



Primary Industries and Resources SA Food Safety Program Compliance & Enforcement Policy

Purpose

The Primary Industries and Resources SA (PIRSA) Food Safety Program (FSP) Compliance and Enforcement Policy:

- identifies the regulatory options used by the FSP to respond to incidents of non-compliance or complaints associated with FSP's regulatory responsibilities under the *Primary Produce (Food Safety Schemes) Act 2004 and associated regulations*;
- ensures that the regulatory decision-making process is exercised in a transparent and fair manner according to established and publicly accessible principles.

Background

The objective of PIRSA's FSP is to apply legislation and programs that promote and improve food safety in primary industry sectors, aimed at lowering the incidence of foodborne illness, while delivering consumer and industry confidence and market access opportunities.

The FSP, within PIRSA's Biosecurity Division, administers the *Primary Produce (Food Safety Schemes) Act 2004*. The FSP is responsible for ensuring individuals and companies comply with the requirements of the Act, standards, approved food safety arrangements and produce safe and suitable food.

The Compliance and Enforcement Policy has been developed to ensure enforcement measures are clear, consistent and available to stakeholders.

Scope

The Policy applies to:

- persons or businesses accredited with the Minister under the *Primary Produce (Food Safety Schemes) Act 2004*; and
- persons or individuals who are not accredited but may be in contravention of the Act.

The FSP works closely with other agencies, including State, interstate and federal regulatory agencies, to achieve national consistency in food regulation.

Compliance Protocols

The FSP acts on complaints from the public, accredited operators, and government authorities as well as responding to incidents identified during the auditing of accredited businesses.

Compliance and enforcement is undertaken using a variety of approaches including investigation, complaint resolution, enforcement, surveillance activities, audits, application of sanctions, industry/public awareness and relationships with other agencies.

Complaints or incidents may arise from illegal activities, reports of non-compliance with standards, the production of unsafe or unsuitable food, and foodborne illness investigations.

To encourage compliance with food safety standards without placing an undue cost burden upon the food industry the FSP has identified a range of compliance options. The FSP is committed to delivering a system of compliance that is clear, effective, equitable and flexible.

The FSP applies risk management principles, prior history and audit activity/cost to drive compliance and corrective action.

This policy applies the principles outlined in the Australian & New Zealand Food Regulation Enforcement Guideline¹.

Sanctions (Enforcement tools)

A graduated and proportionate response will be applied using one or more of the following:-

- Verbal warnings
- Corrective Action Request (CAR)
- increasing the audit frequency at the operator's expense,
- Compliance Order,
- expiation,
- notices,
- seizure of product,
- suspension or revocation of accreditation, or
- prosecution.

The FSP will assess each case on its merits before determining the most suitable enforcement option. A graduated response is where mild sanctions are applied to a business in the first instance: to be followed by more severe sanctions should the business continue the non compliant activity.

A proportionate response is where a sanction is proportionate to the identified non compliance and is capable of providing sufficient incentive to the business to amend the non compliant behaviour.

Factors to be considered to determine the most suitable enforcement option

Factors that will be assessed before determining which sanction(s) will be applied to deal with non-compliance matter include:

- does the incident present the risk of a 'food safety incident'?
- what is the extent of the food safety risk?

¹ Endorsed by the Implementation Sub Committee – Food Regulation Standing Committee

- Evaluating the impact of the alleged offence; on the consumer, to competitors of the offending business, and to any profits earned by the business resulting in the offence
- is there prima-facie evidence that an offence is likely to have occurred?
- what is the level of public interest and need for consumer protection?
- what level of deterrence is warranted (based on risk, prior knowledge and compliance history)
- has the alleged offender/accredited operator previously committed breaches/offences against the legislation?
- culpability of the alleged offender/ accredited operator
- mitigating or aggravating circumstances
- degree of willingness shown by the offender/ accredited operator to address the non-compliance
- prevalence of the breach/offence
- consistency of approach to similar breaches/offences
- length of time since the alleged offence/breach occurred
- possible impact on other proceedings
- level of personal or financial hardship to the alleged offender/ accredited operator
- cultural, linguistic or communication difficulties of alleged offender/ accredited operator
- impact of new or transitional legislative requirements.

Factors to be ignored when determining the most suitable enforcement option

- any element of discrimination or bias against the person such as ethnicity, nationality, political association, religion, gender, sexuality or beliefs
- possible political advantage or disadvantage to a government or any political group or party
- the possible effect of the decision on the personal or professional circumstance of those responsible for the decision
- any personal feelings of decision-makers toward other parties involved.

Strategies to improve compliance

Education

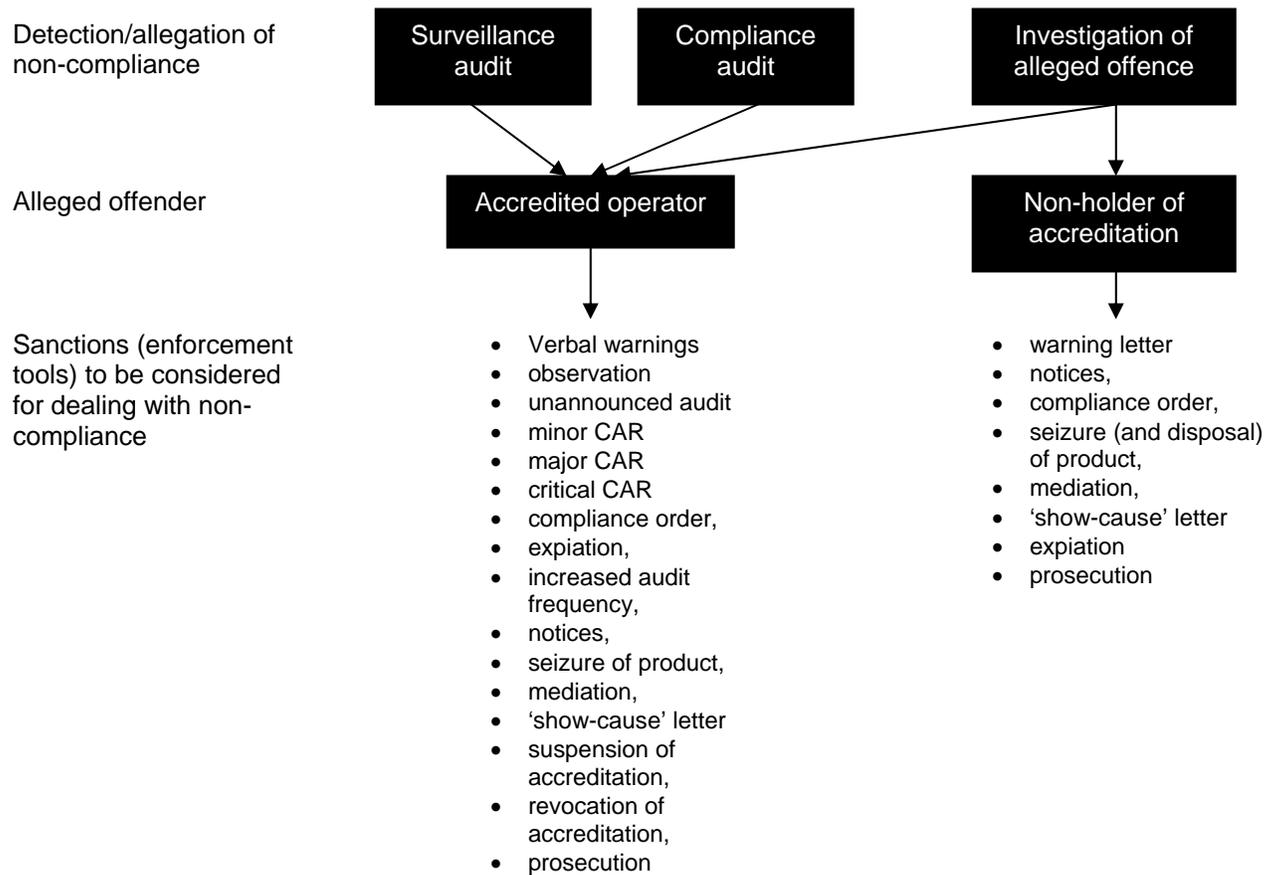
The FSP endeavours to use education as a tool to enhance compliance by informing businesses about standards and legislative requirements, and by guiding them to relevant sources of information. This is achieved by various means including media releases, circulars, newsletters, the PIRSA web site, communications with stakeholders (eg. SA Health and local government) and appearances at industry and public gatherings.

Training

Training is often associated with CAR's (incorporating preventive action) to prevent recurrence of non-compliance identified at audit and will frequently be used in conjunction with other compliance strategies.

The FSP observes industry trends and implements industry workshops and other training opportunities as a tool to achieve industry improvement in areas of poor performance.

Figure 1: Framework for Authorised Officers in dealing with non-compliance



Glossary

1 Approved food safety arrangement

Approved food safety arrangement of an accredited producer means a food safety arrangement approved for the producer by the accreditation body that accredited the producer

2 Food safety arrangement

A **food safety arrangement** is a set of processes adopted by a producer to apply to the production of primary produce for the safety and suitability of the produce, including processes relating to one or more of the following:

- (a) operations before, during and after production of the produce;
- (b) maintaining premises, vehicles, plant and equipment used in connection with the production of the produce;
- (c) auditing of compliance with the processes.

3 Compliance Order

Under section 31(1) of the Act, if an Authorised Officer reasonably suspects that a producer has contravened or is contravening legislative requirements, the officer may, by written notice to the holder-

- require specified action to be taken within a specified time to rectify the contravention; or
- require specified action to be taken within a specified time to ensure compliance with legislative requirements; or
- prohibit the use of specified premises, vehicles, plant or equipment until legislative requirements are complied with; or
- prohibit the use of product

legislative requirements means requirements of this Act, including conditions of accreditation and requirements of a food safety scheme or approved food safety arrangement.

The Authorised Officer is able to amend an Order pursuant to s.31 (2) of the Act.

1.1 Reasons why Compliance Orders are issued

Common reasons for the issue of a Compliance Order includes:

- in the case of a food safety 'emergency', to take immediate action;
- non-compliance with approved food safety arrangements;
- standards of construction which pose a risk/hazard to product safety and suitability, and public health;
- standards of hygiene and operational procedures do not comply with minimum standards;
- processing without accreditation.

Failure to comply with an Order is an offence against s.32 of the Act for which a maximum penalty \$20,000 applies.

1.2 Closing out a s.31 Compliance Order

Once the conditions listed in the Compliance Order have been corrected the client must notify an Authorised Officer so that an audit/inspection can be arranged to verify the satisfactory completion of corrective action. After assessing the effectiveness of actions to correct the contravention/s, the Compliance Order may be revoked. The audit/inspection will be arranged so as to minimise any delays in resuming operations. However, in the interests of public health, any works must be completed to a satisfactory standard, and early notice given as to when it is suitable for an inspection to be carried out.

1.3 Costs

The holder of the accreditation will bear all costs associated with audits/inspections that raise, follow-up or close out a Compliance Order.

4 Corrective action request (CAR)

Non-compliance is generally identified through audit and is classified according to risk and fits into three categories - minor, major or critical. Minor and major non-conformances may be dealt with during the monitoring process. Critical non-conformances require the accredited operator to take immediate and specific action to correct the non-compliance

Minor Non-conformance: Low risk situation

A non-conformance with the approved food safety arrangement where the potential impact of the non-conformance is not likely to compromise food safety.

Major Non-conformance: Medium risk situation

A non-conformance with the approved food safety arrangement where the potential impact of the non-conformance is likely to compromise food safety and suitability if no remedial action is taken to correct the non-conformance within a specified period.

Critical Non-conformance: High risk situation

A high risk non-conformance with the approved food safety arrangement where the potential impact of the non-conformance is of substantial and/or immediate significance to food safety and suitability warranting immediate corrective action.

Failure to sufficiently address a critical non-conformance can lead to the suspension or cancellation of an accreditation, or prosecution.

5 Compliance audit

A compliance audit is conducted at cost to the accredited operator and is scheduled when a major or critical corrective action request (CAR) has been issued at a previous audit. Follow-up audits may be unannounced.

6 Expiation

Is the equivalent of a penalty infringement notice or 'on-the-spot' fine.

7 FSP

Food Safety Program (within the Department of Primary Industries and Resources SA).

8 Increased audit frequency

An intensified audit frequency is conducted as a result of continued non-compliance with an approved food safety arrangement at cost to the accredited operator.

9 Mediation

Negotiation conducted by an impartial party to resolve differences between two or more parties.

10 PIRSA

The Department of Primary Industries and Resources SA.

11 Prosecution

Prosecution may be undertaken when alternative compliance strategies fail. Prosecution may also be the strategy of choice where the food safety risk posed by the non-compliance is high or the non-compliance is considered to be of a serious nature.

12 Show Cause Letter

A letter sent to an accredited producer informing them of the intention to suspend or revoke their accreditation. PIRSA FSP is obliged to give 14 days notice of the proposed action, where the producer can make a submission in response. This detailed under section 21 (4) of the Act.

13 Suspension or revocation of an accreditation

The suspension or revocation of an accreditation is considered to be a very severe measure and is only undertaken as the final consequence when other enforcement options (such as a Compliance Order) have been applied and have failed.

Notes

Review

The Compliance and Enforcement Policy will be reviewed as part of PIRSA's Food Safety Program annual review and planning processes.

Legal status

This policy does not have and is not intended to have legal status. It is not legally binding on the PIRSA and does not confine, restrain or limit the discretion of Authorised Officers or PIRSA to take any action. It is designed to provide guidance on the FSP's approach to non-compliance.

Further information

If you wish to know more about the FSP's Compliance and Enforcement Policy, or wish to provide information on the unauthorised production or processing of primary produce, please call the FSP on (08) 82077964. All calls are treated with the utmost confidentiality.

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