



Policy P6.1.2

Illegal and Careless Fires and Enforcement

Version	3.0
SOPs	P6.1.2-1 Investigation Management for Legal Process P6.1.2-2 Issuing a Penalty Notice P6.1.2-3 Issuing a Caution Letter P6.1.2-4 Conducting an Internal Review of Issued Penalty Notice P6.1.2-5 Reporting or Referring a Matter to the NSW Police Force P6.1.2-6 Formal Community Engagement P6.1.2-7 Exceptional Circumstances P6.1.2-8 Record Keeping for Legal Process
Policy Owner	Deputy Commissioner Operational Coordination
Policy Contact	Director State Operations
Approval Date	7 July 2025
Next Review	7 July 2030

1. Purpose

1.1 This policy:

- Outlines procedures for staff to follow when taking legal process action for breaches of the *Rural Fires Act 1997* (the Act) and Rural Fires Regulation 2022 (the Regulation)
- Provides advice on how to issue and serve a penalty notice under the Act, exercise discretion under section 19A of the *Fines Act 1996*, or take other appropriate action, and
- Provides advice on how to offer guidance to change the behavior of the community in reducing the occurrences of illegal and careless fires.

2. Policy

- 2.1 The Act and the Regulation allow for authorised officers to take legal action against persons who commit an offence as listed in [Schedule 2 of the Regulation](#).
- 2.2 These breaches relate to persons who are careless with their actions around the use of fire and/or light and/or cause a fire to be lit on lands they own or occupy.

- 2.3 District Managers and Area Commanders must ensure an authorised officer is assigned to review and manage all illegal and careless fires.
- 2.4 Authorised officers from the RFS are required to take some form of legal process against persons who are reasonably suspected of committing offences.
- 2.5 The RFS has produced the Authorised Officer Handbook to assist authorised officers in the enforcement of the Rural Fires Act and Rural Fires Regulation.
- 2.6 An authorised officer will conduct an investigation into the alleged offence/s in accordance with SOP P6.1.2-1 Investigation management for legal process.
- 2.7 All information gathered as part of the investigation must be maintained in accordance with SOP P6.1.2-8 Recordkeeping for legal process.

Authorised officers

- 2.8 Authorised officers of the RFS may issue and serve penalty notices under section 131 of the Act.
- 2.9 The Commissioner has delegated his authority under [Schedule 2 of the Regulation](#) to appoint authorised officers to the Deputy Commissioner Operational Coordination.
- 2.10 Following initial authorisation, mandatory ongoing refresher training is required to maintain authorisation.
- 2.11 The Deputy Commissioner Operational Coordination must keep a register of all authorised officers, which is to be reviewed annually by the Fire Investigation and Compliance Unit (FICU).

Authorised officers' discretion

- 2.12 An authorised officer has five options in respect of an alleged offence:
 - to issue a penalty notice
 - to issue a caution letter pursuant to section 19A of the Fines Act
 - to refer the matter to the NSW Police Force
 - to undertake formal community engagement, or
 - determine that the case for exceptional circumstances exists and it is noted in ICON with sufficient information.
- 2.13 A penalty notice or caution letter is to be issued unless special circumstances exist. Authorised officers are not to issue verbal warnings in relation to any matter covered by this policy.
- 2.14 No member of the RFS is to:
 - direct or influence an authorised officer to make a particular decision, or
 - direct, imply, infer, or give the impression (either overtly or covertly) that an authorised officer is required to exercise their discretion in a particular way.

Review of authorised officers

- 2.15 An authorised officer can have their authorisation reviewed by the Director State Operations at any time, with a recommendation made to the Deputy Commissioner Operational Coordination where an authorised officer has:
 - failed to undertake mandatory training to maintain currency as an authorised officer, or
 - a. failed to comply with this policy.

- 2.16 Any recommendation made to the Deputy Commissioner Operational Coordination following a review may include but not be limited to:
- recommendation for changes to organisational policy or training, relevant to penalty notices
 - requiring the authorised officer to undertake further training, including mentoring
 - suspension of the authorised officer status for a defined period
 - removal of authorised officer status, or
 - any combination of the above.
- 2.17 In the course of a review, the Director State Operations may refer a matter for action where evidence shows that the authorised officer may have acted in such a manner that:
- misconduct action should be initiated under relevant provisions of the *Government Sector Employment Act 2013* (GSE Act)
 - performance management should be initiated under relevant provisions of the GSE Act, or
 - requires the RFS to report the matter to an external oversight agency (i.e. Revenue NSW, Independent Commission Against Corruption (ICAC), NSW Police Force).
- 2.18 Where a referral is initiated based on clause 2.15 above, the Director State Operations shall suspend the review process until the outcome of any external considerations is completed.

Incidents triggering legal process

- 2.19 Legal process is triggered when the final suspected cause is listed in the ICON record of an incident, i.e. when a final sitrep marking the fire as 'OUT' is authorised. The following suspected causes trigger the need for legal process:
- burning off illegal
 - escaped hazard reduction
 - escaped permit, and
 - escaped pile burn.

Privacy and personal information

- 2.20 Information pertaining to illegal and careless fires and enforcement processes is to be maintained in accordance with Service Standard 1.1.14 Personal Information and Privacy and policy P5.1.6 Records Management.

Further information

- 2.21 Further information can be obtained from the Fire Investigation and Compliance Unit (FICU), the Authorised Officer Handbook and the ICON Cause Management and Determination Guide.

3. Definitions

- 3.1 For the purpose of this policy, the following definitions apply:
- Authorised officer:** as defined in Schedule 2 Penalty Notice Offences cl 1(3) of the Rural Fires Regulation 2022:
 - Police officers
 - Persons authorised by a local authority, or
 - Persons authorised by the Commissioner.

- c. **Cautioning of persons:** as defined in [s139 of the Evidence Act](#), a statement to a person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence
- d. **Illegal and careless fire:** is one that is lit by a landowner, property manager, occupier or lawful visitor to that private land without authority or permissions
- e. **Jurat:** The section on an official statement, affidavit etc by the authorised officer, showing by whom, when and before whom it was sworn to
- f. **Offence:** A breach of a law or rule, an illegal act
- g. **Penalty notice:** as per [s20 of the Fines Act](#)
- h. **Penalty notice offence:** as defined in the Fines Act 1996, is an offence under a statutory provision for which a penalty notice may be issued
- i. **Penalty Notice Officer (PNO):** PNO is the internal RFS qualification for an authorised officer
- j. **RFS legal process:** action taken against a person who commits an offence against the Rural Fires Act and/or Rural Fires Regulation.

3.2 A reference to the Commissioner is also a reference to a person acting under a relevant delegation from the Commissioner.

4. Document Control

Release history

Version	Date	Summary of changes
1.0	1 Sep 1999	Initial release as policy 4.2.4 Penalty Notices v1.0
1.0	1 Sep 2008	Repealed and remade policy 4.2.4 v1.0 Renumbered as P6.1.2 to align with updated policy index Complete review to align with the Rural Fires Regulation 2008
2.0	14 May 2018	Repeals and remakes P6.1.2 v1.0 Retitled to “Penalty Notices and Cautions” Complete review to align with the Rural Fires Regulation 2013
3.0	7 July 2025	Renamed to Illegal and Careless Fires and Enforcement Complete review to ensure continued compliance with legislative requirements and associated business processes.

Approved by

Name	Position	Date
Peter McKechnie	A/Commissioner	7 July 2025

Related documents

Document name
Rural Fires Act 1997
Rural Fires Regulation 2022
Fines Act 1996
Caution Guidelines under the Fines Act 1996
Internal Review Guidelines under the Fines Act 1996
Criminal Procedure Act 1986
Evidence Act 1995
Government Sector Employment Act 2013
Law Enforcement (Powers and Responsibilities) Act 2002
Surveillance Devices Act 2007
Service Standard 1.1.14 Person Information and Privacy
Service Standard 1.1.7 Code of Conduct and Ethics
Service Standard 1.3.1 Operational Delegations and Authorisations
Service Standard 4.2.2 Fire Permits
Policy P1.1.3 Conflicts of Interest
Policy P2.1.1 RFS Administrative Delegations
Policy P5.1.6 Records Management
ICON Cause Management and Determination Guide
Authorised Officers Handbook (see FICU for further information)
Proofs of Evidence Guide (see FICU for further information)
Fixed Penalty Handbook (see FICU for further information)
RFS register of Authorised Officers
RFS register of numbered notebooks

SOP P6.1.2-1

Investigation management for legal process

1 Purpose

- 1.1 This SOP details the process involved in an investigation into breaches of the provisions listed in Schedule 2 of the Rural Fires Regulation.
- 1.2 An investigation can only be carried out by an authorised officer, as set out in Schedule 2 cl 1(3) of the Regulation.
- 1.3 The RFS has produced the Authorised Officer Handbook to assist authorised officers in the enforcement of the Rural Fires Act and Rural Fires Regulation.

2 Procedures

- 2.1 Authorised officers must carry their identification and authority card with them whilst on duty in that role.
- 2.2 An authorised officer must produce their RFS identification and authorisation card whenever requested to do so when attending an incident scene.
- 2.3 An authorised officer may be informed by the District Duty Officer of a suspected illegal and careless fire.
- 2.4 The authorised officer will review the incident and associated information to ascertain if a breach has occurred. As a result of this assessment, and if a breach is suspected, the authorised officer initiates the investigation plan.
- 2.5 The authorised officer will attend the scene of the incident unless there are mitigating circumstances where phone contact is appropriate. Consideration needs to be given as to whether a corroborating/support officer should accompany the authorised officer. At the scene the authorised officer must consider the following:
 - what offence/s may have been committed. To assist in determining this, officers should refer to the Proofs of Evidence Guide, which details the elements for each offence listed in Schedule 2
 - what evidence is available to assist in proving each of the elements of the offence/s
 - what is the best way of capturing or gathering the evidence, and
 - who is the likely offender for the offence.

Evidence

Elements

- 2.6 An offence can have multiple elements , and all of the individual elements are required in order to prove the offence.
- 2.7 It is the role of the authorised officer to establish all of the elements of the allegation to the Criminal Standard of Proof (which is beyond reasonable doubt) that an offence has been committed.

Recording evidence

- 2.8 It is the responsibility of the authorised officer to ensure all evidence is collected in a manner which complies with the Evidence Act, to ensure it is admissible in court.

Official notebooks

- 2.9 Each authorised officer is issued with an RFS accountable notebook. This notebook is to be used when obtaining information and evidence for the purpose of legal process.
- 2.10 The authorised officer is to record all notes contemporaneously – i.e. recording at the time or as soon as practicable.
- 2.11 If the authorised officer has another officer with them at the time they conduct an investigation, they should have this other officer read and adopt the notes that are made in the notebook at the time or as soon as practicable. This requires the other officer to read and initial each page and sign at the end of the notes indicating they agree with the accuracy of the information recorded.

Statements

- 2.12 To comply with the *Criminal Procedure Act 1986* and allow a statement into evidence, the statement must have the following:
- jurat
 - age of the person making the statement
 - each page signed by the person making the statement, and
 - each signature on each page witnessed.
- 2.13 When an authorised officer completes or takes a statement from a witness it must:
- be truthful and accurate
 - detail events in chronological order
 - Include the identity of the person making the statement
 - be descriptive
 - have relevant admissible (in first person) conversation
 - provide information which supports one or more proofs of the offence, and
 - document anything further that they consider relevant.

Witnesses

- 2.14 If an authorised officer identifies a witness who can provide direct evidence that supports the proof of an offence, this evidence needs to be recorded as an official statement.
- 2.15 An authorised officer can take a statement from a witness in their official notebook as long as it complies with clauses 2.10 and 2.11 of this SOP.

Photographs

- 2.16 Authorised officers should take photographs to record the scene.
- 2.17 The photographs taken by the authorised officer must commence from the outer perimeter of the property, showing the location of the property, and tell a story by using the images, finishing with the fireground.
- 2.18 These photographs are included as part of the authorised officer's investigation and subsequent statement, and form part of the brief of evidence.

Admissions from alleged offenders

- 2.19 While an authorised officer is initially speaking with an alleged offender, and before officially asking them questions in respect to the incident, the authorised officer must 'caution' the alleged offender as to their right to silence. This caution must be compliant with S139 of the [Evidence Act 1995](#).
- 2.20 If during the initial discussion between an authorised officer and an alleged offender, the alleged offender makes an admission to them about committing the offence, the authorised officer can provide this admission as evidence as long as:
- the admission is recorded in an official notebook
 - this entry in the notebook is brought to the attention of the alleged offender at the time of the admission
 - the authorised officer confirms with the alleged offender that they understand the contents of the recording, and
 - The authorised officer asks the alleged offender to read and adopt the record as true and correct by signing each page of the record.
- 2.21 There is no legislative requirement for the alleged offender to provide a version or answer any questions put to them.

Taking action

- 2.22 Once the investigation is complete, considerations need to be made as to which legal process action will be taken. This can be best explained in the legal process action flow shown at Figure 1 below:

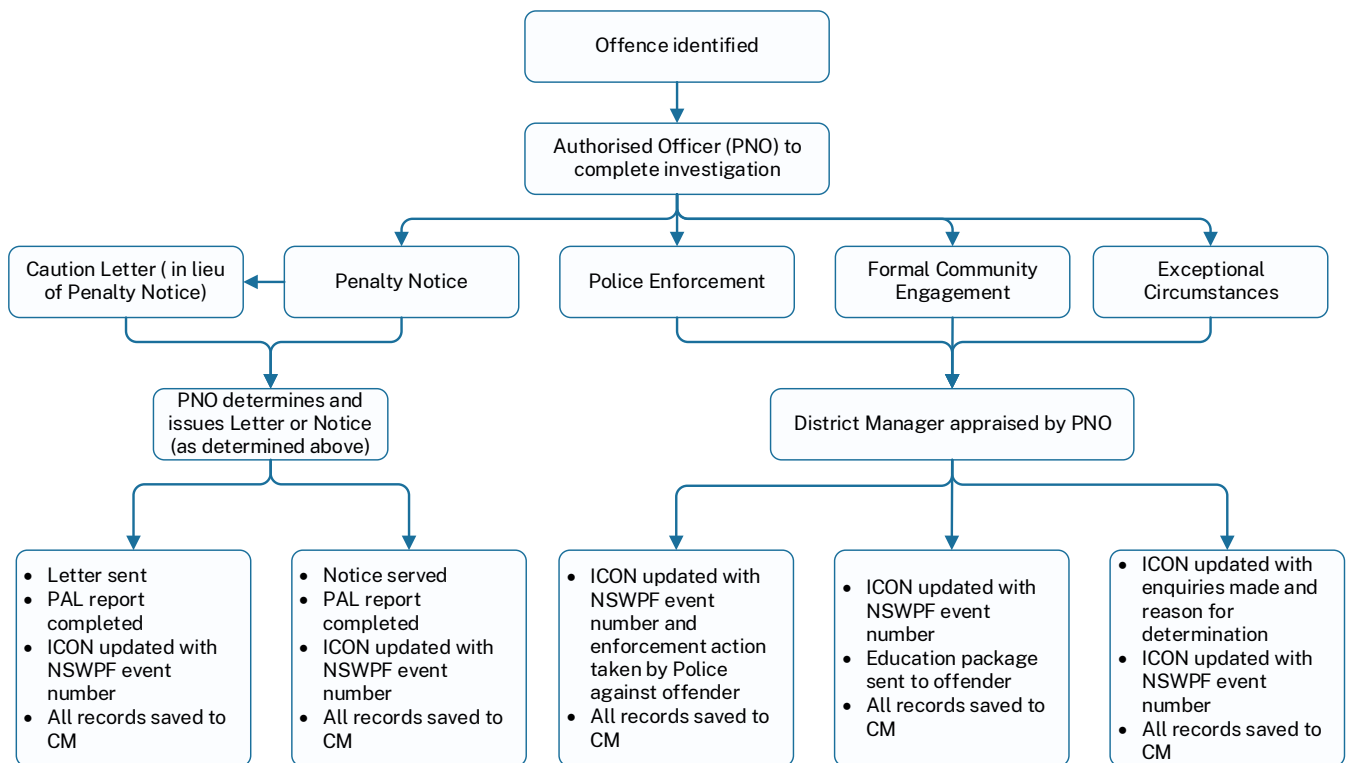


Figure 1 legal process action flow

2.23 In making a decision as to which legal process action to proceed with, an authorised officer:

- should consider that all action taken by the RFS is aimed at changing the behaviour of landowners/managers/occupiers/lawful visitors who disregard the laws relating to the use of fire in the landscape, and
- believes:
 - on reasonable grounds that a person has committed an offence under a statutory provision for which a penalty notice may be issued, or
 - it is appropriate to give a caution in the circumstances, to exercise discretion, in accordance with the [Caution Guidelines under the Fines Act 1996](#).

Statute of Limitations

2.24 For the majority of the offences listed in Schedule 2 of the Rural Fires Regulation, there is a statute of limitations of six months. This means action needs to be taken within six months of the time of the breach. The Fire Investigation and Compliance Unit (FICU), in conjunction with Area Commands, will review all matters older than six months and the District Manager may need to explain why no action has been taken.

2.25 Offences under Section 100 (1)(a) and Section 100 (1)(b) of the Rural Fires Act are the exception to the rule, whereby action needs to be taken within two years of the time of the offence.

Briefs of evidence

2.26 A brief of evidence is a group of documents, including statements and photographs that officers may use as evidence at the hearing.

2.27 The FICU will provide advice and guidance on all matters that reach this level.

2.28 Documents which must be included in a brief for production at court are:

- copy of the penalty notice
- statement of facts – this is a legal document that puts forward the factual information surrounding the incident
- evidence list
- witness list
- statements
- photographs, maps or diagrams, and
- any other document an officer will rely upon to prove the elements of the offence.

Prima facie

2.29 A prima facie case is one on which, on the evidence presented by the prosecution, it is possible that the alleged offender will be found guilty. It is important to ensure the evidence produced in the brief of evidence establishes a prima facie case.

2.30 This means asking yourself, without any further evidence being produced, or the alleged offender calling witnesses, could the case be proven?

2.31 The court will look at whether a prima facie case is established. If yes, the matter proceeds.

3 Related Forms

- Proof of evidence guide. Contact the FICU for further information.
- RFS investigation management training resources. Contact the FICU for further information.

SOP P6.1.2-2

Issuing a penalty notice

1. Purpose

- 1.1 This SOP details the process and considerations an authorised officer is to follow when seeking to issue a penalty notice under the Fines Act.
- 1.2 Penalty notices can only be issued using the approved RFS penalty notice pads or electronic process.
- 1.3 Where the person to be issued a penalty notice is a repeat/recidivist offender, the NSW Police Force should be notified and requested to attend for investigation and criminal prosecution purposes.

2. Procedures

Issuing the penalty notice

- 2.1 A penalty notice must not be issued unless the authorised officer can demonstrate, on reasonable grounds, that every element of the offence appears to be present and there is sufficient evidence to prove the offence.
- 2.2 A penalty notice **should not** be issued where the time elapsed is greater than six months from the date of the offence, as this is outside the statute of limitations.
- 2.3 When issuing a penalty notice the authorised officer must produce their RFS identification and authorisation card if requested to do so,
- 2.4 For discarded lit cigarette from motor vehicle offences, registered owner checks are to be conducted on the Transport for NSW vehicle registration database, available through the [Service NSW website](#).

Requirement to be satisfied as to identity prior to issuing penalty notice

- 2.5 An authorised officer must be satisfied as to the identity of the person to which a penalty notice is to be issued.
- 2.6 Section 131A of the Rural Fires Act allows for an authorised officer who intends to serve a penalty notice on a person, to direct the person to state their full name and residential address.
- 2.7 Wherever possible, an authorised officer should attempt to confirm the detail provided by the person to be issued a penalty notice (i.e. sight their drivers licence).
- 2.8 For discarded lit cigarette from motor vehicle offences, the identity of the person to be issued a penalty notice is limited to the registered owner of the motor vehicle as recorded on the [Service NSW website](#).

Cautioning of persons prior to exercising powers

- 2.9 An authorised officer prior to exercising a power must provide a caution that is compliant with S139 of the Evidence Act 1995 and must include the following details:
 - a. the authorised officer's name
 - b. that you are an officer of the RFS authorised to issue penalty notices

- c. that you suspect that the individual is committing, or has committed, an offence against the Act or Regulation.

Completing the penalty notice

- 2.10 An authorised officer must ensure that the penalty notice is completed in full and contains all required information to allow enforcement.
- 2.11 Once completed, the relevant parts of the penalty notice are to be distributed as follows:
 - a. Part A: sent to Revenue NSW
 - b. Part B: remains in the penalty notice pad
 - c. Part C: served upon the person to receive the penalty notice (posted or in person).

Further information on how to complete a penalty notice is contained within the Authorised Officers Handbook (Part 04) and the Self-Enforcing Infringement Notice Scheme (SEINS) course material provided by Revenue NSW.

- 2.12 An authorised officer ***should not*** issue any more than two penalty notices to any one person for the same fire event. The penalty notice(s) provided must be for the more serious of all the offences committed.

Cancelling a penalty notice

- 2.13 An authorised officer may only cancel a penalty notice in the following circumstances:
 - error in the identity of the person entered on the penalty notice
 - error in the offence or offence code entered on the penalty notice, or
 - error in the location or other details required on the penalty notice.
- 2.14 Where an error has been identified the authorised officer should strike out the penalty notice with two parallel lines and the word ‘cancelled’ clearly printed across the notice. Part A of the cancelled penalty notice is to be returned to Revenue NSW. Parts B and C are to remain in the penalty notice pad.
- 2.15 Where an error has been identified after Part C has been served by either posting or handing to an individual, the authorised officer is to:
 - a. prepare a report to the Director State Operations outlining the error, the circumstances leading to the error, and requesting cancellation of the penalty notice, and
 - b. Submit that report to the Director within seven days of penalty notice being serviced.

Reporting to the NSW Police Force

- 2.16 When a penalty notice is issued, this must be reported to the NSW Police Force via the Police Assistance Line (PAL). See SOP P6.1.2-5 Reporting or referring a matter to the NSW Police Force.

3. Related forms

- Authorised Officer Handbook

SOP P6.1.2-3

Issuing a caution letter

1. Purpose

- 1.1 This SOP details the process and considerations an RFS authorised officer is to follow when seeking to issue a caution letter under the Fines Act.
- 1.2 Cautions can only be issued in writing using the approved RFS caution letter templates.

2. Procedures

- 2.1 An authorised officer must exercise their discretion when deciding to serve a penalty notice or issue a caution letter, based on the facts of each individual case.
- 2.2 There is no obligation to give a caution letter instead of a penalty notice.
- 2.3 An authorised officer may issue a caution letter instead of a penalty notice if they believe:
 - a. on reasonable grounds that a person has committed an offence under the Rural Fires Act or Rural Fires Regulation for which a penalty notice may be issued, and
 - b. it is appropriate to give a written caution letter in the circumstances.
- 2.4 An authorised officer should consider the following when deciding whether it is appropriate to issue a caution letter:
 - the offending behaviour is at the lower end of the scale of seriousness for that offence, or is minor in nature
 - the authorised officer has reasonable grounds to believe that the person is homeless
 - the authorised officer has reasonable grounds to believe that the person is under 18 years
 - the authorised officer has reasonable grounds to believe that the person has a special infirmity or is in very poor physical health
 - the person claims on reasonable grounds that they did not knowingly or deliberately commit the offence, or
 - the person admits to the offending behaviour and shows remorse; is cooperative and/or complies with the request to stop the offending behaviour.
- 2.5 If someone has been issued with a caution letter previously, this does not mean that they cannot be issued with another caution letter. However, where a caution letter has previously been issued for the same offence, a penalty notice should be considered.
- 2.6 An authorised officer **should not** issue any more than two caution letters to any one person for the same fire event.
- 2.7 A caution letter should only be issued using the approved RFS caution letter templates available on OneRFS.

- 2.8 When a caution letter is issued, this must be reported to the NSW Police Force via the Police Assistance Line (PAL). See SOP P6.1.2-5 Reporting or referring a matter to the NSW Police Force.

3. Related forms

- A list of letter templates is located on OneRFS at Fire Investigations and Compliance

SOP P6.1.2-4

Conducting an internal review of issued penalty notice

1. Purpose

- 1.1 This SOP details the process of how the RFS General Counsel (GC) shall conduct an internal review of any issued penalty notice.
- 1.2 A person who has been issued a penalty notice may lodge an appeal through Revenue NSW, who will refer the request to review the matter to the RFS.

2. Procedures

- 2.1 Internal reviews of penalty notices issued by RFS authorised officers must be conducted independently and in accordance with the Internal Review Guidelines under the Fines Act issued by the Attorney General.
- 2.2 Upon receiving the request for review from Revenue NSW, the GC shall conduct the review following the process outlined in Figure 2 below:

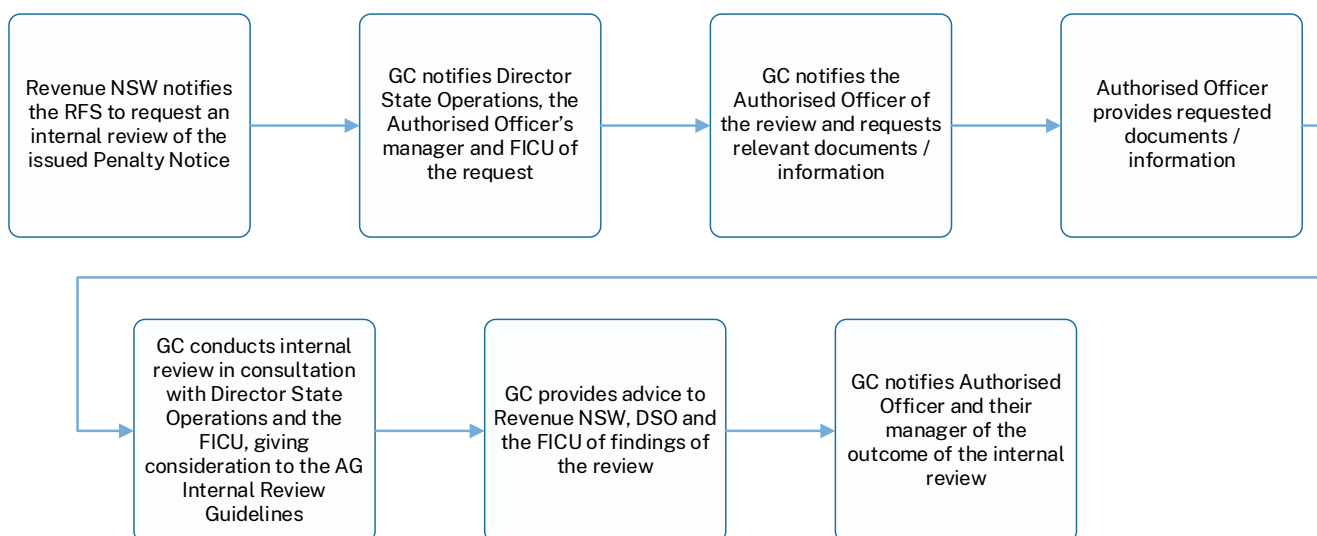


Figure 2 penalty notice internal review process

- 2.3 An authorised officer is to provide the information requested by the GC within 7 days of being asked to do so. This ensures the RFS adheres to the relevant timelines within the Attorney General's Internal Review Guidelines.
- 2.4 Once completed, the GC shall notify the authorised officer, Director State Operations, the manager of the authorised officer and the FICU of the outcome of the internal review.
- 2.5 On considering the review outcome, the Director State Operations may initiate a review of an authorised officer's status in accordance with this policy.

3. Related forms

- None

SOP P6.1.2-5

Reporting or referring a matter to the NSW Police Force

1. Purpose

- 1.1 This SOP details the process an RFS authorised officer is to follow when reporting or referring a matter to the NSW Police Force (NSWPF).

2. Procedures

- 2.1 The RFS and NSWPF have an agreement under which fires can be reported to the Police Assistance Line (PAL) using the RFS Bush Fire Reporting Form, available from the FICU.
- 2.2 The PAL is operated by the NSWPF and is staffed 24hrs a day, seven days a week.
- 2.3 All incidents where an offence has occurred and where an authorised officer issues a penalty notice or caution letter must be reported to NSWPF via the PAL.
- 2.4 All incidents where an offence has occurred but there was insufficient evidence for the authorised officer to take any action, must still be reported to the NSWPF via the PAL.
- 2.5 The 'Any Further Information' section of the RFS Bush Fire Reporting Form should contain specific details of the illegal and careless fire. The 'Hazard Reduction' section must contain the landowner details and that the RFS has issued either a penalty notice or a caution letter.
- 2.6 The details of NSWPF attendance to incidents or incidents reported via the PAL must be entered into the ICON incident report and include the Police event number. No information that could identify an individual is to be entered into ICON. Such information is to be stored in the appropriate CM record.
- 2.7 When seeking the assistance of NSWPF to undertake enforcement on behalf of the RFS, the authorised officer must complete a brief of evidence which is to be included in the handover to the NSWPF.
- 2.8 Police enforcement is when the NSWPF issues an infringement notice or a court attendance notice to the alleged offender for the offence/s.
- 2.9 The authorised officer is to follow up with the NSWPF to ascertain what action has been taken, and complete the legal process details in ICON.

3. Related forms

- RFS Bush Fire Reporting Form (PAL Form)
- Authorised Officer Handbook

SOP P6.1.2-6

Formal community engagement

1. Purpose

- 1.1 This SOP details the process and considerations the authorised officer is to follow when seeking to deal with the legal process incident via formal community engagement.

2. Procedures

- 2.1 The authorised officer has discretion to take the action outlined at clause 2.12 of this policy that they deem is appropriate in relation to the breach/es under the Rural Fires Act and Rural Fire Regulations.
- 2.2 A determination that formal community engagement is the appropriate legal process option means that an education package will be forwarded to the landowner/land manager/land occupier.
- 2.3 The following are some reasons why formal community engagement may be chosen as the legal process course of action:
 - an investigation was conducted and there is insufficient evidence to prove the offence
 - the offending behaviour did not involve risks to public safety, damage to property or financial loss, or have a significant impact on other members of the public
 - the offending behaviour is at the lower end of the scale of seriousness for that offence, or is minor in nature
 - the person was actively engaged in suppression of the fire
 - the authorised officer has reasonable grounds to believe that the person is homeless
 - the authorised officer has reasonable grounds to believe that the person is under 18 years
 - the authorised officer has reasonable grounds to believe that the person has a special infirmity or is in very poor physical health, and
 - other mitigating factors.
- 2.4 A verbal community engagement outcome must not be given in lieu of a written formal community engagement package.
- 2.5 When a determination is made to deal with a legal process incident via formal community engagement, all enquiries made and reasons behind that determination are to be recorded on a file note and stored in CM.

3. Related forms

- Approved RFS Investigation Management templates for formal community engagement. Contact the FICU for further information.

SOP P6.1.2-7

Exceptional circumstances

1. Purpose

- 1.1 This SOP details the internal RFS process and considerations the authorised officer is to follow when seeking to deal with the legal process incident via exceptional circumstances.

2. Procedures

- 2.1 The authorised officer has discretion to take the actions outlined in this policy that they deem is appropriate in relation to breaches under the Rural Fires Act and Rural Fire Regulations.
- 2.2 A determination that exceptional circumstances is the appropriate legal process action essentially means that no further action will be taken.
- 2.3 The following are some reasons why exceptional circumstances may be chosen as the legal process action:
 - the suspected cause entered into the sitrep in ICON is incorrect and the circumstances of the incident do not warrant legal action
 - an investigation was conducted and there is insufficient evidence to prove the offence
 - consideration was given to special circumstances as defined by [ServiceNSW](#) of the alleged perpetrator such as: medical emergencies, trauma, cognitive health issues or disability, temporary hardship, financial or domestic abuse, or
 - Other mitigating factors.
- 2.4 When a determination is made to deal with a legal process incident via exceptional circumstances, all enquiries made and reasons behind that determination are to be recorded on a file note and stored in CM. The District Manager may sign the file note for exceptional circumstance matters, on behalf of the authorised officer.
- 2.5 In the case where an investigation was conducted and there is insufficient evidence to prove the offence, the authorised officer needs to participate in some form of community engagement with the persons involved.

3. Related forms

- Approved RFS Investigation Management templates for exceptional circumstances. Contact the FICU for further information.

SOP P6.1.2-8

Recordkeeping for legal process

1. Purpose

- 1.1 This SOP details the process involved in the management of investigative documents associated with an investigation into breaches of the provisions listed in Schedule 2 of the Rural Fires Regulation.
- 1.2 It provides information as to what records are to be maintained and stored for all legal process investigations relating to penalty notices and caution letters.

2. Procedures

- 2.1 When an incident is reported through 000 or other means (e.g. a direct call to a Fire Control Centre) a report of the incident will be entered into CAD which will automatically generate an ICON incident.
- 2.2 Any staff or volunteer member with access to ICON can update the incident with ongoing situation reports, maps and intelligence.
- 2.3 If the incident is determined to be an illegal or careless fire by the landowner/manager/occupier/ lawful visitor, an investigation is completed by the authorised officer. All records from this investigation are to be scanned, recorded and attached to the ICON report and saved to Content Manager (CM).
- 2.4 Information relating to the investigation or that may identify any person that may be subject to an investigation is not to be recorded in ICON.
- 2.5 Consideration is to be given to the requirements of Service Standard 1.1.14 Personal Information and Privacy and P5.1.6 Records Management.
- 2.6 All records pertaining to an investigation are to be kept in the authorised RFS record keeping system, currently CM. A new CM folder is to be created for each investigation, with the NSWPF Event Number forming part of the CM folder title so as to form the common link between ICON and CM records.
- 2.7 District Managers are to ensure that access to these CM folders is controlled in order to preserve the privacy of any individual, the confidentiality of the information and to prevent unauthorised access.
- 2.8 Documents which must be included in the CM folder for that NSWPF Event Number include:
 - communications operational logs
 - brigade incident report
 - notes/log from Authorised Officer
 - proof of identification of landowner/offender
 - incident report form
 - legal process file
 - the PAL form
 - any permits or records relating to permits
 - notes from attending Brigade officers
 - statements

- photographs/diagrams
- penalty Notice/Caution Letter, and
- all documents relied upon to prove the elements of the offence.

3. Related Forms

- RFS Investigation Management training resources. Contact the FICU for further information.