

Otago Regional Council

Biosecurity Compliance and Enforcement Policy

Biosecurity Act (1993)

Otago Regional Pest Management Plan 2019-29



1. INTRODUCTION

The Otago region covers 12% of New Zealand’s land area and is the third largest region in New Zealand. The region has a high level of endemism, meaning that certain species are only found in this region. Otago also features a wide range of geography and ecosystems, from alpine regions, glacial lakes, grasslands, forests, and a dramatic coastline. This leads to Otago being one of the most biodiverse regions in New Zealand. The indigenous biodiversity contributes to our health, our economy, and our social and cultural wellbeing. The Otago landscapes and geography are a key attraction to those who visit the region and supports the agricultural sector as key drivers of Otago’s economic development.

Broadly, the environment encompasses the ecosystems that include people and their communities, natural and physical resources, and the resulting amenity values. These, in turn, influence, and are influenced by, the prevailing aesthetic, cultural, economic, and social conditions. However, the environment of the region is increasingly under threat by harmful organisms. These organisms can have a detrimental effect and adverse impact on the natural environment and human wellbeing.

All land occupiers, including crown¹, public and private entities, are responsible for effectively managing the spread of animal and plant pests. Under the Biosecurity Act (1993) (‘the Act’), the Otago Regional Council (ORC) is empowered to enforce action to ensure pests are managed appropriately. To achieve this, the Otago Regional Pest Management Plan (RPMP), under the provisions of the Act, provides the scope to undertake inspections and enforcement action to ensure compliance with given regulations.

This policy sets out the approach and principles by which the ORC ensures compliance with the Act and the RPMP. This policy is intended to ensure a fair and reasonable, consistent and robust approach to compliance and enforcement by ORC.

2. DETERMINATION OF COMPLIANCE

Section 154N of the Act sets down instances where non-compliance is deemed to be an offence and is liable for enforcement. Of particular relevance to the ORC, section 154N(19) states that non-compliance with a RPMP rule, or any part thereof, creates an offence under the Act.

The Act does not provide guidance on the scale, or threshold, of non-compliance. Therefore, non-compliance is, in effect, any breach of the Act or RPMP rule, irrespective of scale. This means non-compliance does not necessarily have to be widespread across a property and may relate to a single location (or a defined area) within a property.

¹ Under Section 69(5) of the Biosecurity Act (1993), the Crown is only liable to meet its responsibility for pest management under the ‘Good Neighbour Rule’.

3. PRINCIPLES TO ACHIEVING EFFECTIVE COMPLIANCE

ORC's preferred approach is to use informal means to achieve compliance (e.g., through education, consultation, work request and negotiation). The emphasis here is to foster voluntary cooperation for a common goal. This is, ultimately, the most cost-effective approach for occupiers and landowners.

When informal options have not led to compliance, ORC will progressively, yet fairly and reasonably, undertake enforcement action as provided for by the Act. The provisions of the Act are clear and straightforward. By following standard processes, enforcement actions undertaken under the Act have proven to be robust and able to withstand legal challenge².

The Eight Principles of Compliance and Enforcement

The underlying principles to ORC's approach to compliance and enforcement action are:³

Transparency – We will provide clear information and explanations to the community, and those being regulated, about the standards and requirements for compliance. We will ensure the community is kept informed about the actions taken by us to address the non-compliance of biosecurity rules.

Consistency of process – Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. We will ensure that our staff have the necessary skills and are appropriately trained, and that there are effective systems and policies in place to support them.

Fair, reasonable and proportional approach – We will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably and ensure our decisions are appropriate to the circumstances, and that our interventions and actions will be proportionate to the seriousness of the non-compliance and the risks posed to people and the environment.

Evidence-based and informed – We will use an evidence-based approach to our decision making. Our decisions will be informed by a range of sources, including robust science, regulated parties, information received from other regulators, community members, industry and interest groups.

Collaborative – We will work with and, where possible, share information with other regulators (e.g. Ministry for Primary Industries) and stakeholders to ensure the best compliance outcomes for our region. We will engage with the community, those we regulate and government to explain and promote biosecurity requirements and achieve better community outcomes.

² Hayes v Environment Waikato, District Court Manukau CIV-2009-057-000319, 21 March 2011.

³ These principles are adapted from the Compliance and Enforcement Special Interest Group (CESIG) Regional Sector Strategic Compliance Framework 2019-2024.

Lawful, ethical and accountable – We will conduct ourselves lawfully and impartially and in accordance with these principles, relevant policies and guidance. We will document and take responsibility for our decisions and actions. We will measure and report on our regulatory performance.

Targeted – We will focus on the most important issues and problems to achieve the best biosecurity outcomes. We will target our regulatory intervention at non-compliances that pose the greatest risk to biosecurity. We will apply the right tool for the right problem at the right time.

Responsive and effective – We will consider all alleged non-compliances to determine the necessary interventions and actions to minimise impacts on the community and maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

4. METHODS TO ACHIEVE COMPLIANCE

The ORC has a ‘spectrum’ approach to encouraging positive behaviour change and ensuring the highest levels of compliance possible. The ORC’s approach to ensuring compliance with the RPMP is based on ‘4Es model’⁴ of Enable, Engage, Educate and Enforce:

- **Enable** – provide opportunities for occupiers and landowners to be exposed to best practice and regulatory requirements. Link regulated parties with appropriate pest management industry.
- **Engage** – consult with occupiers and landowners, stakeholders and community on matters that may affect them. This will require maintaining relationships and communication until final outcomes are reached. This will facilitate greater understanding of challenges and constraints, engender support and identify opportunities to work with others.
- **Educate** – alert occupiers and landowners to what is required to be compliant and where the onus lies to be compliant. Education should also be utilised to inform community and stakeholders about what regulations are in place around them, so that they will better understand what is compliant and what is not.
- **Enforce** – when non-compliance is identified then enforcement tools and actions are available to ensure the RPMP intentions are achieved. Enforcement outcomes should be proportional to individual circumstances of the breach and culpability of the party.

When non-compliance with the RPMP is observed, ORC will inform the occupiers and landowners of the work required. This proactive approach is to encourage compliance, however, the Act is a robust law that provides for significant enforcement action should non-compliance be persistent. ORC’s approach and use of enforcement actions depends on the issue, context and seriousness of the breach as illustrated below⁵:

⁴ The 4Es model is adapted from the CESIG Regional Sector Strategic Compliance Framework 2019-2024.

⁵ Influencing behaviour change is based on the CESIG Regional Sector Strategic Compliance Framework.

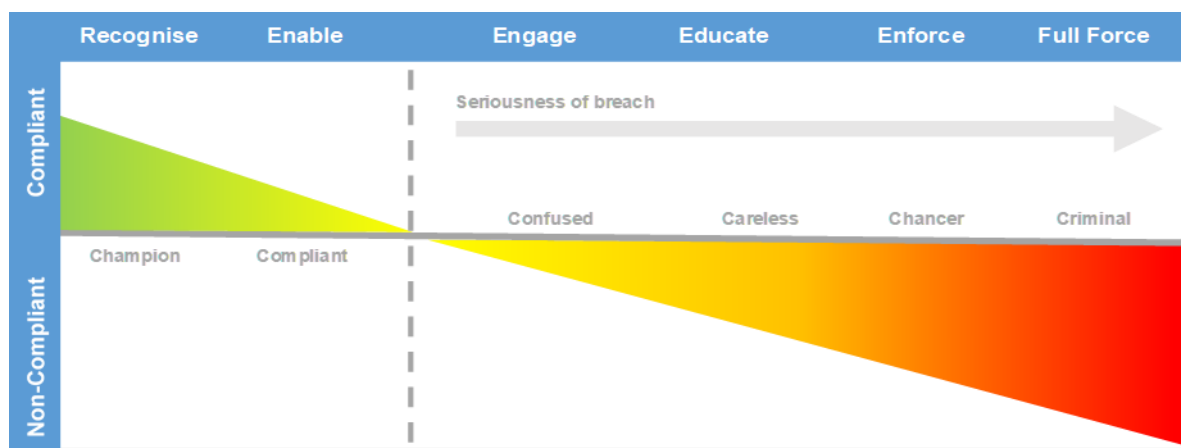


Figure 1: Enforcement Progression

5. THE COMPLIANCE AND ENFORCEMENT PROCESS

The Chief Executive of the ORC, acting as Principal Officer under the Act, has authority to appoint authorised persons for the purposes of exercising the functions, powers and duties under the Act. An authorised person (sometimes referred to as a ‘warranted’ officer) is permitted to enter private property (excluding a house or marae) for the purpose of assessing compliance with the Act and RPMP. Authorised persons receive specific training and are familiar with their statutory obligations before carrying out any enforcement functions.⁶

The initial phase of compliance and enforcement is to undertake an inspection. Inspections can be scheduled, in response to a complaint, or based on professional observation. When inspecting a private property, the rights of the occupier and landowner will be respected. ORC staff must ensure that all entry to private property is done so lawfully. However, under the Act inspections can be undertaken without providing prior notice to the occupier or landowner.

If the occurrence or density of pest infestation exceeds the rules as set out in the RPMP, then compliance and enforcement action will be implemented to ensure compliance with the RPMP rules. If a property is deemed to be non-compliant, occupiers and landowners will have a given timeframe to undertake the required work before a re-inspection is carried out. A re-inspection is undertaken to ascertain whether compliance with the rules of the RPMP rules has been achieved and to determine if any further actions are required. Re-inspections can occur throughout the compliance and enforcement process until compliance is achieved.

Informal and Formal Actions

The options for enforcement action will depend on the pest species in question and the individual circumstances of each case. Informal actions (not covered in the Act) to encourage compliance include verbal and written advice. Formal actions are available by law through the enforcement mechanisms prescribed in the Act. The administrative approaches taken with

⁶ ORC authorised persons gather data and information in keeping with best practice detailed in *Basic Investigative Skills for Local Government*.

respect to compliance and enforcement will follow the standard operating practices detailed in the ORC Biosecurity Compliance Operating Procedures.⁷

In brief, the compliance and enforcement options that follow a non-compliant inspection are:

1. **Informal Actions** are focused on providing education and incentive-based responses to allow the occupier or landowner to become better informed and develop their own means to achieve compliance. Informal actions will be detailed through a ‘Work Request’ letter.
2. **Formal Actions** are forward-looking to provide clear direction of action required to ensure compliance. Formal actions will be detailed through:
 - a. Legal notices (e.g., Notice of Direction), followed by, if needed,
 - b. Default action or Prosecution.

Figure 2 shows the progression of compliance and enforcement, while Table 1 describes the compliance and enforcement actions in more detail. With respect to legal enforcement, while prosecution remains an option, the most common action will be default action.

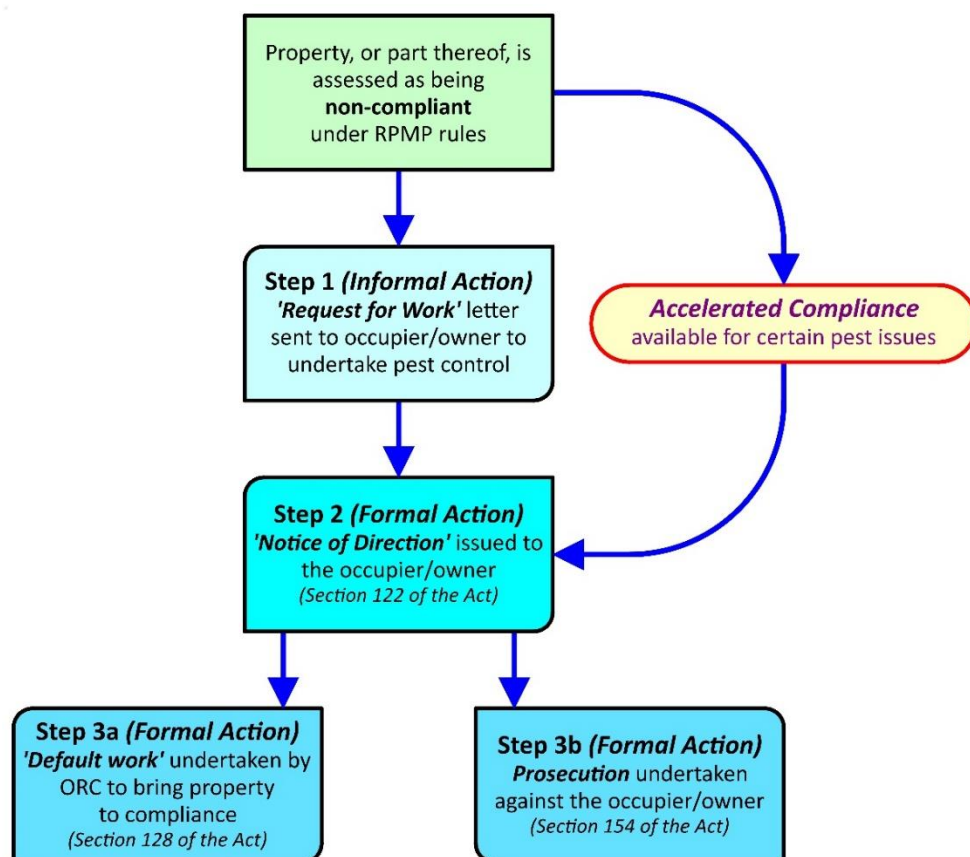


Figure 2: Sequence of primary actions for compliance and enforcement under the Act.

⁷ The ORC Biosecurity Compliance Operating Procedures action this Policy and are contained in a comprehensive set of guidelines and manuals. The Procedures build upon, and implement, the ‘Eight Principles of Compliance and Enforcement’ outlined in this Policy. They are reviewed and updated regularly to incorporate ongoing business improvement, changes in technology, and system enhancement within Biosecurity operations.

Table 1: Description of Compliance and Enforcement Actions

	Description of action	Potential impacts for the liable party	When this action is appropriate
Informal actions	Work Request		
	<p>Following an initial inspection, a work request alerts occupiers and/or landowners to the pest issue, the rules and their responsibilities under the RPMP, and gives them a timeframe to achieve compliance without formal enforcement.</p> <p>A work request provides the opportunity to proactively prevent further spread, to remedy, or to mitigate the effects of non-compliance. Biosecurity Officers can provide guidance around rules, regulations, and pest management options to help parties to achieve compliance.</p>	<p>This is a non-formal process and as such has no legal implication. However, it does start the path towards possible formal action if the work request is not completed as required.</p>	<p>A work request is issued after the initial inspection when a property is deemed non-compliant.⁸ This is normally the extent of the action required when dealing with cooperative parties who are motivated to do the right thing but lack the knowledge or skills necessary to achieve and maintain compliance.</p>
Formal actions	Notice of direction (NOD)		
	<p>Under the Act, an authorised person has the power to give directions to control pests. This is enacted through a Notice of Direction (NOD). A NOD is the first level of formal enforcement action under the Act. Once issued, a NOD can be extended, varied or cancelled depending on circumstances and actions taken.</p>	<p>A NOD requires a person to take action to address plant and animal pest problems that breach a rule in an RPMP. The NOD is the formal acknowledgement of non-compliance. Non-compliance with a NOD is an offence under the Act and can lead to further enforcement actions, such as default work or prosecution.</p>	<p>A NOD may be issued:</p> <p>[1] When compliance has not been achieved following informal actions; or</p> <p>[2] After the initial inspection where a priority pest issue needs to be addressed using the accelerated compliance process as described in Section 5 of this policy.</p>
	Default Work		
<p>Under the Act, the regional council has the power to undertake default work when a NOD or a compliance order has not been complied with. Default action occurs when the ORC legally undertakes the necessary work to ensure the pest non-compliance has been dealt to. Other than in the most extreme cases, this will be the most punitive action taken to enforce the Act.</p>	<p>This is legally enforceable action and requires the occupier/landowner to provide access for the work as directed, arranged and costed by the ORC. The action to undertake default work does not need court approval.</p> <p>All costs will be charged to the occupier/landowners. Non-payment of costs can lead to a statutory land charge being placed on the property. More details on cost recovery are given in Section 7 of this policy.</p>	<p>This action can be taken following non-compliance with an enforcement document (e.g., a Notice of Direction (NOD) and/or a compliance order).</p>	

	Description of action	Potential impacts for the liable party	When this action is appropriate
Formal actions, cont.	Prosecution		
	<p>A prosecution is a process followed through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions.</p> <p>Biosecurity Act matters are heard by a District Court Judge. All evidential rules and standards must be met for a prosecution under the Act.</p>	<p>A successful prosecution will generally result in a conviction, a penalty imposed (imprisonment and/or fines as specified in the Act), and consideration to costs of the investigation.</p> <p>A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.</p>	<p>Prosecution may be pursued following non-compliance with an enforcement document (e.g., a NOD). However, under ORC standard operating procedures prosecution is pursued only in exceptional cases that are deemed sufficiently serious to warrant intervention by criminal law.</p>

Additional Compliance Powers

Other compliance powers include:

- Declaration of a restricted place:** The Act provides the ability to issue a Restricted Place Notice to prevent the removal or introduction of any organism or good to any place, and may direct that specified organisms and goods be isolated, confined or stored and identified. A Restricted Place Notice is useful and relevant for RPMP work where, for example, the movement of gravel from a place containing pests to a non-infested place needs to be stopped to avoid the pests spreading.
- Declaration of a controlled area:** The Act provides the ability to publicly declare a specified area to be controlled. The notice may restrict, regulate or prohibit the movement into, within, or from the controlled area of specified organisms, organic material, risk goods or other goods and/or require the goods be treated or subject to specified processes. While this enforcement power exists for regional councils, it has limited relevance for RPMP compliance.
- Compliance Order:** Under the Act, an authorised person may serve a compliance order requiring an individual or legal entity to cease doing something or prohibit the person from starting something, doing something again, or having something done that will contravene biosecurity law. Non-compliance with a compliance order is an offence under the Act and can lead to further enforcement actions. A compliance order is an alternative to the Notice of Direction. While it is available as an enforcement option, the ORC uses the Notice of Direction as its standard enforcement document.

6. ACCELERATED COMPLIANCE PROCESS

When there is need to respond to a high-risk pest management issue (e.g. rapid increase in wallaby sightings accompanied by landowner apathy, or to curtail the increase in a priority pest, such as rabbits), this policy provides for the compliance process to be accelerated. An

⁸ A Work Request does not apply if the non-compliance is being dealt to through the accelerated compliance pathway (see Section 5).

accelerated compliance process means that if a property is deemed to be non-compliant following a first inspection, the ORC can bypass the informal action (Step 1 in Figure 2) and issue a Notice of Direction (Step 2 in Figure 2).

Accelerated compliance may be applied to priority pests (as identified in the current Biosecurity Operational Plan), high-risk situations, and to any current or potential exclusion programmes. An accelerated compliance process prioritises the risk to environmental, economic and landscape values, including supporting control efforts of others, while being mindful of the increased operational requirements.

7. ENFORCEMENT DECISION

The ORC takes a rational and principled approach to regulation. In general, the ORC advocates a policy of education and co-operation towards compliance. However, the ORC recognises that there are times when the use of formal enforcement measures is necessary.

The process for taking enforcement action against biosecurity non-compliance is clearly laid out in the Act. The Act provides a robust enforcement framework, with only one known case filed.⁹ This decision was in favour of the regional council in question as they had shown good process, provided accurate documentation, taken relevant photographs, and kept good, clear records.

Factors considered in enforcement decision-making processes:

The factors leading to an enforcement decision are context dependent as each non-compliance situation is unique, including:

- Alignment with biosecurity priorities
- Impact on environment and areas of high biodiversity
- Extent of infestation (grade and area)
- Change in infestation grading between inspections
- Impact on neighbour/community control activity
- Equity (consistent, equity of enforcement in the neighbourhood and across region)
- Individual circumstance (personal/property specific)
- Past/present/planned control activity
- Officer comments & recommendations
- Other external circumstances (e.g., flooding, drought, lockdown)

The responsibility and discretion to take compliance and enforcement action, or not, sits solely with those delegated to make such decisions in the regulatory agency¹⁰. Decision-making

⁹ Hayes v Environment Waikato, District Court Manukau CIV-2009-057-000319, 21 March 2011.

¹⁰ New Zealand Law Commission 'Prosecution decisions and the discretion to prosecute'
<http://www.nzlii.org/nz/other/nzlc/report/R66/R66-5.html>

processes are standardised and robust to ensure equitable and consistent implementation. These decisions include:

- The appropriate party to pursue;
- The appropriate enforcement tools to use in the circumstances; and
- Whether to extend, vary or withdraw an enforcement action that has been commenced.

ORC is required to exercise this discretion in a way that is reasonable and consistent with the principles of the Act and the requirements of natural justice.

Where prosecution is being considered, the ORC will follow the Solicitor General's Prosecution Guidelines, including the evidential and public interest tests.

8. COST RECOVERY

The Act gives ORC the power to recover the costs associated with its compliance monitoring obligations. This is provided for under section 135(3) and section 129 of the Act. In Otago, charges are not currently applied to informal actions, such as a scheduled inspection or a re-inspection when the property has become compliant.

Recovery of Non-Compliance Costs

Councils, as management authorities, have the statutory right to use a variety of charges to recover costs incurred in administering the RPMP. This can include fixed charges for issuing notices, hourly rates, estimates of advanced work and reasonable costs. Fees and charges that may be recovered are listed in the current Long-Term Plan or Annual Plan and are reviewed annually. In setting its cost recovery model, ORC is conscious that costs associated with monitoring should fall onto those resource users who are subject to monitoring, as opposed to the general ratepayer. For any prosecutions, ORC reserves the right to seek recovery of allowable legal costs.

Recovery of Default Work Costs

Under the Act, the actual and reasonable cost of default work can be recovered by the ORC as a debt due. This is normally done through an invoice. Failure to pay can result in compounding interest being added to the debt, and ultimately a lien can be placed on the property that prevents owners dealing with the title to their property until the debt associated with the lien has been resolved.

Policy owner	Manager, Environmental Implementation		
Superseded Version #	1.0	9 June 2021	Initial policy
Current Version #	2.0	26 June 2024	Reviewed and updated for consistency and clarity. Approved Otago Regional Council meeting on 26 June 2024.
Next Review Date	March 2027		

Cover Photo: Australian Young Mine Water wheel Carrick Range, Bannockburn (Credit: Gary Smith)