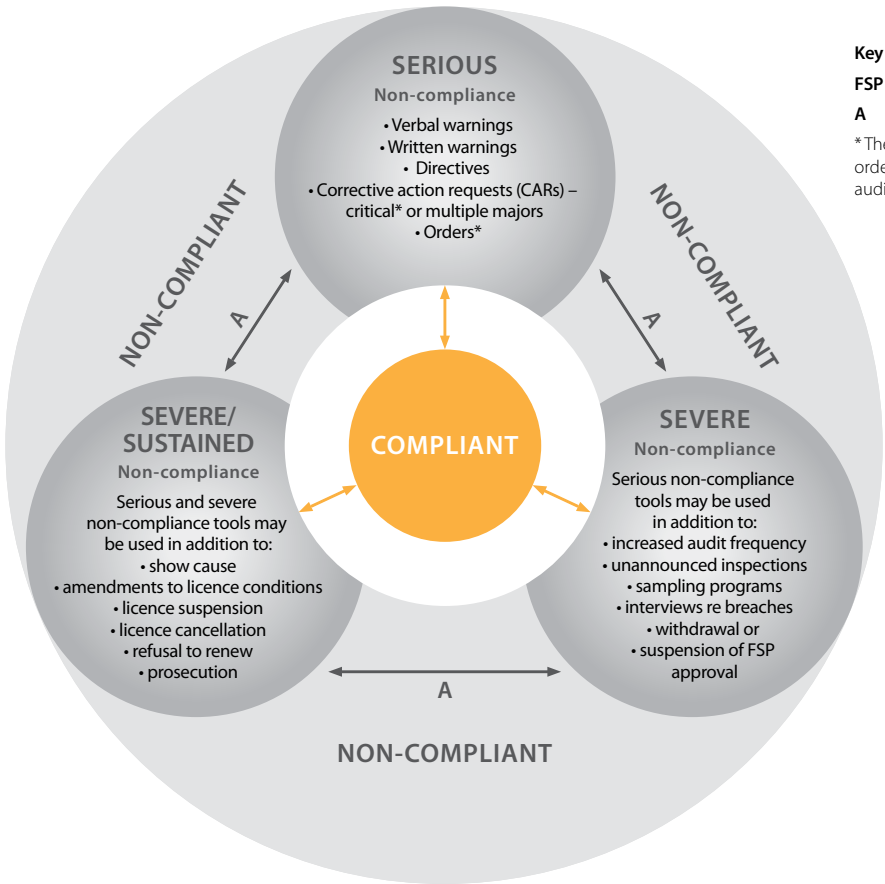


Dairy Food Safety Victoria (DFSV) Enforcement Model Guidelines

DFSV will take enforcement action when deemed necessary to fulfil its statutory objective to ensure that the standards which safeguard public health are maintained in the Victorian dairy industry.

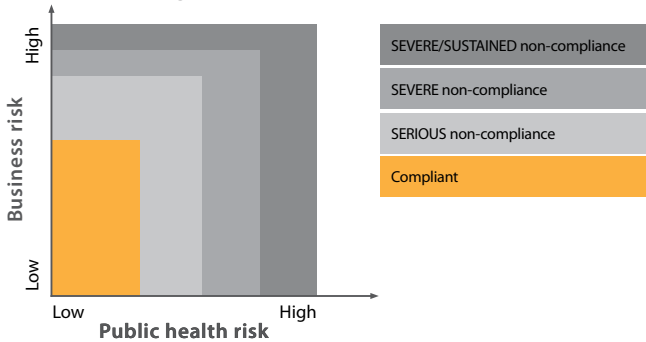
Consistent with the principles of the Australian and New Zealand Food Regulation Enforcement Guideline DFSV will take actions proportionate to the seriousness of the legislative non-compliance identified and the food safety or business risk.

Enforcement Model – escalation of DFSV’s enforcement action in response to non-compliance



Note: this is a guide only and DFSV will assess each business and their non-compliance(s) on a case-by-case basis, taking action by using the regulatory tool/s deemed appropriate under the specific circumstances.

Risk graph



Enforcement actions

The enforcement model shows actions that may be taken by DFSV when serious, severe or severe/sustained non-compliance is identified with definitions as follows:

- **Serious** non-compliance is defined as non-compliance that requires immediate or short term corrective action to minimise the public health or business risk.
- **Severe** non-compliance is defined as non-compliance that requires immediate or short term corrective action to minimise the public health or business risk and additional oversight by DFSV to ensure compliance is maintained.
- **Severe/sustained** non-compliance is defined as non-compliance that requires legal action or intervention action by DFSV to minimise public health or business risk.

Enforcement actions available to DFSV and DFSV authorised officers under the *Dairy Act 2000* and the *Food Act 1984* are outlined in the following table.

Table 1: Enforcement actions

Action	Description
Corrective action requests (CARs)	Written requests, documented on audit reports, requiring actions to be taken by a specified date.
Orders	Written notices ordering a person to take specified action. Failure to comply with an order is a prosecutable offence.
Directives (verbal or written)	Directions to a person to take specified actions. Failure to comply with a directive is a prosecutable offence.
Warnings (verbal or written)	Advice regarding offences/breaches of legislation and where applicable, required remedial actions that must be taken.
Increased audit frequency	The requirement for a licensee to undergo one or more audits at specified times/frequencies, in addition to the scheduled audits required for compliance to licence conditions. These audits are to be conducted at the licensee's cost and will be charged at the enforcement rate (higher than the standard audit rate).
Unannounced inspections	Inspections of licensed premises without prior notice to the licensee. These may or may not be conducted at the licensee's cost.
Sampling programs	The procuring of samples of dairy and non-dairy food produced by a licensee to be submitted to a laboratory for analysis.
Interviews	Questioning of a person to obtain explanations or further information.
Withdrawal or suspension of food safety program approval	The withdrawal or suspension of DFSV's approval of a licensee's food safety program. Whilst the withdrawal/suspension remains in force, the licensee must not conduct business.
Amendments to licence conditions	Documented changes to a licensee's licence conditions by DFSV to limit or control a licensee's activities.
Show cause	The opportunity for a licensee to provide documented reasons why action (e.g. licence cancellation) should not be taken against the licence.
Licence suspension or cancellation	Action taken by DFSV to cease business activity.
Refusal to renew a licence	Action taken by DFSV when renewal eligibility criteria are not met.
Prosecution	Legal action taken against a person for committing an offence under the <i>Dairy Act 2000</i> or <i>Food Act 1984</i> .

There will not always be a clear linear progression of actions taken. DFSV may choose to use any enforcement tool in the first instance or as part of subsequent action taken. Multiple tools may also be used together as deemed appropriate (see Table 2 for examples of use).

Where non-compliance is identified, an authorised officer may **immediately** take one or more of the serious non-compliance actions. The authorised officer may also recommend to the Chief Executive Officer (CEO) of DFSV that one or more of the severe or severe/sustained non-compliance actions be implemented. If the CEO agrees with the recommendation, the licensee will be notified in writing of the decision and associated requirements. As a general rule, the licensee will receive this advice within five business days of the date of recommendation.

Table 2: Examples of use for each tool

Action	Example/s of when it may be used
Corrective action requests (CARs)	<p>Will be raised by auditors when non-compliance is identified during audits. CARs are classified minor, major or critical, based on risk.</p> <p>Failure to take action as requested to close a CAR by the specified date will result in escalation of the CAR from minor to major or major to critical as applicable.</p> <p>Critical CARs (including escalated majors) will trigger an increase in monitoring and supervision by DFSV through the use of other enforcement tools such as orders or increased audit frequency.</p>
Orders	<p>May be issued by authorised officers for the following purposes:</p> <ul style="list-style-type: none"> • to control the movement of contaminated or potentially contaminated product or to ensure it is handled or disposed of in an appropriate manner • to prevent the use of equipment or an area of the premises which are non-compliant (e.g. unclean, damaged or in disrepair) • to prevent the manufacture or handling of certain products until the safety of the processes and resulting product can be assured.
Directives (verbal or written)	<p>May be used by authorised officers during inspections to direct a person to take actions to correct identified non-compliances or to provide information as part of an investigation.</p>
Warnings (verbal or written)	<p>May be provided by authorised officers or DFSV to warn of further enforcement action that DFSV will take should inadequate action be taken by a person to correct an identified non-compliance or if a repeated non-compliance is identified. Examples of further enforcement may include licence cancellation or prosecution.</p>
Increased audit frequency	<p>Will be required by DFSV to increase the monitoring of a licensee following:</p> <ul style="list-style-type: none"> • the identification of a critical non-conformance • the failure to close a major CAR by the due date resulting in an escalation of the major to a critical CAR • the issue of an order. <p>May be required under other circumstances where the extent of a licensee’s improvement or ongoing compliance is deemed to require extra monitoring. For example,</p> <ul style="list-style-type: none"> • where a clearance program is to be implemented • where the person responsible for the implementation of an approved food safety program has not demonstrated an adequate understanding of the requirements of the program to an auditor or authorised officer.
Unannounced inspections	<p>May be conducted by authorised officers to check compliance with directions, orders, licence conditions or other regulatory requirements.</p>
Sampling programs	<p>May be conducted to determine the safety or composition of a product where evidence is not available or ongoing evidence is required.</p>

Interviews	May be conducted by authorised officers to obtain explanations or further information during or after inspections where non-compliances are identified. Interviews may be recorded and answers provided used in legal proceedings.
Withdrawal or suspension of food safety program approval	May be instigated by DFSV where serious or repeated non-compliance with the requirements of the program have been identified and in the opinion of DFSV cannot be dealt with by increased monitoring.
Amendments to licence conditions	May be instigated by DFSV to impose restrictions on dairy production or on certain personnel involved in the dairy or to limit the period that the licence remains current, in situations where specific actions are required to be taken.
Show cause	May be instigated by DFSV in situations where DFSV determines that the licensee/person responsible has not had an opportunity through an investigation process to put their case forward.
Licence suspension or cancellation	May be instigated by DFSV as a result of the identification of deliberate or repeated breaches of licence conditions or regulatory requirements.
Refusal to renew a licence	May be instigated where a licensee has: <ul style="list-style-type: none">• failed to comply with a licence condition during the licence period.• ceased to operate during the licence period• not conducted business over a specified period e.g. greater than 12 months for dairy farmers• had their food safety program approval withdrawn or suspended• outstanding debt owing to DFSV.
Prosecution	May be instigated by DFSV against a person for: <ul style="list-style-type: none">• commencing or conducting a dairy business without a current, valid licence• failing to comply with an order issued by an authorised officer• refusing admission to an authorised officer and any person accompanying an authorised officer during an investigation• refusing to provide information or for providing misleading information to an authorised officer• refusing to comply with a direction from an authorised officer• refusing to assist an authorised officer• interfering or altering samples or any items seized by an authorised officer• assaulting, obstructing, threatening, intimidating, abusing or insulting or attempting to do any of the pre-mentioned things to an authorised officer or other person accompanying an authorised officer during an inspection, audit or investigation• in the course of any business, accepting, collecting, buying or selling any dairy food from an unlicensed dairy business• selling or providing unpasteurised milk or dairy products for human consumption (other than the sale or delivery of unpasteurised milk to licensed dairy manufacturing premises)• non-compliance with the Food Standards Code• the handling and sale of unsafe or unsuitable food (as defined in the <i>Food Act 1984</i>)• providing a false description of food• misleading conduct in relation to the sale of food• the sale of unfit equipment, packaging or labelling material.

Table 3: Examples of escalations and the use of multiple tools (this is a guide only – case-by-case assessments will be made by DFSV)

Example	Non-compliance identified	DFSV action	Licensee action	DFSV action	Licensee action	DFSV action
1	Serious Public health risk	Immediate: • Critical CAR • Order/s Subsequent: • Increased audit frequency	<ul style="list-style-type: none"> ◦ Corrective actions implemented immediately to minimise the risk ◦ Compliance with the order/s ◦ Compliance demonstrated at additional audits 	<ul style="list-style-type: none"> • Critical CAR closed • Order revoked • Licensee advised they may return to standard audit frequency 	<ul style="list-style-type: none"> ◦ Compliant 	<ul style="list-style-type: none"> • No further action
2	Serious Public health risk	Immediate: • Critical CAR • Order/s Subsequent: • Increased audit frequency	<ul style="list-style-type: none"> ◦ Corrective actions taken not adequate to minimise the risk ◦ Compliance with the order/s ◦ Compliance not demonstrated at additional audits (major and critical CARs continue to be identified) 	<ul style="list-style-type: none"> • Withdrawal of FSP approval • Interview • Show cause 	<ul style="list-style-type: none"> ◦ Inadequate response to show cause provided 	<ul style="list-style-type: none"> • Licence cancelled
3	Serious Business risk e.g. outstanding debt for audit services	<ul style="list-style-type: none"> • Warning 	<ul style="list-style-type: none"> ◦ Continued failure to pay the debt 	<ul style="list-style-type: none"> • Licensee notified of DFSV's refusal to renew the licence/or initiation of licence suspension unless the debt is paid by a specified date 	<ul style="list-style-type: none"> ◦ Debt paid by due date 	<ul style="list-style-type: none"> • Licence renewed or remains current
4	Severe Public health risk	<ul style="list-style-type: none"> • Order/s • Unannounced inspections • Sampling program 	<ul style="list-style-type: none"> ◦ Compliance with the order/s ◦ Compliance demonstrated at inspections ◦ Samples return compliant results 	<ul style="list-style-type: none"> • Order/s revoked • No further action 		
5	Severe Public health risk	<ul style="list-style-type: none"> • Order/s • Increased audit frequency • Unannounced inspections 	<ul style="list-style-type: none"> ◦ Failure to comply with the order/s ◦ Compliance with food safety program not demonstrated at audits or inspections 	<ul style="list-style-type: none"> • Prosecution • Withdrawal of FSP approval • Show cause 	<ul style="list-style-type: none"> ◦ Inadequate response to show cause provided 	<ul style="list-style-type: none"> • Licence cancelled
6	Severe/Sustained Public health risk (deliberate or repeated action by licensee)	<ul style="list-style-type: none"> • Order/s • Withdrawal of food safety program • Show cause 	<ul style="list-style-type: none"> ◦ Inadequate response to show cause provided 	<ul style="list-style-type: none"> • Licence cancellation 		

For further information contact DFSV on (03) 9810 5900 or email info@dairysafe.vic.gov.au