



# POLICY P6.1.2

## PENALTY NOTICES AND CAUTIONS

ITEM	DESCRIPTION
Version Number	2.0
SOPs	<ul style="list-style-type: none"><li>&gt; SOP P6.1.2-1 Issuing a Caution</li><li>&gt; SOP P6.1.2-2 Issuing a Penalty Notice</li><li>&gt; SOP P6.1.2-3 Conducting an Internal Review of Issued Penalty Infringement Notice</li><li>&gt; SOP P6.1.2-4 Reporting or Referring a Matter to the NSW Police Force</li></ul>
Policy Owner	Executive Director Operations
Policy Contact	Director Response and Coordination
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### 1 Purpose

- 1.1 This policy:
- a. Outlines procedures for taking action for offences under the *Rural Fires Act 1997* (the Act) and Rural Fires Regulation 2013 (the Regulation); and
  - b. Provides advice on how to issue and serve a Penalty Notice under the Act, or exercise discretion to issue a caution under section 19A of the *Fines Act 1996*, or take other appropriate action.

### 2 Definitions

- 2.1 For the purpose of this policy document the following definitions apply:
- a. **Authorised officer:** per cl 48(2) of the Rural Fires Regulation 2013
  - b. **Caution:** per s19 of the *Fines Act 1996*
  - c. **Penalty Infringement Officer:** per cl 48(2) of the Rural Fires Regulation 2013
  - d. **Penalty notice:** per s20 of the *Fines Act 1996*
  - e. **Penalty Infringement Notice offence:** per cl 48(1)(a) of the Rural Fires Regulation 2013

### 3 Policy

- 3.1 The Act and the Regulation contain a number of offences.
- 3.2 Some offences can be dealt with by way of a Penalty Notice or Caution. These offences are listed in Schedule 2 of the Regulation.
- 3.3 All other offences should be referred to the NSW Police Force.

- 3.4 The NSW RFS has produced the Penalty Infringement Officers Handbook to assist authorised officers in the execution of their duty.

### **Authorised Officers**

- 3.5 Authorised officers of the NSW RFS may issue and serve penalty notices under the Act and Regulation.
- 3.6 Clause 48(2) of the Regulation sets out who are authorised officers. They are police officers, persons authorised by local authorities or persons authorised by the Commissioner.
- 3.7 The Commissioner has delegated his authority under clause 48(2) to appoint authorised officers to the Executive Director, Operations.
- 3.8 Prior to authorisation a member of the NSW RFS must undertake training provided by Revenue NSW, NSW RFS, and be registered in the SEINS database.
- 3.9 The Executive Director, Operations must keep a register of all authorised officers, which is to be reviewed annually.

### **Review of Authorised Officers**

- 3.10 The appointment of an authorised officer is subject to successful completion of all initial and ongoing training both NSW RFS related, or as otherwise specified by Revenue NSW.
- 3.11 An authorised officer shall have their authorisation reviewed by the Director Response and Coordination, with a recommendation made to the Executive Director, Operations where an authorised officer has:
- Failed to undertake mandatory training to maintain currency as an authorised officer;
  - Failed to comply with this policy;
  - Where the NSW RFS has been required to withdraw a penalty notice; or
  - Where the NSW RFS has been subject to a failed court prosecution.
- 3.12 Any recommendation made to the Executive Director, Operations 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 authorised officer status for a defined period;
  - Removal of authorised officer status;
  - Any combination of the above.
- 3.13 In the course of a review the Director Response and Coordination may make referral for action against any authorised officer where a reasonable belief is held that the authorised officer has:
- Acted in such manner that misconduct action should be initiated under relevant provisions of the *Government Sector Employment Act 2013*;
  - Acted in such manner that performance management should be initiated under relevant provisions of the *Government Sector Employment Act 2013*; or
  - Acted in such manner that requires the NSW RFS to report the matter to an external oversight agency (i.e. Revenue NSW, ICAC, NSW Police Force).
- 3.14 Where a referral is initiated based on clause 3.13 above the Director Response and Coordination shall suspend the review process until the outcome of any external considerations is completed.

### **Issuing a Penalty Notice**

- 3.15 An authorised officer may serve a Penalty Notice if the authorised officer believes on reasonable grounds that the person has committed an offence against the Act / Regulation.
- 3.16 An authorised officer must issue any Penalty Notice in accordance with SOP P6.1.2-2 Issuing a Penalty Notice.
- 3.17 An authorised officer is to ensure any Penalty Notice issued complies with this policy and the Penalty Infringement Officers Handbook.

### **Serving a Penalty Notice**

- 3.18 A Penalty Notice may be served either personally or by post.
- 3.19 An authorised officer of the NSW RFS must not serve a Penalty Notice on:
- a. a member of his or her immediate family;
  - b. any members of staff or volunteer from their home district; or
  - c. in circumstances that could be argued to be a conflict of interest.
- 3.20 A “conflict of interest” is defined in Policy [P1.1.3 Conflicts of Interest](#).
- 3.21 An authorised officer who has an actual or perceived conflict must ensure their respective manager is informed, and the Penalty Notice is issued by another independent authorised officer.

### **Court Elections and Briefs of Evidence**

- 3.22 Where a person issued a Penalty Notice elects to take the matter to court the NSW RFS must be notified. The NSW RFS will notify the authorised officer when this occurs.
- 3.23 It is the responsibility of the authorised officer upon notification of any court election to provide to NSW RFS Legal and Government Information section the following:
- a. Copy of the authorised officer’s notebook containing all relevant information relative to the penalty notice issued;
  - b. Copies of any photographs or diagrams drawn;
  - c. Copies of any permit or other document where it is alleged a condition has been breached;
  - d. Copies of relevant SITREP and validated BIRS report;
  - e. Copies of any other information supplied to the authorised officer that caused the issuing of the penalty notice;
  - f. If known a list of potential witnesses to the matter (e.g. Brigade members in attendance, neighbours etc.); and
  - g. Any other information requested.
- 3.24 The NSW RFS Legal and Government Information section will provide assistance to the authorised officer to prepare a brief of evidence for the nominated court date.

### **Cautions**

- 3.25 A caution is an alternative to a Penalty Notice and can be issued in certain circumstances.
- 3.26 Authorised officers have a discretion whether to serve a Penalty Notice or to issue a caution. An authorised officer must have regard to the Caution Guidelines under section 19A of the *Fines Act 1996* to determine if it is appropriate to issue a caution.
- 3.27 Any caution issued under this policy must be done in accordance with SOP P6.1.2-1 Issuing a Caution.
- 3.28 A verbal warning is not a caution as defined under the *Fines Act 1996* and must not be given in lieu of a Penalty Notice or caution.

### **Alternate to Caution**

- 3.29 Where an authorised officer is not satisfied on reasonable grounds that a particular person has committed an offence, but is satisfied that an offence has been committed, it may be appropriate to provide the particular person and any witnesses with some information on fire safety and the requirements of the legislation. For example, where it is clear that an offence has been committed but it is unclear whether it was person A or B or both who committed the offence, it may be appropriate to provide both A and B with the suggested information.
- 3.30 Where an authorised officer has doubt as to the applicability of a caution or penalty notice, advice should be sought in the first instance from their respective manager or the Manager Emergency Management and Coordination.

- 3.31 Where an authorised officer uses discretion to not issue either a caution or penalty notice but rather provide fire safety advice, the reasons for such decision must be clearly documented with the authorised officer's notebook, and appropriate notation made within the Intel Section of ICON.

### **Use of NSW RFS notebooks**

- 3.32 Each authorised officer will be issued with a NSW RFS numbered notebook. This notebook is to be used when obtaining information and evidence for the purpose of enforcement action.
- 3.33 The notebook shall record contemporaneous notes and information as such:
- a. Time, Date and Location of the offence;
  - b. Name and particulars of the offender/s;
  - c. Dialogue between authorised officer and offender/s;
  - d. Name and particulars of any witnesses;
  - e. Statements of witnesses;
  - f. Drawings or diagrams; and/or
  - g. General notes.
- 3.34 The authorised officer's notebook should contain sufficient details to justify the issuing of either a Penalty Notice or caution. The details in the notebook will form the basis of any brief of evidence required should the Penalty Notice be challenged in court.
- 3.35 The notebook of an authorised officer must be secured and accounted for at all times. The use and security of the authorised officers note book will be subject to periodic audit.
- 3.36 NSW RFS Response and Coordination section will maintain a register of all issued NSW RFS notebooks through the SAP HR Object on Loan functionality.
- 3.37 Penalty Notices issued for cigarette related offences reported to the NSW RFS via the NSW RFS public website may not require a notebook entry by the authorised officer if sufficient information is provided at time of reporting.

### **Penalty Notice pads**

- 3.38 Penalty Notice pads where issued must be secured and accounted for at all times.
- 3.39 NSW RFS Response and Coordination section will cause periodic audits to be undertaken to confirm the location and appropriate use of a NSW RFS Penalty Notice pad.
- 3.40 It is the responsibility of the Business Unit, Regional or District Manager to account for issued NSW RFS Penalty Notice pads at all times.
- 3.41 NSW RFS Response and Coordination section will maintain a register of all issued NSW RFS Penalty Notice Pads which will be reviewed annually.

### **Request for Internal Review**

- 3.42 Request for internal reviews of penalty notices issued by the NSW RFS are undertaken in accordance with the Internal Review Guidelines under the *Fines Act 1996* issued by the Attorney General.
- 3.43 There are two ways to challenge a penalty notice:
- a. Applying for internal review of the decision to issue the penalty notice; or
  - b. Electing to have the alleged offence heard in court.
- 3.44 The *Fines Act 1996* states that an application for review of a Penalty Notice may be made at any time up to the due date for payment specified in the penalty reminder notice.
- 3.45 Applications for review should be made direct to Revenue NSW, which will either conduct the review or refer the application to the issuing agency.
- 3.46 The NSW RFS Legal and Government Information section is responsible for the independent conduct of any internal review referred to the NSW RFS by Revenue NSW and is conducted in accordance with SOP P6.1.2-3 Conducting an Internal Review of Issued Penalty Notice.

- 3.47 The Penalty Notice must be withdrawn if, following an internal review, the NSW RFS finds that:
- a. The Penalty Notice was issued contrary to law;
  - b. The issue of the Penalty Notice involved a mistake of identity;
  - c. The Penalty Notice should not have been issued, having regard to exceptional circumstances relating to the offence;
  - d. A caution should have been given instead of a penalty notice, having regard to the relevant caution guidelines; or
  - e. The person to whom the Penalty Notice was issued is unable,
    - i. to understand that their conduct constituted an offence, or
    - ii. to control such conduct,
 because the person has an intellectual disability, a mental illness, a cognitive impairment or is homeless.

#### Reporting or Referring a matter to the NSW Police Force

- 3.48 The NSW RFS and NSW Police Force (NSWPF) have an agreement under which fires can be reported to the Police Assistance Line (PAL) using a 'RFS Bush Fire Reporting Form'.
- 3.49 An Authorised Officer must report to the NSWPF action taken in respect to issue of a Penalty Notice or a Caution in accordance with SOP P6.1.2-4 Reporting or Referring a Matter to the NSW Police Force.

## 4 Related documents

- > [Rural Fires Act 1997](#)
- > [Rural Fires Regulation 2013](#)
- > [Fines Act 1996](#)
- > [Caution Guidelines under Fines Act 1996](#)
- > [Internal Review Guidelines under the Fines Act 1996](#)
- > [Service Standard 1.1.7 Code of Conduct and Ethics](#)
- > [Policy P1.1.3 Conflicts of Interest](#)
- > [Policy P2.1.1 NSW RFS Administrative Delegations](#)

## 5 Amendments

AMENDMENT DATE	VERSION NO	DESCRIPTION
1 September 1999	1.0	> Initial release as policy 4.2.4 Penalty Notices v1.0
1 September 2008	1.0	> Repealed and remade SS 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
14 May 2018	2.0	> Repeals and remakes P6.1.2 v1.0 > Retitled to "Penalty Notices and Cautions" > Complete review to align with the Rural Fires Regulation 2013

# SOP P6.1.2-1

## ISSUING A CAUTION

### 1 Purpose

- 1.1 This SOP details the process and considerations a NSW RFS Penalty Notice Authorised Officer is to follow when seeking to issue a Caution under the *Fines Act 1997*.
- 1.2 Cautions can only be issued.

### 2 Procedures

- 2.1 An authorised officer may issue a caution 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 caution in the circumstances.
- 2.2 An authorised officer should consider the following circumstances and take into account when deciding whether it is appropriate to give a person a caution:
  - a. 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;
  - b. The authorised officer has reasonable grounds to believe that the person has a mental illness or intellectual disability;
  - c. The authorised officer has reasonable grounds to believe that the person is homeless;
  - d. The authorised officer has reasonable grounds to believe that the person is under 18 years;
  - e. The authorised officer has reasonable grounds to believe that the person has a special infirmity or is in very poor physical health;
  - f. The offending behaviour is at the lower end of the scale of seriousness for that offence or is minor in nature;
  - g. The person claims on reasonable grounds that they did not knowingly or deliberately commit the offence;
  - h. The person admits the offending behaviour and shows remorse. The person is cooperative and/or complies with a request to stop the offending conduct; and/or
  - i. There are other reasonable grounds for giving a caution in all the circumstances of the case.
- 2.3 An authorised officer must exercise his/her discretion to serve a Penalty Notice or issue a caution based on the facts of each individual case.
- 2.4 It should be noted that there is no obligation to give a caution instead of a penalty notice.
- 2.5 The fact that someone has been issued with a caution previously does not mean that they cannot be issued another caution. However, where a caution has previously been issued for the same offence a penalty notice should be issued.
- 2.6 An authorised officer must not issue any more than two cautions to any one person for the same fire event. The cautions provided must be for the more serious of all the offences committed.
- 2.7 A caution can only be given by providing the person with the caution letters using the approved NSW RFS Caution templates listed in Section 3 of this SOP.

### 3 Related forms

- > Caution – Obstruction of members of Service
- > Caution – Damaging neighbourhood safer places signs
- > Caution - Failing to extinguish fire Caution – Failing to extinguish fire or notify authorities
- > Caution – Failure to comply with a bush fire hazard reduction notice
- > Caution – Failure to provide notice
- > Caution – Lighting a fire without certain authorities
- > Caution – Lighting a fire without a fire permit
- > Caution – Lighting a fire that is dangerous to a building
- > Caution - Breach of Fire Permit Condition
- > Caution – Failure to comply with a direction given by the Minister about lighting a fire in certain circumstances
- > Caution – Discarding lighted cigarettes etc
- > Caution – Set Fire to another's Land
- > Caution – Leaving a fire before it is extinguished
- > Caution – Burning to demolish buildings with a permit
- > Caution – Burning to destroy sawmill waste material
- > Caution – Failure to comply with conditions of burning to destroy sawmill waste material
- > Caution – Use of spark arresters
- > Caution – Use of motorised machines
- > Caution – Lighting fires for cooking etc
- > Caution – Burning garbage and refuse
- > Caution – Burning household garbage etc
- > Caution – Lighting fires to produce charcoal etc
- > Caution – Lighting fires to burn waste products from the production of charcoal etc
- > Caution – Light, use or carry tobacco product



# 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 1997*.
- 1.2 Penalty Notices can only be issued using the approved NSW RFS Penalty Notice Pads or electronic process.
- 1.3 Where the person to be issued a penalty notice is a repeat / recidivist offender, NSW Police should be notified and requested to attend for investigation and criminal prosecution purposes.

### 2 Procedures

#### Prior to Issuing the Penalty Notice

- 2.1 A Penalty Notice enables a person to pay a penalty within the time specified in the notice rather than having the matter determined by a court.
- 2.2 A Penalty Notice must not be issued unless the authorised officer can demonstrate the proofs of the offence for the Penalty Notice to be issued.
- 2.3 A Penalty Notice should not be issued where the time elapsed is greater than six months from the date of the offence being committed.
- 2.4 An authorised officer must carry on their person at all times their official NSW RFS identification/authorisation card and wallet.
- 2.5 An authorised officer must produce their NSW identification/authorisation card and wallet whenever requested to do so by any person when issuing a Penalty Notice.
- 2.6 For cigarette from motor vehicle related offences, the appropriate checks should be conducted on NSW Government vehicle registration databases.

#### Requirement to be satisfied as to identity prior to issuing Penalty Infringement Notice

- 2.7 An authorised officer must be satisfied to the identity of the person to which a Penalty Notice is to be issued.
- 2.8 Section 131A of the *Rural Fires Act 1997* allows for an authorised person who intends to serve a Penalty Notice on a person if it appears that a person is committing an offence against the Regulation, may direct the person to state their full name and residential address.
- 2.9 A person must not, without reasonable excuse fail to comply with a direction of an authorised officer to state name and address. Failure to comply with this direction may constitute an offence under the Act.
- 2.10 Prior to exercising the power to require name and address, the authorised officer must caution the person to be subject to the direction.
- 2.11 For cigarette from motor vehicle related 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 applicable NSW Government vehicle registration database.

#### Caution prior to exercising powers

- 2.12 An authorised officer prior to exercising a power to require a person to state full name and address must provide a caution that must include the following details:
  - a. Your Name;
  - b. That you are an Authorised Officer of the NSW RFS to issue Penalty Notices;
  - c. That you suspect that the individual is committing or committed an offence against the Act or Regulation;



- d. That you direct the person to state their full name and residential address; and
- e. Failure to comply with your direction may constitute an offence

Example:

*“My name is Joe Blogs; I am an Authorised Officer of the NSW Rural Fire Service to issue Penalty Notices. I have reason to suspect that you have committed an offence against the Rural Fires Act. I now direct you to state to me your full name and residential address, I must caution you that failure to comply with my direction may be an offence”*

- 2.13 It is important an authorised officer confirm the details provided of a person to be issued a penalty notice with an appropriate form of Identification (i.e. Drivers Licence).

### **Completing the Penalty Notice**

- 2.14 An authorised officer must ensure that the Penalty Notice is completed in full and contains all required information to allow enforcement.
- 2.15 Once completed the relevant parts of the Penalty Notice is to be distributed as follows:
- a. Part A – Sent to the State Debt Recovery Office
  - b. Part B – Remains in the Penalty Notice Pad
  - c. Part C – Served upon the person to receive the Penalty Notice
- 2.16 Greater detail on how to complete a Penalty Notice is contained within the Penalty Issuing Officers Handbook and SEINS course provided Revenue NSW.
- 2.17 An authorised officer must not issue any more than two Penalty Notices to any one person for the same fire event. The Penalty Notice provided must be for the more serious of all the offences committed.

### **Cancelling a Penalty Notice**

- 2.18 An authorised officer may only cancel a Penalty Notice in the following circumstances:
- a. Error in the identity of the person entered upon the Penalty Notice;
  - b. Error in the offence or offence code entered upon the Penalty Notice; or
  - c. Error in the location or other details required upon the Penalty Notice.
- 2.19 Where an error has been identified the authorised officer should strike out Penalty Notice with two parallel lines and the word “cancelled” clearly printed across the notice. Where any part of the notice has been removed from the infringement pad these are to be returned and permanently secured to the Penalty Notice pad.
- 2.20 Upon cancellation of the Penalty Notice the authorised officer is to make a notation upon the cancelled notice of the re-issued infringement number, and have the authorised officer’s manager or supervisor initial the notation.
- 2.21 Where an error has been identified after service of Part C has already occurred (posted or handed to individual) the authorised officer is to:
- a. Prepare memorandum to the Director Response and Coordination outlining the error, and circumstances leading to the error, and requesting cancellation of the penalty notice; and
  - b. Submit such report to the Director within seven days of penalty notice service.

## **3 Related forms**

- > None

# SOP P6.1.2-3

## Conducting an Internal Review of Issued Penalty Notice

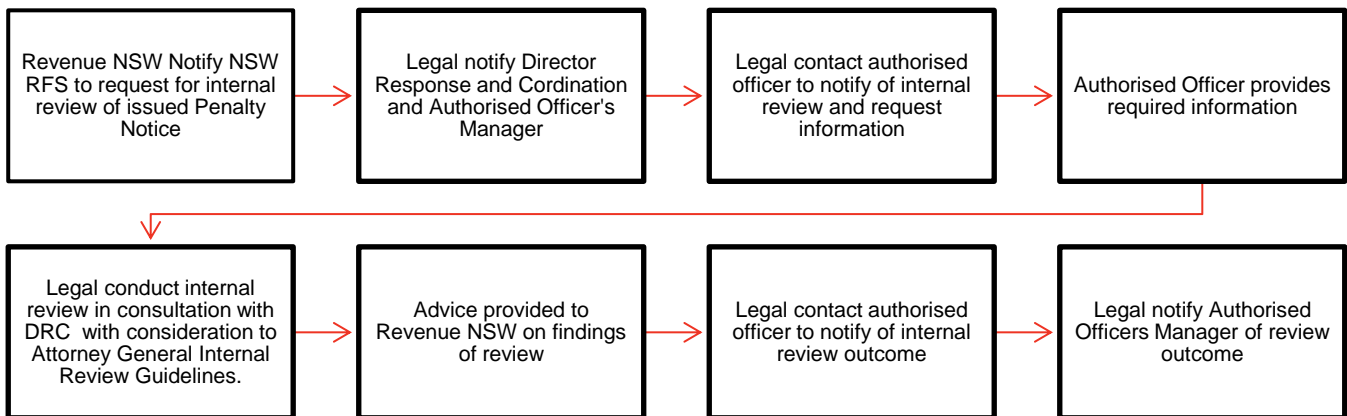
### 1 Purpose

- 1.1 This SOP details the process how NSW RFS Legal and Government Information shall conduct an internal review of any issued Penalty Notice.

### 2 Procedures

- 2.1 Internal reviews of Penalty Notices issued by NSW RFS Authorised Officers must be conducted independently and in accordance with Internal Review Guidelines under the *Fines Act 1996* issued by the Attorney General.
- 2.2 Upon notification of request for internal review by Revenue NSW, the NSW RFS Legal and Government Information section shall conduct the review following the process outlined in Figure 1.
- 2.3 An Authorised Officer is required to provide information requested by NSW RFS Legal and Government Information within 7 days of been asked to do so, to ensure the NSW RFS adheres to relevant timelines within the Attorney Generals Internal Review Guidelines.
- 2.4 Once completed, NSW RFS Legal and Government Information shall notify the Authorised Officer, Director Response and Coordination, and the Manager of the authorised officer of the outcome to the internal review.
- 2.5 Having regard to the merits of the review outcome, the Director Response and Coordination may initiate a review of an authorised officer's status in line with the provisions of this policy.

Figure 1



### 3 Related forms

- > None

## **SOP P6.1.2-4**

# **REPORTING OR REFERRING A MATTER TO THE NSW POLICE FORCE**

## **1 Purpose**

- 1.1 This SOP details the process a NSW RFS Penalty Notice Authorised Officer is to follow when reporting or referring a matter to the NSW Police Force.

## **2 Procedures**

- 2.1 The NSW RFS and NSW Police Force (NSWPF) have an agreement under which fires can be reported to the Police Assistance Line (PAL) using a 'RFS Bush Fire Reporting Form'.
- 2.2 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 must be reported to NSWPF via PAL.
- 2.4 In these circumstances the 'Any Further Information' section of the PAL Bush Fire Reporting Form should contain specific details of the illegal and careless fire, the Hazard Reduction section has to contain the landowner details and that NSW RFS has issued either a Penalty Notice or a caution.
- 2.5 The details of NSWPF attendance to incidents or incidents reported via PAL must be entered in the ICON Incident Report and include the COPS event number.

## **3 Related forms**

- > None