

DRAFT DECISION SUPPORT TOOL FOR DETERMINING LANDHOLDER GENERAL BIOSECURITY DUTY

DISCLAIMER

This Decision Support Tool has been developed by the Greater Sydney Regional Weed Committee and is in draft. It has been developed to its current state in good faith using the best available information on the General Biosecurity Duty to provide guidance to Local Control Authorities. The tool has not been formally reviewed or endorsed by the Department of Primary Industries or the State Weed Committee, and should not be relied upon to support compliance action.

Introduction

This guide has been developed as a tool for Local Control Authority (LCA) Authorised Officers to support education and compliance decisions regarding weeds. The guide identifies the various situations which trigger the General Biosecurity Duty (GBD) for a landholder, as well as the actions or responses that are necessary to meet legal requirements and/or community expectations for managing weeds

The guide clarifies when a GBD exists for a landholder and what the landholder could do to discharge their GBD in regards to weed management. It can be used by LCA Authorised Officers as a basis for advice and compliance actions to landholders, by landholders to clarify their weed management obligations, and by volunteers undertaking weed control on land managed by others.

General Biosecurity Duty (GBD)

The *Biosecurity Act 2015* represents a significant move away from the prescriptive nature of the *Noxious Weeds Act 1993*. While State level determined priority weeds (see Priority Weeds section) continue to be regulated by specific legal requirements (i.e. Prohibited Matter, Control Orders, Biosecurity Zones and Mandatory Measures), for the most part the prescriptive control requirements of the Noxious Weeds Act have been replaced by a General Biosecurity Duty.

The General Biosecurity Duty is defined in Part 3 of the *Biosecurity Act 2015*.

Any person who deals with biosecurity matter or a carrier and who knows, or ought reasonably to know, the biosecurity risk posed or likely to be posed by the biosecurity matter, carrier or dealing has a biosecurity duty to ensure that, so far as is reasonably practicable, the biosecurity risk is prevented, eliminated or minimised.

For weeds, the General Biosecurity Duty means that any person dealing with plant matter must take measures to prevent, minimise or eliminate the biosecurity risk (as far as is reasonably practicable). Note that the risk-based approach is fundamental to the General Biosecurity Duty. The risk posed by the plant must have been the subject of a risk assessment that determines there is a risk present that requires control action.

A person or organisation is not expected to know about all biosecurity risks, but is expected to know about risks associated with their industry, business, day-to-day work, and hobbies and interests including activities undertaken on a voluntary basis.

This less prescriptive approach to managing biosecurity risks provides greater flexibility in managing risks posed by plants. For example;

- Plants are no longer required to be identified on a list or declared “noxious” before action can be taken to address the risks posed by the plant.
- The general biosecurity duty is outcomes focused. In many cases, there is no need to prescribe exactly how a person is to discharge their general biosecurity duty. A less prescriptive approach recognizes that there may be more than one way to prevent, eliminate or minimise the particular biosecurity risk, and that the person with the biosecurity duty is best placed to decide how the desired outcome can be achieved.

The General Biosecurity Duty supports the principle of 'shared responsibility'. It increases flexibility in how we can manage biosecurity risks, including weeds. It provides a strong foundation for a proactive and outcome-focused framework based on education and advice instead of prescriptive regulations and processes, but also includes a framework to manage non-compliance.

Although the general biosecurity duty applies broadly, there are a number of elements that must be satisfied for a GBD to exist:

Dealing with – the general biosecurity duty only applies to a person who 'deals with' biosecurity matter or a carrier of biosecurity matter. 'Deal with' includes a wide range of activities, a full list of which can be found in [section 12](#) of the Act. Some examples of dealing with biosecurity matter relevant to weeds are; to keep, possess, grow, breed, move, supply, manufacture, use or treat biosecurity matter.

Biosecurity risk – is to have or the potential to have an adverse impact on the economy, the environment or the community. Examples of an adverse impact could include:

- Reduction of quality or quantity of agricultural, horticultural and forestry products
- Changes to natural diversity and balance of ecological communities threatening survival of native plants and animals
- Human health problems such as asthma and other respiratory diseases, skin irritations and poison.

Note that a risk assessment is required to determine if there is a risk present and the significance of the adverse impact.

Knowledge – a person must know, or ought reasonably to know, that there is or is likely to be a biosecurity risk arising from the plant. This is a question of fact and will depend on the circumstances of each situation.

LCA Authorised Officers should, in the first instance, use advisory techniques to guide and teach landholders about how to best manage their weeds. The aim is to still achieve compliance with the Act, but for this to be done in a voluntary capacity.

People who know or ought reasonably to know will generally include people who deal with biosecurity matter or carriers on a regular basis as part of a commercial, recreational or voluntary activity, and people who work professionally (i.e. 'deal') with a particular type of biosecurity matter or carrier. From a compliance/enforcement perspective, you cannot assume that a person knows simply because of their occupation or activities. It is the responsibility of the regulator (ie LCA in this

instance) to ensure the person knows by providing information about the risk, that the person has a GBD and some options available to discharge the GBD.

'Reasonably practicable' – what is reasonably practicable for the prevention, elimination or minimisation of a biosecurity risk will depend on what is reasonably able to be done at a particular time, taking into account all relevant matters such as:

- the nature and potential impact of the biosecurity risk,
- the person's level of knowledge of the risk and related actions that could reasonably be taken to prevent, eliminate or minimise the risk, and
- the cost, availability and effectiveness of these actions.

It is not likely to be reasonably practicable if the cost is greatly disproportionate to the risk.

For weeds, this basically means that it must be both reasonable and feasible to prevent, eliminate or reduce the risk associated with the weed. For weeds that are not widespread and that have the potential to degrade land in the region, this will generally mean eradicating the plant or preventing its spread from the property. For widespread weeds that are beyond eradication at a regional level, this will generally mean taking measures to reduce the extent of the weed to no greater than that occurring on other lands in the area. See [section 16](#) of the Act for the legal definition.

Preventing, eliminating or minimising the biosecurity risk – the risk must be prevented or eliminated if reasonably practicable, otherwise it must be minimised so far as is reasonably practicable.

It should be noted that a landholder or land manager is free to control weeds more rigorously than required to meet their general biosecurity duty, and may consider it desirable to do so to protect their high value commercial or environmental assets.

More information regarding the General Biosecurity Duty can be found on the [NSW DPI website](#).

Priority Weeds

The priority weeds for the Greater Sydney Local Land Services region are identified in Appendix 1 of the Greater Sydney Regional Strategic Weed Management Plan (RSWMP). Appendix 1 covers State level determined priorities (A1.1) and regionally determined priorities (A1.2).

State level determined priority weeds are subject to other legislative requirements. The *Biosecurity Act 2015* and regulations provide specific legal tools for managing state level priority weeds (A1.1). These specific regulatory tools include Prohibited Matter, Control Orders, Biosecurity Zones and Mandatory Measures Regulation.

Table 1 Requirements for State level priority weeds

Prohibited Matter

Biosecurity matter listed in Schedule 2, Part 1 of the [Biosecurity Act 2015](#) for the purpose of preventing entry of that matter into NSW or a part of NSW. Prohibited matter relevant to the Greater Sydney region is listed in Appendix A1.1 of the [Greater Sydney RSWMP](#). Prohibited matter includes weeds nationally targeted for eradication and presently not in NSW.

Control Orders

These are to establish one or more control zones and related measures to prevent, eliminate, minimise or manage a biosecurity risk or impact. Control orders are for managing weeds under approved eradication programs and last for five years (or can be renewed for longer-term eradication programs). Control orders are published in the [NSW Government Gazette](#) and/or NSW DPI website. Control orders currently in place for Boneseed, Parkinsonia and Tropical Soda Apple and can be found in Appendix A1.1 of the [Greater Sydney RSWMP](#).

Biosecurity Zones

These aim at containment of a species and provide for ongoing strategic management in a defined area of the state. A Biosecurity Zone specifies the measures that must be taken in the defined area to manage the weed. Species may also be subject to other measures tailored by the region either within the zone or outside it. Biosecurity zones for Alligator Weed, Bitou Bush and Water Hyacinth are established under Part 5 of the [Biosecurity Regulation 2017](#) and can also be found in Appendix A1.1 of the [Greater Sydney RSWMP](#).

Mandatory Measures Regulation

This requires parties to take specific actions with respect to weeds or carriers of weeds. Mandatory Measures are defined in the [Biosecurity Regulation 2017](#) and include prohibition on certain dealings - including Weeds of National Significance (WoNS) (Division 8 Clause 33), Parthenium weed carriers - machinery and equipment (Division 8 Clause 35), and duty to notify of importation of plants into the state (Division 8 Clause 34). Mandatory measures relevant to the region are listed in Appendix A1.1 of the [Greater Sydney RSWMP](#).

Regional priority weeds

Appendix 1.2 (A1.2) of the [Greater Sydney RSWMP](#) identifies regionally prioritised weeds and outcomes to demonstrate compliance with the General Biosecurity Duty. Recommended measures for these weeds are included in A1.2 and also provided in the NSW DPI web and mobile based application [WeedWise](#), as practical advice on achieving these outcomes.

Other weeds

If a weed poses a biosecurity risk in a particular area, but is not the subject of any specific legislation, or identified as a priority weed in Appendix 1 of a Regional Strategic Weed Management Plan, then LCA Authorised Officers may in some cases rely on the general biosecurity duty to manage that weed.

Remember, there are a number of elements (i.e. dealing with, biosecurity risk, knowledge and reasonably practicable) that must be met for the GBD to exist.

It is essential that the risk posed by the plant has been the subject of a risk assessment that determines there is a biosecurity risk present that requires control action.

The general biosecurity duty only applies to people who deal with the particular weed and who know or should reasonably know of the biosecurity risks associated with that weed.

Information should be made available to property owners about ways to control the spread of a particular weed. However, in the absence of specific legislative requirements, property owners are not required to follow any specific method so long as they take reasonably practicable measures to control the spread of the weed.

If the general biosecurity duty applies, typically, property owners including those in urban environments might be required to discharge their duty by controlling the movement of weeds onto and off their land by:

- reducing the risk of weeds spreading to neighbouring properties, taking into account the likely means of distribution, and
- taking measures to avoid introducing weeds to the property when acquiring ornamental plants, and
- finding out where products brought onto the property (such as soil, mulch or gravel) originated and taking steps to manage any risks from it, and
- eradicating those weeds that are likely to result in degradation of land in the region.

Property owners in peri-urban or rural environments might also be required to:

- hold newly acquired livestock in a restricted area before releasing them onto the property,
- hold stock in a weed-free area before transporting them off the property if they have been exposed to weed seed, and
- avoid selling or bringing onto the property feed, soil, gravel or other products that might contain weed seed.

Landholder GBD Obligations decision diagram

The following decision diagram has been developed as a guide for LCA Authorised Officers to help determine if landholders have a general biosecurity duty in relation to a specific weed species on their land, and how this duty is satisfied. The decision diagram may be applied to both terrestrial and aquatic weeds.

This decision diagram is not intended to apply to determining the general biosecurity obligation requirements for people other than landholders who also deal with biosecurity matter.

LANDHOLDER GBD OBLIGATIONS – DECISION DIAGRAM

GBD Principles for landholders

1. A fundamental goal of the general biosecurity duty is to reduce the impact of weeds on neighbouring lands - primarily through stopping weed spread.
2. Where there is no discernible difference between the extent of a weed on a landholders property and neighbouring lands the general biosecurity duty is not triggered for that weed.
3. Control obligations to discharge a landholder's GBD must match community expectations at the regional scale and be reasonable and feasible.

Landholders also have a responsibility to exercise awareness and due diligence when introducing plant material onto their land, or accepting equipment or fodder.



