

# **LGNSW Submission on the draft Biosecurity Regulation and related documents**

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## Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils, associate members including special-purpose county councils, and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the draft subordinate legislation to the Biosecurity Act. In mid-November the Department of Primary Industries released the draft Biosecurity Regulation for comment along with the following documents:

- Proposed Biosecurity Amendment (Schedules to Act) Regulation 2016
- Proposed Biosecurity Amendment (National Livestock Identification System) Regulation 2016
- Regulatory Impact Statement
- Biosecurity Manual
- Supporting documents including 18 fact sheets and 11 proposed management approaches covering issues such as citrus, goats and weeds.

## Response

Local government has a significant role – as a local control authority (LCA) – in regulating weeds under the new Biosecurity legislation. Local government must also understand the legislation and implement its responsibilities as a land manager. For example, councils are active in managing feral animals and weeds on land they manage. While much of this submission focuses on the weeds component of the documents on exhibition, comments made in relation to training, guidance, roles and responsibilities apply across all aspects of the biosecurity framework.

Local government is supportive of the concepts that underpin the Biosecurity Act, such as risk-based decision making and shared responsibility. The creation of a general biosecurity obligation is pivotal to embedding the concept of shared responsibility into day to day decision-making. However the community needs to understand what the general biosecurity obligation is and what it means for them. In order for that to happen, the NSW Government must take a lead role in raising awareness and educating the community about the obligation. In addition to broader awareness raising, LGNSW also strongly recommends training and guidance be provided for local government staff.

Following are comments on the draft Biosecurity Regulation and other documents exhibited. Also included are broader comments on the implementation of the biosecurity framework.

### Roles and Responsibilities

The biosecurity framework is substantial, with several ‘moving parts’ including the Act, Regulations, a manual, control orders, and in the case of weeds, regional plans. Similarly, the mechanisms and tools for managing biosecurity include declarations of prohibited matters, mandatory measures, biosecurity zones and the general biosecurity duty.

Consistent with the concept of ‘shared responsibility’, there are roles for a number of agencies, local government, industry and individuals. However there is no easy reference as to who will do what. For example, the Act provides for the appointment of authorised officers that can potentially operate across all or only some aspects of the legislation. LGNSW notes that LCA’s officers are only expected to regulate in relation to weeds, but who will regulate

councils with regard to their weed activities? A table which clearly states the role of local government and other players across the entire biosecurity framework would be useful for all parties.

### **Biosecurity Zones**

The draft Regulation establishes three weed biosecurity zones – for water hyacinth, alligator weed and bitou bush – that require a person to notify the LCA of the presence (or suspected presence) of the species within 1 working day, and to eradicate, destroy or suppress the weed as much as is practicable.

The bitou bush biosecurity zone includes all land within the State except land within 10 kilometres of the mean high water mark of the Pacific Ocean. This will force coastal LCAs to focus their limited funding and programs to the bitou bush biosecurity zone when currently most of the funding is focused on successfully reducing the core infestation along the dune areas of the coast. If these LCAs have to focus their efforts in the biosecurity zone, then the current programs along the coast will be reduced, with the result being spread / reinfestation of bitou bush in those areas. While we understand the intent behind the zones is to contain a biosecurity threat and stamp out any incursions quickly, in the case of bitou bush it could result in a larger problem eventuating in the longer term.

The water hyacinth biosecurity zone currently includes Newcastle but excludes surrounding areas of Port Stephens, Maitland and Lake Macquarie i.e. if water hyacinth is found in the Newcastle area it is required to be notified and eradicated, destroyed or suppressed as much as is practicable. This appears to be an anomaly given Newcastle is physically surrounded and hydrologically connected to areas excluded from the zone. It would therefore seem logical to exclude Newcastle from the water hyacinth biosecurity zone.

While LGNSW appreciates that not all weeds can be priorities, there are major aquatic weeds other than the alligator weed, bitou and water hyacinth that have serious implications for the environment and production, such as salvinia, water lettuce and senegal tea. LGNSW requests that the weed risk assessment results that informed the matching of weeds to management approaches (eg, biosecurity zone, limit on movement or sale, general biosecurity duty only) be published so that all parties can understand the rationale for selecting some weeds and not others.

Consistent with comments made in our submission on the proposed biosecurity framework in 2014, LGNSW would like to see asset protection factored into the application of biosecurity zones by adding an exception to the biosecurity zone approach in environmentally-significant areas. For example if a weed is identified in a Ramsar wetland, an endangered ecological community, or threatening a listed species or population outside the biosecurity zone, then all effort to manage that weed as a priority should apply as it would within the biosecurity zone.

Councils and county councils have also raised concern as to whether LCAs can, and to what extent, undertake enforcement with landholders on alligator weed, water hyacinth and bitou bush in areas that are exempt from the relevant biosecurity zones. While there will be a general biosecurity duty applying outside the zones, this enforcement 'stick' will be more cumbersome to apply to a landholder just outside the zone where the biosecurity threat is just as real. We have also raised the need for training and guidance for enforcement officers later in this submission.

### **Prescribed Fees**

The prescribed maximum fee approach for certificates from LCAs does not recognise that for some rural based councils costs due to distances and travel time may exceed recovery costs in practice. The fees do not account for legal costs, if they are required, which can be significant. LGNSW recommends that the fees for issuing certificates be revised in consultation with regional weeds committees or the State Weeds Committee, to ensure it does provide for cost recovery. We also recommend that the regulation provide for fees to increase over time in line with inflation.

### **Training and Guidance**

There is a strong need for training and guidance to be provided to local government officers in relation to the practical application of the Biosecurity legislation, primarily in relation to weeds, but also more broadly as it relates to their obligations as land managers. LGNSW strongly recommends that training and guidance for local government staff be provided as soon as possible.

Specifically, training or succinct guidance on how the legislation will operate and be enforced, roles and responsibilities, and expectations in relation to enforcement (particularly in terms of the general biosecurity duty) are key areas for local government officers. A reference document that compares or translates the existing regulatory framework for weeds to the biosecurity framework would be particularly useful. An example of such a comparison is provided in the Regulatory Impact Statement (pp89-91) however more detail is required to meet the needs of professional staff.

Currently there is a *Noxious Weeds Handbook for Councils and Councillors*, which provides clear and consistent information for councillors to pass on to their constituents. LGNSW recommends that the Handbook is updated as a high priority, so that elected representatives and others can be aware of the new legislation and requirements needed to comply with the *Biosecurity Act 2016*.

More generally, many councils consider that public awareness of biosecurity and biosecurity responsibilities is very low, and this makes encouraging compliance (and undertaking enforcement) much more difficult. In particular, explaining the general biosecurity duty – what it is, what it means to the individual - will be critical. While LGNSW appreciates that the Act has not yet commenced, efforts in raising awareness are needed now, and in fact may already be too late. Those who currently work within the weeds/pests space are struggling to understand the framework in detail enough to provide meaningful comment on the draft regulation and related documents, let alone those who are less familiar.

### **Regulatory Impact Statement**

The Regulatory Impact Statement (RIS) considers implications of the draft regulation at a high level, however there are local impacts that should also be recognised. The change from a reasonably simple five-class weed classification under the Noxious Weeds Act to the more complex system in the Biosecurity framework has potential financial impacts on councils. Under the current system, leveraging funds to deal with Class 1 noxious weeds (for example) can be readily argued within council and with other funding bodies. The 'downgrading' of some of these weeds (eg water lettuce, senegal tea) so that they are not on the prohibited matter list nor covered by a biosecurity zone, will likely make it harder to argue for funding to eradicate or manage them, particularly in an ever tighter financial climate.

## Conclusion

LGNSW is committed to working with the State Government and other stakeholders to achieve a workable biosecurity framework for NSW, and we appreciate the opportunity to comment on the 'tier' of regulatory controls spanned by the draft Regulation and Biosecurity Manual.

LGNSW strongly recommends the NSW Government commit to training and guidance for local government staff, and a significant campaign to raise awareness of biosecurity, as a high priority.

We would be pleased to discuss the issues raised in this submission further. Please contact Susy Cenedese at LGNSW on 9242 4080 or [susy.cenedese@lgnsw.org.au](mailto:susy.cenedese@lgnsw.org.au)