarity is needed with regards to which legislation takes precedence and in which circumstances (if it is limited).

Recommendation 15: That the Act be amended to assist authorised officers to more effectively enforce the legislation (as noted in other recommendations), and to clarify which legislation the Biosecurity Act takes precedence over (and when, if limited).

Other issues

Environmental Assessment

Rural councils may have occasional applications for abattoirs and knackeries or livestock farming types such as poultry sheds or beekeeping that requires environmental planning permissibility and the Biosecurity Act may require some conditions of consent. From a planning perspective, the Biosecurity Duties (a duty to prevent, eliminate or notify biosecurity risks or events) would be part of the environmental assessment process.

LGNSW suggests that the Biosecurity Strategy themes of Capability and Capacity; Shared Responsibility; and Tools and Technology could assist statutory assessment under the *Environmental Planning & Assessment Act 1979*. This could be achieved with a rollout of educative training material to council statutory development planners so they can be more aware of the importance of the Biosecurity Act in environmental assessment obligations.

The NSW Department of Planning & Environment (DPE) is in the process of uploading standard conditions to its mandatory e-portal used for registering planning approvals. The NSW Department of Primary Industries (DPI) could work with DPE to introduce standard conditions on the e-portal.

Recommendation 16: That DPI work with DPE to:

- (a) develop educative training material for council development planners on the role of the biosecurity legislation in environmental assessment;
- (b) introduce standard development conditions relating to biosecurity on the e-portal.

Definition of 'Residential Premises'

Sections 98 and 99 of the Act refer to the entry powers of authorised officers onto premises, with Section 99 specifically referring to 'residential premises'.

There is a definition in the Act for 'premises' which "includes any land, building, structure or vehicle and any place, whether built on or not." This is very broad and there is no definition in the Act for 'residential premises'. This is a major problem when LCA staff are trying to inspect properties in an urban or peri-urban area. In rural areas, staff simply exclude the house paddock although this interpretation has not been tested.

Recommendation 17: That the Biosecurity Act include a definition for 'residential premises'.

Addition of Biosecurity (Prosecution) Fund provisions

The Biosecurity Act provides for the prosecution of non-compliant landholders or for LCAs to undertake weed control works on recalcitrant landholders' properties. LCAs often do not have the financial capacity to meet the substantial cost of compulsory weed control work and the costs associated with the prosecution of non-compliant landholders.

Local government has resolved to call on the NSW Government to establish a Prosecution Fund (administered by Department of Primary Industries) to support the compliance and enforcement of the Act. A proposal outlining how the fund could operate has already been provided to the DPI and the Minister.

It is understood that a Fund could be established under existing provisions of the Act, however it may be preferable to include a head provision in the Act.

Recommendation 18: That the NSW Government establish a Biosecurity Prosecution Fund to support LCA compliance and enforcement of the Biosecurity Act, with head provisions made in the Act to facilitate this.

Conclusion

LGNSW appreciates the opportunity to provide input to the statutory review of the Biosecurity Act 2015.

This submission provides several recommendations for improving the Biosecurity Act and broader framework from the perspective of local government practitioners. With a primary role in regulating biosecurity risk (i.e. weeds) their emphasis is how readily the Act can be used to undertake this task in tandem with education and guidance. Not unsurprisingly, a more prescriptive approach is favoured over an outcomes-based approach.

As a result, LCAs seek better articulation of roles and responsibilities in the Act and greater support from the legislation and government agencies on implementing outcomes-focused concepts like 'shared responsibility' and 'reasonably practicable'. Improved definitions for specific terms in the Act have also been recommended, along with other changes to support the work of LCAs in regulating weeds.

We look forward to continuing to work closely with DPI and other agencies to further improve the biosecurity framework and outcomes in NSW.

For further information on the issues raised in this submission, please contact Susy Cenedese, Strategy Manager Environment, on susy.cenedese@lgnsw.org.au or 02 9242 4080.

Summary of Recommendations

Recommendation 1: That DPI provide more consistent and direct information in relation to the Act that outlines how individuals can discharge their General Biosecurity Duty.

Recommendation 2: That the following terms in the Biosecurity Act be modified as follows:

- a) 'reasonably practicable' be replaced, or at least defined with more prescriptive terminology so that it is clear to everyone what is required.
- b) 'biosecurity impact' be more clearly defined e.g. What is considered an impact on amenity, health, or infrastructure?

Recommendation 3: That DPI consider and consult on the mandating of Regional Strategic Weed Management Plans.

Recommendation 4: That DPI update Schedule 5 of the Biosecurity Regulation to include figures for all fees and charges.

Recommendation 5: That the Biosecurity Act be amended so that biosecurity directions and undertakings for weed-related matters are recorded against the land.

Recommendation 6: That the Biosecurity Order (Permitted Activities) 2019 be revised, particularly with regard to Parthenium weed, to reflect and address known pathways for weed spread.

Recommendation 7: That DPI review the range of management, compliance and operational tools, their duration and review mechanisms, with the aim of streamlining the biosecurity framework. In particular, the Act should provide timeframes for and review provisions for biosecurity zones.

Recommendation 8: That the Act be amended to add provisions for LCAs to undertake pre-purchase weed inspections for State-listed priority weeds, and that the Regulations specify a relevant fee.

Recommendation 9: That the Act provisions relating to undertakings (s142) be reviewed to clarify the process.

Recommendation 10: That the Act articulate roles and responsibilities (and how they are shared) and that this be supported by more detailed communications material and training.

Recommendation 11: That the Act and Regulation provide more detail on how 'shared responsibility' is to be implemented.

Recommendation 12: That the Biosecurity Regulation be amended to support the development of local weed plans, and that DPI provide templates and training to support the consistent preparation of these plans.

Recommendation 13: That the weed risk management process that informs the implementation of the Act be reviewed and updated to enable finer scale assessments and improved scoring.

Recommendation 14: That the NSW Government provide funding stability for LCAs and increase funding via the Weed Action Program to \$20M per year.

Recommendation 15: That the Act be amended to assist authorised officers to more effectively enforce the legislation (as noted in other recommendations), and to clarify which legislation the Biosecurity Act takes precedence over (and when, if limited).

Recommendation 16: That DPI work with DPE to:

- (a) develop educative training material for council development planners on the role of the biosecurity legislation in environmental assessment;
- (b) introduce standard development conditions relating to biosecurity on the e-portal.

Recommendation 17: That the Biosecurity Act include a definition for 'residential premises'.

Recommendation 18: That the NSW Government establish a Biosecurity Prosecution Fund to support LCA compliance and enforcement of the Biosecurity Act, with head provisions made in the Act to facilitate this.